

**THE WORKERS' RIGHTS BILL**  
(No. XVIII of 2019)

**Explanatory Memorandum**

The object of this Bill is to repeal the Employment Rights Act and replace it by a modern and comprehensive legislative framework with a view to addressing the shortcomings of the present legislation and to provide the emerging forms of work in the industrial revolution so as to promote decent work and sustainable development.

**2. The Bill, inter alia –**

- (a) protects workers against discrimination by expanding the definition of “discrimination” to include impairment and different treatment where a worker performing the same or similar work is employed by a subsidiary company or a parent company;
- (b) protects workers against precarious employment by –
  - (i) restricting a fixed term contract to a work of a temporary nature;
  - (ii) considering the length of service of a worker on a fixed term contract as being continuous employment where the contract is renewed and where there is no break of 28 days between 2 fixed term contracts;
- (c) gives a person who performs atypical work, such as online platform work, the status of a worker;
- (d) provides for a compromise agreement to be vetted by a worker’s legal representative, trade union or representative of the Ministry responsible for the subject of labour and employment relations so as to protect workers where they are compelled to sign an agreement to their detriment;
- (e) reconciles work with family by providing more flexible work arrangements, such as flexitime;
- (f) provides for a recourse to a protective order to safeguard workers’ remuneration and for an advance payment from a Wage Guarantee Fund Account where an employer fails to pay remuneration a worker;

- (g) extends maternity benefits to a mother who adopts a child of up to 12 months old;
- (h) harmonises core conditions of employment and provides for new benefits such as bank of sick leave, Juror's leave and other special leaves;
- (i) protects workers' jobs by the setting up of a Redundancy Board;
- (j) guarantees workers a gratuity on retirement which will take into account their full length of service irrespective of the number of employers with whom they have been working; and
- (k) widens the scope of protection to workers against violence by making an employer vicariously responsible, in certain circumstances, for the act committed by a co-worker or any other person on a worker.

**S. S. CALLICHURN**

*Minister of Labour, Industrial Relations,  
Employment and Training*

12 July 2019

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**ARRANGEMENT OF CLAUSES**

*Clause*

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## A BILL

**To provide a modern and comprehensive legislative framework for the protection of workers, and to provide for matters related thereto**

ENACTED by the Parliament of Mauritius, as follows –

### PART I – PRELIMINARY

#### 1. Short title

This Act may be cited as the Workers’ Rights Act 2019.

#### 2. Interpretation

In this Act –

“agreement” means a contract of employment between an employer and a worker, whether oral, written, implied or express;

“basic wage or salary”, in relation to a worker, means –

- (a) where the terms and conditions of employment of the worker are governed by Remuneration Regulations, an arbitral award or an agreement, the basic wage or salary prescribed in the corresponding Remuneration Regulations or Wages Regulations, award or agreement, or where the employer pays a higher wage or salary, the higher wage or salary so paid, excluding any allowance by any name called, and whether paid in cash or in kind;
- (b) in any other case, all the emoluments received by the worker, excluding any bonus or overtime;

“Board” means the Redundancy Board referred to in section 68;

“child” means a person under the age of 16;

“collective agreement” has the same meaning as in the Employment Relations Act;

“continuous employment” means the employment of a worker under an agreement or under more than one agreement where the interval between an agreement and the next agreement does not exceed 28 days;

“Court” means the Industrial Court;

“Director-General” has the same meaning as in the Mauritius Revenue Authority Act;

“earnings” –

(a) means basic wages specified in any Remuneration Regulations or Wages Regulations or such wages paid by an employer; and

(b) includes –

(i) wages earned pursuant to sections 19 and 20;

(ii) wages paid under sections 7, 10, 15, 16, 17, 24, 26, 27, 28, 29, 30, 38, 42, 43, 45(1), (4), (5) and (6), 46, 47, 48, 49, 50 and 51;

(iii) any sum of money, including commission, by whatever name called, paid to a worker, in respect of any work performed by him, in addition to the basic wages agreed upon between him and the employer, and which is related to productivity; and

(iv) any allowance paid under any Remuneration Regulations or Wages Regulations;

“emoluments” means any payment in money or money’s worth which is salary, wages, leave pay, fee, overtime pay, perquisite, allowance, bonus, gratuity, commission or other reward or remuneration, by whatever name called, in respect of, or in relation to, the office or employment of a worker;

“employer”, subject to sections 56, 67 and 110 –

- (a) means a person who employs a worker and is responsible for the payment of remuneration to the worker; and
- (b) includes –
  - (i) a job contractor;
  - (ii) a person, other than another share worker, who shares the profit or gross earnings of a share worker;

“financial year” means the period of 12 months ending on 30 June in any year;

“fortnight” means any period of 14 consecutive days;

“good and sufficient cause” includes –

- (a) illness or injury certified by a medical practitioner;
- (b) absence authorised by the employer;
- (c) absence due to participation in a lawful strike;

“goods vehicle” has the same meaning as in the Road Traffic Act;

“insolvent” means being placed into compulsory receivership, under administration or in liquidation;

“job contractor” means a person who employs a worker to perform any work or service that the person has contracted to do or provide for another person;

“local authority” has the same meaning as in the Local Government Act;

“Minister” means the Minister to whom responsibility for the subject of labour and employment relations is assigned;

“Ministry” means the Ministry responsible for the subject of labour and employment relations;

“night work” means any period, whether in shift or otherwise, during which a worker is required to work or to remain at his workplace for at least 5 consecutive hours between 6 p.m. and 6 a.m.;

“non-citizen” has the same meaning as in the Non-Citizen (Employment Restriction) Act;

“notional hourly rate” means the hourly rate calculated in accordance with section 18;

“officer” means an officer designated by the supervising officer;

“part-time worker” means a worker whose normal hours of work are less than those of a comparable full-time worker;

“past service” means service with the employer from the period commencing from the date the worker is employed by the employer up to the date preceding the date of the commencement of this Act;

“pay period” means the period during which remuneration is paid under section 24;

“place of work” means a place where work is performed under an agreement;

“productivity payment” –

(a) means any sum of money, by whatever name called, paid to any category of worker in respect of work performed by him over and above or in addition to the basic work agreed upon between him and his employer, and related to productivity; but

(b) does not include payment of attendance bonus equivalent to a maximum of 10 per cent of the worker's basic wages, meal allowance, transport allowance or any other allowances or payment not related to productivity;

“public holiday” has the same meaning as in the Public Holidays Act;

“public officer” has the same meaning as in the Constitution;

“remuneration”, subject to section 37(3) –



- (a) means all emoluments, in cash or in kind, earned by a worker under an agreement; and
- (b) includes –
  - (i) any sum paid by an employer to a worker to cover expenses incurred in relation to the special nature of his work;
  - (ii) any money to be paid to a job contractor for work by the person employing the job contractor; and
  - (iii) any money due as a share of profits;

“Remuneration Regulations” or “Wages Regulations” –

- (a) means any regulations made by the Minister under section 93 of the Employment Relations Act; and
- (b) includes any Remuneration Order, made under the repealed Industrial Relations Act, which is still in operation;

“retirement age” means the date on which a worker attains the age of 65;

“seed capital” means an amount funded from the Workfare Programme Fund to provide for default payment of wages unpaid contribution under section 37(2) and for partial payment of contribution for SMEs or otherwise as may be prescribed”;

“severance allowance” means an amount calculated in accordance with section 83;

“share worker” means a person who –

- (a) is remunerated, wholly or partly, by a share in the profits of the enterprise for which he works, or gross earnings of an enterprise obtained from the work done by him; but
- (b) is not the owner of the main equipment, premises and materials used in the work he does;

“shift work” means work organised in 2 or more shifts in a period of 24 consecutive hours;

“shop” means a place where any wholesale or retail trade or business is carried on;

“SME” has the same meaning as in the Small and Medium Enterprises Act 2017;

“stipulated hours” means the hours of work specified in section 14(1)(a) and (b) and (4)(a) or such lesser number of hours of work as may be specified in an agreement;

“supervising officer” means the supervising officer of the Ministry;

“threatening behaviour” means any behaviour or declaration of intention to use force on, or to intimidate, a worker;

“trade or business” means any occupation, calling, trade, business, profession, industry, service or other commercial activity;

“trade union” has the same meaning as in the Employment Relations Act;

“Transition Unemployment Benefit” means the unemployment benefit referred to in section 75;

“Tribunal” means the Employment Relations Tribunal established under the Employment Relations Act;

“undertaking” includes –

- (a) any economic, technical, commercial, financial or service activities by way of a trade or business, whether or not the trade or business is carried out for profit, in which workers are employed and the objective is to produce or provide market commodities or services of any kind;
- (b) any Ministry or Government department, statutory body, local authority, and any other form of organisation or body of persons or any part thereof;
- (c) a branch of an undertaking;

“week” means any period of 7 consecutive days;

“week day” means any day other than a public holiday;

“worker”, subject to sections 10, 56, 75 and 76 –

- (a) means a person who has entered into, or works under an agreement or a contract of apprenticeship, other than a contract of apprenticeship regulated under the Mauritius Institute of Training and Development Act, whether by way of casual work, manual labour, clerical work, or otherwise, and however remunerated; and
- (b) includes –
  - (i) a part-time worker;
  - (ii) a former worker, where appropriate; and
  - (iii) a share worker; but
- (c) does not include –
  - (i) a job contractor;
  - (ii) a person taking part in a training scheme set up by the Government or under a joint public-private initiative with a view to facilitating the placement of jobseekers in gainful employment;
  - (iii) except in relation to sections 4, 23, 25, 27, 29, 30, 45, 46, 49, 50, 52 and Parts IX, X, XI, XII and XIII, a person whose basic wage or salary is at a rate exceeding 600,000 rupees in a year;
  - (iv) a person performing atypical work, except in relation to sections 4, 23, 28, 29 and 30 and Parts IX, X, XI, XII, XIII, XIV and XV;

"year" means any period of 12 consecutive months;

“young person” means a person, other than a child, who is under the age of 18.

### **3. Application of Act**

(1) Subject to subsections (2) and (3) and notwithstanding any other enactment, this Act shall apply to every agreement.

(2) Where an employer employs a job contractor, both the employer and the job contractor shall be jointly and severally liable for the remuneration and conditions of employment of the workers of the job contractor, including their safety, health and welfare.

(3) This Act shall not apply to –

- (a) a public officer or a local government officer, except in relation to sections 4, 23, 109, 113, 114, 115, 118(1)(f) insofar as it applies to such public officer or local government officer, (2), (3) and (4) and Part XIII;
- (b) a worker of a statutory body who is, or has opted to be, governed by the recommendations made in a report of the Pay Research Bureau, except in relation to sections 4, 23(1), 82, 84, 113, 114, 115 and 118(1)(f) insofar as it applies to that worker, (2), (3) and (4) and Parts IX, XI and XIII;
- (c) a worker who is employed on terms and conditions as per the recommendations in the report of the Pay Research Bureau except in relation to sections 4, 23(1), 82, 84, 113, 114, 115 and 118(1)(f) insofar as it applies to that worker, (2), (3) and (4) and Parts IX, XI and XIII;
- (d) a worker whose terms and conditions are governed by a collective agreement or by terms and conditions of employment made in a salary report, by whatever name called, except for –
  - (i) sections 4, 23(1), 82, 84, 99(1)(f), 113, 114, 115 and 118(1)(f) insofar as it applies to that worker, (2), (3) and (4) and Parts IX, X, XI, XII and XIII; and
  - (ii) terms and conditions specified in this Act but not provided in the collective agreement or salary report, as the case may be;
- (e) a worker employed in an enterprise where terms and conditions of employment are governed by recommendations made in a salary report by whatever name called except in relation to sections 4, 23(1), 82(1), 83, 86, 94, 95, 96, 97 and 99(1)(f) insofar as it applies to that worker, (2), (3) and (4) and Parts IX, XI, XII and XIII;

- (f) an atypical worker, except in relation to sections 4, 23, 28, 29 and 30 and Parts VI, IX, X, XI, XII, XIII, XIV and XV.

## **PART II – AGREEMENT**

### **4. Discrimination in employment and occupation**

(1) (a) No employer shall treat, in a discriminatory manner, any worker who is in his employment.

(b) No prospective employer shall treat a person in a discriminatory manner in respect of access to employment.

(2) Any distinction, exclusion or preference in respect of a particular occupation based on the inherent requirements of the occupation shall not be deemed to be discrimination.

(3) A person does not discriminate against another person by imposing or proposing to impose on that other person a condition, requirement or practice that has or is likely to have a disadvantaging effect, where the condition, requirement or practice is reasonable in the circumstances.

(4) The matters to be taken into account in determining whether or not a condition, requirement or practice is reasonable in the circumstances include –

- (a) the nature and extent of the disadvantage resulting or likely to result, from the imposition or proposed imposition of the condition, requirement or practice;
- (b) the feasibility of overcoming or mitigating the disadvantage; and
- (c) whether the disadvantage is proportionate to the result sought to be achieved by the person who imposes, or proposes to impose, the condition, requirement or practice.

(5) In this section –

“discrimination” includes affording different treatment to –

- (a) different workers attributable, wholly or mainly, to their respective description by age, race, colour, caste, creed, sex, sexual orientation, HIV status, impairment, marital or family status, pregnancy, religion, political opinion, place of

origin, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

- (b) workers of a subsidiary company performing work of equal value as a worker employed by another subsidiary company of the parent company or the parent company, operating in the same line of business, on less favourable salary, terms and conditions of employment;

“employment” or “occupation” includes access to vocational training, to employment and to particular occupations, and terms and conditions of employment.

## **5. Agreement**

(1) A person who is of the age of 16 or more shall be competent to enter into an agreement and shall, in relation to the agreement and to its enforcement, be deemed to be of full age and capacity.

(2) No worker shall be bound by virtue of an agreement to be responsible for an act or omission of any other person.

(3) No person shall enter into an agreement where remuneration is to be paid at intervals of more than one month.

(4) Any agreement which contains a provision inconsistent with subsection (3) shall, to the extent of the inconsistency, be void.

(5) Where a worker is –

- (a) required to report at, or is conveyed to, a place of work by his employer or agent of the employer; and
- (b) found fit and willing to perform the work for which he was required to report or conveyed,

the worker and the employer shall be deemed to have entered into an agreement.

(6) Where a worker is required to perform task work or piece work, his employer or an agent of the employer agent shall, before the work is commenced, inform the worker of the nature of the task he is required to perform and the rate at which he shall be remunerated for that work.

(7) Nothing in this Act shall –

(a) prevent an employer from –

- (i) remunerating a worker at a rate higher than that provided for in any Remuneration Regulations or Wages Regulations; or
- (ii) providing the worker with conditions of employment which are more favourable than those specified in any Remuneration Regulations or in this Act; or

(b) authorise an employer –

- (i) to reduce the wages of a worker; or
- (ii) subject to section 57 of the Employment Relations Act, to alter the conditions of employment of the worker so as to make them less favourable.

(8) Subject to section 57 of the Employment Relations Act, an agreement by a worker to relinquish any of his rights under this Act shall be void.

(9) Every employer shall provide to every worker engaged for more than one month, a written statement of particulars of employment in the form set out in the First Schedule, or in such other form as may be prescribed, in the French or Creole language, within 14 days of the completion of the first calendar month, and a copy of the statement shall be submitted to the supervising officer within 30 days.

## **6. Fixed term agreement**

(1) An employer may, subject to this section, enter into an agreement with a worker for a specified period of time in relation to the temporary needs of the employer –

- (a) for the performance and completion of a specific piece of work which is temporary and non-recurring;
- (b) in respect of any work or activity which is of a temporary, seasonal or short-term nature;

- (c) in replacement of another worker who is on approved leave or suspended from work;
- (d) for the purpose of providing training to the workforce;
- (e) for a specific training contract; or
- (f) in accordance with a specific work or training scheme set up by the Government or a statutory body for a determinate duration.

(2) Subsection (1) shall not apply to –

- (a) the exclusion of limitations of the rights of a worker; or
- (b) the deprivation of the right of a worker to permanent employment.

(3) Where a worker is employed on a fixed term contract, the worker shall be informed in writing by his employer of the specific skills required, the specific tasks to be carried out and the duration thereof.

(4) A worker, other than a migrant worker, who is employed in a position which is of permanent nature, shall not be employed on a contract of fixed duration for the performance of work relating to the fixed, recurring and permanent needs of the continuous normal business activity of the employer.

(5) Where a worker is employed on a fixed term contract, his terms and conditions of employment shall not be less favourable than those of a worker employed on an indeterminate contract performing the same or similar work, having regard where relevant, whether they have a similar level of qualifications, skills or experience.

(6) A worker employed on a fixed term contract shall be deemed to be in continuous employment where there is a break not exceeding 28 days between any 2 fixed term contracts.

(7) An employer shall inform a worker employed on a fixed term contract of any vacancy of a permanent nature in the same category and grade to his current employment.



## 7. Part-time work

(1) A full-time worker is considered as a comparable full-time worker in relation to a part-time worker where –

- (a) both workers are –
  - (i) employed by the same employer and based at the same establishment; and
  - (ii) engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience; or
- (b) there is no full-time worker in the same establishment, but there is a comparable full-time worker based at a different establishment.

(2) A part-time worker shall not be treated by his employer less favourably than a comparable full-time worker –

- (a) as regards the terms of his contract; or
- (b) by being subjected to any other detriment by his employer.

(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker, the pro rata principle in terms of hours of work shall be applied.

(4) Where a part-time worker is paid remuneration for extra work in a period at a rate lower than the rate payable to a comparable full-time worker who performs extra work in the same period, he shall not be regarded as being treated less favourably than the comparable full-time worker to the extent that the total number of hours worked by the part-time worker in the period, including overtime, does not exceed the number of hours the comparable full-time worker is required to work in the period, excluding absences from work and overtime.

(5) Where a worker employed on a part-time contract considers that he should have been classified as a full-time worker, he may apply to the Court for an order to that effect.

(6) In this section –

- (a) a worker is a full-time worker where he is paid by reference to the time he works, whether on normal or stipulated hours, and having regard to the custom and practice of the employer in relation to workers employed by the employer under the same type of contract; and
- (b) a worker is a part-time worker where he is paid by reference to the time he works and, having regard to the custom and practice of the employer in relation to a comparable full-time worker.

## **8. Consideration for full-time or permanent employment**

(1) Where a vacancy occurs in the full-time or permanent workforce of an employer, priority of consideration for the full-time employment shall be given, as far as practicable, to a part-time worker or to a worker on determinate contract of employment in the same category and grade.

(2) Where 2 or more workers are eligible under subsection (1), the employer shall make an offer to the more suitable worker, having regard to qualifications, merit, experience, performance and seniority.

## **9. Transfer to part-time or full-time work**

(1) A full-time worker may enter into an agreement with an employer to perform part-time work where the agreement –

- (a) is in writing and for a specified period of time; and
- (b) provides for the option to the worker to revert to full-time work at the expiry of the specified period of the part-time work.

(2) A part-time worker may enter into an agreement with an employer to perform full-time work where the agreement –

- (a) is in writing; and
- (b) where appropriate provides for the option to the worker to revert to part-time work.

## **10. Atypical work**

(1) Notwithstanding this Act, a worker may, where there is an agreement between him and his employer, work as an atypical worker, the employment relationship of which may be different from an employment relationship which applies to any other worker.

(2) The Minister may, for the purpose of this section, make such regulations as he thinks fit.

(3) In this section –

“worker” –

- (a) means an atypical worker; and
- (b) includes –
  - (i) a homemaker;
  - (ii) an online platform worker; or
  - (iii) a worker, other than a homemaker or an online platform worker, who may work for one or more employers at the same time and who chooses when, where and how to work.

## **11. Compromise agreement**

(1) A worker may make a compromise agreement with his employer in resolution of a dispute concerning his termination of employment or short payment or non-payment of wages where the worker has received advice from a relevant independent adviser as to the terms of the agreement and its effect on the claim of the worker to be sued in Court.

(2) A compromise agreement shall not be valid where –

- (a) the relevant agreement was not vetted by an independent adviser; or
- (b) the independent adviser was a party to the matter for the employer.

(3) Where an employer fails to comply with a compromise agreement, any payment due to the worker under the agreement may be claimed in Court.

(4) In this subsection (1) –

“relevant independent adviser” means –

- (a) a qualified law practitioner;
- (b) an officer or a member of a registered trade union;
- (c) an officer of the Ministry.

## **12. Continuous employment**

The continuous employment of a worker shall not be deemed to have been interrupted –

- (a) by the worker’s absence from work –
  - (i) on any leave taken in accordance with this Act or any other enactment, an agreement, a collective agreement or an award;
  - (ii) due to suspension from employment;
  - (iii) by reason of participation in a strike which is not unlawful under the Employment Relations Act; or
  - (iv) with the consent of his employer;
- (b) on account of the limited number of days worked as specified in the agreement of a part-time worker;
- (c) where the worker has been detained pending a police enquiry and he has been released before a period of 60 days from the last day he worked; or
- (d) where the worker ceases to be in the employment of one employer and enters the employment of another employer pursuant to section 65.

## **PART III – MINIMUM AGE FOR EMPLOYMENT**

### **13. Employment of children and young persons**

(1) No person shall employ a child for employment or work in any occupation.

(2) For the purpose of subsection (1), a child shall not be considered to be employed for employment or work where, during school holidays or outside school hours, the child remains at the place of work of his parent or assists his parent in a family business in a light job which is not harmful to his health or his development or prejudicial to his participation in a vocational orientation or training programme.

(3) No person shall employ, or continue to employ, a young person –

- (a) in work which, by its nature, or the circumstances in which it is carried out, is likely to jeopardise his health, safety, or physical, mental, moral or social development; or
- (b) after being notified in writing by the supervising officer that the kind of work for which he is employed is unsuitable, or is likely to interfere with his education.

(4) Every employer shall keep a record of every child or young person employed by him, stating his full name, address, date of birth and such other details as may be prescribed.

## **PART IV – HOURS OF WORK**

### **14. Normal working hours**

(1) Subject to subsection (2) and to any other enactment, the normal working week for every worker, other than a part-time worker or *garde malade* shall consist of 45 hours of work, excluding time allowed for meal and tea breaks, made up as follows –

- (a) where the worker is required to work on 5 days in a week, 9 hours' work on any 5 days of the week, other than a public holiday;

- (b) where the worker is required to work on 6 days in a week –
  - (i) 8 hours' work on any 5 days of the week other than a public holiday; and
  - (ii) 5 hours' on one other day of the week other than a public holiday.

(2) Subject to the operational requirements of the employer, the normal working week of any worker may begin on any day of the week.

(3) No worker, other than a *garde malade*, shall, except in special circumstances and subject to in any other enactment, be required to work for more than 12 hours per day.

(4) The normal day's work of a *garde malade*, other than a part-time worker –

- (a) shall consist of 12 hours' actual work, excluding time allowed for meal and tea breaks; and
- (b) may begin on any day of the week, whether a public holiday or not.

(5) (a) A worker shall be entitled to a rest day of at least 24 consecutive hours in every period of 7 consecutive days.

(b) Subject to paragraph (c), the rest day referred to in paragraph (a) shall be a Sunday.

(c) Where, by nature of his operational requirements, an employer operates on a 7-day week, the rest day shall, at least twice a month, be a Sunday.

(6) No person shall employ a young person in an undertaking between 10 p.m. and 5 a.m..

(7) Every worker shall be entitled to a rest of not less than 11 consecutive hours in any day.

(8) Where, by his agreement a worker is required to work for 6 days in a week as provided in section (1)(b), the employer shall pay the worker a full day's remuneration on the day on which the worker is required to stop work after 5 hours' work as agreed upon between him and his employer.

## **15. Compressed hours**

A worker on piece work, task work or a similar method of work shall be deemed to have performed a day's or a week's work where he completes the piece work, task work or other work within a shorter period of time and he shall be paid wages due for the whole day or week, as the case may be.

## **16. Flexitime**

(1) An employer may request a worker to work on flexitime.

(2) Where an employer makes a request under subsection (1), the worker may accede to that request.

(3) Subject to subsection (5), a worker shall be entitled to request to work on flexitime to care for his child where the child is below school age or the child has an impairment.

(4) Where a worker makes a request to work on flexitime, his employer shall inform him, in writing within 21 days of the date of the request, whether or not it has been granted.

(5) The employer shall, unless there are reasonable business grounds to refuse, grant the request.

(6) Where a worker is entitled to work on flexitime, the employer shall establish –

(a) a core period of the day during which the worker shall be at work; and

(b) a period of time within which work shall be performed.

(7) In this section –

“reasonable business grounds” means –

(a) an inability to reorganise work; or

(b) a detrimental impact on quality or performance;

“school age” means the age of 4.

## **17. Shift work**

- (1) An employer may request a worker to work on shift work.
- (2) An employer shall not, without a worker's consent, require a worker to work on shift work –
  - (a) for more than 8 hours in a day;
  - (b) at night on more than 5 consecutive nights, except in such sector or industry as may be prescribed.
- (3) Where a female worker who may be required to perform night shift work produces a medical certificate certifying that she is pregnant, her employer shall not require her to perform night shift work during a period of at least 8 weeks before confinement.
- (4) Shift work shall be scheduled on a monthly basis.
- (5)
  - (a) A copy of the monthly schedule of duty worked out on a roster basis indicating the date and time at which a worker shall attend duty shall be handed over to the worker.
  - (b) The monthly schedule of duty shall be posted up in a conspicuous place at the place of work at least one week before the schedule is due to take effect and a copy thereof handed to each worker concerned.
- (6) Where a worker is employed on shift work, he shall be paid an allowance of 15 per cent of his basic wage in addition to his normal day's wage for work performed during night shift.

## **18. Notional calculation of basic hourly rate**

For the purposes of determining the hourly basic wage due for extra work or any other reason, except where expressly provided in an enactment –

- (a) a month shall be taken to consist of –
  - (i) 26 days in the case of a worker employed on a 6-day week; and
  - (ii) 22 days in the case of a worker employed on a 5-day week;



- (b) a day shall be deemed to consist of –
  - (i) 8 hours' work in the case of a worker employed on a 6-day week;
  - (ii) 9 hours' work in the case of a worker employed on a 5-day week; or
  - (iii) 12 hours' work in the case of a *garde malade*.

## 19. Overtime

- (1) Subject to subsections (3) and (4) –
  - (a) a worker and an employer may agree on the number of hours of work to be performed in excess of the stipulated hours where the exigencies of an enterprise so require;
  - (b) no employer shall require a worker to perform work in excess of the stipulated hours unless he has given, as far as is practicable, at least 24 hours' notice to the worker of the extra work to be performed.
- (2) A worker who does not wish to work in excess of the stipulated hours on a particular day shall, at least 24 hours in advance, notify his employer of his intention.
- (3) Subject to subsection (5), where a worker works on a public holiday, the employer shall remunerate him in respect of any work done –
  - (a) during normal working hours, at not less than twice the rate at which the work is remunerated when performed during the normal hours on a week day;
  - (b) after normal working hours, at not less than 3 times the rate at which the work is remunerated when performed during the normal hours on a week day.
- (4) Subject to subsection (5), where a worker works on a week day for more than the normal working hours, the employer shall, in respect of the extra work, remunerate the worker at not less than one and a half times the rate at which the work is remunerated when performed during the normal hours.

(5) An agreement shall stipulate that the remuneration provided for in the agreement includes payment for work on public holidays and overtime where –

- (a) the maximum number of public holidays; and
- (b) the maximum number of hours of overtime on week days and public holidays,

covered by the remuneration are specified in writing in the agreement.

(6) For the purpose of subsection (5), the monthly or hourly basic salary shall be clearly specified in the agreement.

(7) Subject to subsection (4), where a worker is required to perform extra work immediately after a normal day's work, he shall be granted a rest period of at least 10 minutes with pay before performing the extra work.

(8) In this section –

“normal hours” includes stipulated hours.

## **20. Public holiday**

(1) Every worker shall be entitled to a normal day's pay in respect of every public holiday, other than a Sunday, that occurs on any of his normal working days.

(2) Where a worker is required to work on a public holiday, other than a Sunday, he shall be paid, in addition to the normal day's pay provided for under subsection (1), any remuneration due under section 19.

(3) Any agreement by a worker to relinquish his right to a paid public holiday or to forego such leave shall be void.

## **21. Meal and tea breaks**

(1) Unless otherwise agreed, every employer shall grant to a worker on each working day –

- (a) a meal break of one hour not later than after 4 consecutive hours of work; and

- (b) one tea break of at least 20 minutes or 2 tea breaks of at least 10 minutes each.

(2) Any break under this section shall be without pay.

## **22. Meal allowance**

(1) Where a worker is required to perform more than 2 hours' extra work after having completed his normal day's work on any day of the week, he shall, in addition to any remuneration due for overtime work, be provided by the employer with an adequate free meal or be paid a meal allowance in such amount as specified in the Second Schedule.

(2) The meal allowance referred to in subsection (1) shall be paid not later than on the last working day of the pay period.

(3) Subsection (1) shall not apply to a migrant worker where the migrant worker is being paid a meal allowance or is being provided a free meal for a value higher than what he would be entitled under this section.

(4) In this section, a normal day shall be deemed to be of –

- (a) 8 hours for a worker employed on a 6-day week;
- (b) 9 hours for a worker employed on 5-day week; or
- (c) the number of stipulated hours specified in an agreement.

## **PART V – REMUNERATION**

### **23. Equal remuneration for work of equal value**

(1) (a) Every employer shall ensure that the remuneration of a worker shall not be less favourable than the remuneration of another worker performing work of equal value.

(b) Where an employer has recourse to the services of a job contractor, both the principal employer and the job contractor shall ensure that the remuneration of any worker shall not be less favourable than the remuneration of another worker performing work of equal value.

(2) The following criteria shall apply in determining whether there exists an element of discrimination, based on the sex of a worker or between

workers of the same sex for any work or class of work payable under any agreement –

- (a) the rates and types of remuneration shall be based on an objective job evaluation of the work performed instead of on the worker's sex or personal attributes;
- (b) any job classification system shall be based on objective criteria irrespective of the worker's sex;
- (c) the work of a worker of the same or different sex shall be given the same value for a like job or a work rated as equivalent in the same employment;
- (d) for work which is not exclusively or predominantly performed by female workers, the extent to which –
  - (i) the work or class of work calls for the same, or substantially similar degrees of skill, effort and responsibility; and
  - (ii) the conditions under which the work is to be performed are the same or similar;
- (e) for work which is exclusively or predominantly performed by female workers, the rate of remuneration that would be paid to male workers with the same or substantially similar skill, responsibility, and service performing the work under the same or substantially similar conditions and with the same or substantially similar degree of effort.

#### **24. Payment of remuneration**

(1) Every employer shall pay remuneration to a worker at monthly intervals, unless the parties agree to payment at shorter intervals.

(2) Every employer shall pay remuneration directly to every worker –

- (a) in legal tender only, unless there is a written agreement between the parties for payment by cheque or into the worker's bank account;
- (b) during working hours at the place of work, when paid in legal tender or by cheque; and

- (c) in any other case not later than on the last working day of the pay period.
- (3) Every employer shall –
- (a) issue to every worker, at the time of paying remuneration, a payslip, in the form set out in the Third Schedule, which shall indicate the contribution made by the employer to the Portable Retirement Gratuity Fund specified in Part XII; and
  - (b) cause every worker, to whom remuneration is paid in legal tender or by cheque, to sign in or affix his thumbprint in a remuneration book setting out the particulars of the remuneration paid.
- (4) No employer shall, in respect of the payment of remuneration –
- (a) restrict, by agreement or otherwise, the freedom of a worker to determine where and how his remuneration is to be spent; or
  - (b) pay, require or permit remuneration to be paid in a shop, or cause or allow the owner of the shop or his representative or any person employed by him, to pay remuneration due to the worker, unless the worker is employed to work in the shop.
- (5) Where a worker is required to replace another worker drawing a higher remuneration and to perform the same level of work as the other worker, he shall be paid the remuneration applicable to that other worker.
- (6) Where a claim of non-payment of wages is made to the Court, the Court may, where it thinks fit, order an employer to pay interest at a rate not exceeding 12 per cent in a year on the amount of wages due from the date of non-payment or short payment to the date of payment.

## **25. Deduction**

- (1) Subject to subsection (2), no employer shall deduct any amount from a worker's remuneration, other than an amount which –
- (a) is authorised by the worker in writing –

- (i) and is due to the employer in recovery of an advance made on basic wages, provided the deduction does not exceed one fifth of the basic wages due for a pay period; or
  - (ii) where the worker wishes to make any payment or contribution to any body, fund or other institution; or
- (b) is deducted in accordance with any enactment or a Court order.

(2) No employer shall deduct any amount from a worker's remuneration, which in the aggregate, exceeds one half of the worker's remuneration for any pay period.

(3) No employer shall, in respect of the payment of remuneration, deduct any amount –

- (a) by way of fine or compensation for poor or negligent work or for damage caused to the property of the employer;
- (b) as a direct or indirect payment for the purpose of obtaining or retaining employment; or
- (c) by way of discount, interest or any charge on account of any advance of remuneration made to a worker.

## **26. Payment of remuneration to part-time worker**

(1) Every employer shall pay to a part-time worker not less than the basic wage or salary prescribed in any enactment or specified in a collective agreement except where the enactment overrides the agreement, for the category or grade in which he is employed, whichever is higher, calculated proportionately on the notional hourly rate and increased by not less than 5 per cent.

(2) Where no basic wage or salary is prescribed in an enactment or specified in a collective agreement, every employer shall pay to a part-time worker not less than the basic wage or salary of a comparable full-time worker, calculated proportionately on the notional hourly rate and increased by not less than 5 per cent.

## 27. Payment of remuneration in special circumstances

- (1) An employer shall pay to a worker –
  - (a) a full day's remuneration where –
    - (i) the employer is unable to provide work to the worker; or
    - (ii) due to climatic conditions, power failure, or breakdown in machinery or appliances, work has been stopped after the worker has worked for more than 2 hours; or
  - (b) half a day's remuneration where owing to climatic conditions, power failure or breakdown in machinery or appliances –
    - (i) the employer is of opinion that no work can be performed; or
    - (ii) work has been stopped before the worker has completed 2 hours of work.

(2) An employer may require a worker to work temporarily for a time shorter than that specified in his agreement at a reduced remuneration, subject to the approval of the supervising officer.

(3) A worker who is required to work for a shorter time as specified in subsection (2) and is paid a lower remuneration shall have the right to accept work from another employer during the time no work is provided to him.

(4) Where a cyclone warning class III or IV is in force, a worker may absent himself from work and the employer shall pay remuneration to the worker at the normal rate in respect of the period of absence.

- (5) Subsection (4) shall apply until –
  - (a) the cyclone warning class III or IV has been removed; and
  - (b) the employer provides a means of transport to the worker to attend his place of work; or
  - (c) public transport is available.

(6) Where, by the nature of the operation of an undertaking where a worker is employed, he is required to work on a day on which a cyclone warning class III or IV is in force, the worker shall, in addition to any remuneration due to him, be entitled to –

- (a) an allowance equal to 3 times the basic rate per hour in respect of every hour of work performed; and
- (b) adequate free meals.

(7) Subject to section 51, no remuneration shall be payable to or recoverable by a worker for any period –

- (a) during which the worker is in lawful custody;
- (b) spent by the worker in a reform institution; or
- (c) spent by the worker in going to, attending, or returning from, any Court.

## **28. Payment of remuneration due on termination of agreement**

(1) Subject to subsection (2), every employer shall pay any remuneration due to a worker on the termination of the worker's agreement.

(2) Where the parties to an agreement are deemed to have entered into a fresh agreement, the employer shall, not later than 2 working days after the expiry of the previous agreement, pay to the worker the remuneration due under the previous agreement.

(3) Where notice of termination of an agreement has been given under section 61, the employer shall, on or before the date of expiry of the notice, pay to the worker any remuneration due under the agreement.

(4) Where an agreement is terminated otherwise than by notice under section 61, or on expiry of the period for which the agreement was agreed to last, the employer shall pay to the worker any remuneration due on the termination of the agreement.

(5) Where an agreement is terminated by an employer otherwise than on the ground of misconduct, and at the time of termination the worker has not taken the annual leave to which he is entitled to under section 42 or any other enactment or any agreement, the employer shall, in lieu of the remaining annual



leave, pay to the worker such remuneration which he would have been entitled to if his agreement was not terminated.

## **29. Additional remuneration**

Subject to section 30(3), (4) and (8), every employer shall, as from the appointed date, pay to every worker in his employment, in addition to the actual wage or salary earned by the worker, an additional remuneration to compensate him for an increase in such cost of living as may be prescribed.

## **30. Payment of additional remuneration**

(1) Where the wage or salary of a worker is paid partly by one employer and partly by another, each employer shall pay that part of the additional remuneration which bears the same proportion to the additional remuneration as the part of the wage or salary paid by him bears to the total wage or salary.

(2) Where an employer has paid, during the period 1 January to 31 December of the year, an increase in wage or salary –

- (a) otherwise than –
  - (i) by virtue of the Additional Remuneration Act or Remuneration Regulations of the previous year;
  - (ii) by way of an increment or increase on promotion; or
- (b) pursuant to a collective agreement or an award of the Tribunal,

and such increase was specified in writing, or agreed upon by the worker, as being an increase in wage or salary designed specifically to compensate the worker for an increase in the cost of living in respect of that period, there shall be sufficient compliance with section 29, in case such increase is less than the additional remuneration specified in section 29, if the employer pays the difference.

(3) Subject to subsection (5), where a worker is remunerated on a piece rate basis at rates specified in the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983 or as agreed upon, such rates shall, as from the appointed date, be increased in the same proportion as the increase of the payment of the additional remuneration on the basic wage prescribed or agreed upon, as the case may be, of the worker.

(4) Subject to subsections (3) and (5), where a worker is remunerated on a piece rate basis at rates specified in any Remuneration Regulations or Wages Regulations or any other enactment, such rates shall, as from the appointed date, be increased by such appropriate rate as may be prescribed.

(5) The piece rates specified in the enactments specified in subsections (3) and (4) shall include any previous additional remuneration under this section.

(6) Where civil or criminal proceedings are instituted against an employer under this section in relation to a worker first employed by him on or after the appointed date, it shall be a defence for the employer to prove that the wage or salary paid to the worker is not less favourable than all the pecuniary payments made to any other worker of the same grade.

(7) Where a worker is remunerated otherwise than on a monthly basis, it shall be deemed, for the purpose of determining the appropriate additional remuneration, that a month, a fortnight or a week shall consist of such number of days as are specified in any other enactment or agreed upon in relation to that worker.

(8) The amount or percentage of additional remuneration and the appointed date for its payment shall be as may be prescribed.

(9) In this section –

“basic wage or salary” means –

- (a) (i) in relation to a worker whose basic wage or salary is prescribed, and which exceeds the national minimum wage payable to him under the National Minimum Wage Regulations 2017 under the National Wage Consultative Council Act, such basic wage or salary, whether or not the worker’s actual wage or salary exceeds the prescribed wage or salary or the worker is remunerated on a piece rate basis or employed on task work;
- (ii) in relation to a worker, other than a worker of an export enterprise, whose basic wage or salary is prescribed and which, prior to 1 January 2018, was less than the national minimum wage payable to him under the National Minimum Wage Regulations 2017

under the National Wage Consultative Council Act, the national minimum wage plus such successive additional remuneration as may be prescribed;

- (iii) in relation to a worker of an export enterprise whose basic wage or salary is prescribed and which, prior to 1 January 2018, was less than the national minimum wage payable to him under the National Minimum Wage Regulations 2017, the national minimum wage plus such successive additional remuneration as may be prescribed;
  - (iv) in relation to a worker in respect of whom no wage or salary is prescribed under any Remuneration Regulations or Wages Regulations or agreed upon in his contract of service, the total amount, by whatever name called, earned by him as from the appointed date;
  - (v) in every other case and subject to the payment of the national minimum wage under the National Minimum Wage Regulations 2017 under the National Wage Consultative Council Act, the basic wage or salary agreed upon in the worker's contract of service, whichever is higher, whether or not the worker's actual wage or salary exceeds the agreed wage or salary or the worker is remunerated on a piece rate basis or employed on task work; and
- (b) includes any previous additional remuneration granted under any enactment; but
  - (c) does not include any allowance, commission or other benefit not forming part of a worker's wage or salary but given to him in addition to his wage or salary.

## **PART VI – PROTECTION OF REMUNERATION**

### **31. Joint liability on remuneration**

(1) Subject to subsection (2), a job contractor and the principal, for whom the job contractor has recruited or employed a worker, shall be jointly and severally liable for the payment of the remuneration of any worker.

(2) The liability of the principal of a job contractor under subsection (1) shall be limited to the sum payable by him to the job contractor under the arrangement between them.

(3) No person who is jointly liable with a job contractor under subsection (1) may set up as a defence to a claim from a worker seeking to recover remuneration the fact that he has already paid to the job contractor any sum due under the arrangement with the job contractor.

(4) Subject to subsection (5), every worker employed by a job contractor shall, for securing payment of his remuneration, have the same privileges, in respect of the property of the principal, as he would have had if he had been directly employed by the principal without the intervention of the job contractor.

(5) Any amount recoverable under subsection (4) shall not exceed the amount payable by the principal to the job contractor under subsection (2).

### **32. Protective order**

(1) Where, after making an enquiry, the supervising officer is satisfied that an employer has failed to –

- (a) pay any remuneration due to a worker or a group of workers; and
- (b) comply with a notice issued under section 116,

the supervising officer may, where he thinks fit, apply to the Judge in Chambers for a protective order, on behalf of the worker or group of workers in the amount of the remuneration due against an employer and any bank or other financial institution holding funds on behalf of the employer.

(2) An application under subsection (1) shall be made where the supervising officer –

- (a) has lodged a case for remuneration due on behalf of the worker or group of workers before the Court;
- (b) has reasonable ground to believe that the employer may dispose of his property to the prejudice of the worker or group of workers to whom remuneration is due; and

- (c) is satisfied that the amount or value of the property is proportionate to the amount of the remuneration due.

### **33. Grant of protective order**

(1) Where the supervising officer applies to the Judge in Chambers for a protective order, and the Judge in Chambers is satisfied, having regard to any relevant evidence, that there is reasonable ground to believe that –

- (a) remuneration is due and there has been non-compliance with the notice issued under section 116;
- (b) the employer may dispose of his property to the prejudice of the worker or group of workers to whom remuneration is due;
- (c) the amount or value of the property is proportionate to the amount of the remuneration due,

the Judge in Chambers may order that the property shall not be disposed of or otherwise dealt with by any person except in such manner and in such circumstances as specified in the Order.

(2) Where the Judge in Chambers makes a protective order, the supervising officer shall, within 21 days of the making of the protective order, or such other period as the Judge in Chambers may direct, give notice of the order to the employer and any bank or other financial institution holding funds on behalf of the employer.

### **34. Duration of protective order**

(1) The protective order under section 33 shall remain in force for a period of 12 months.

(2) The supervising officer may, on good cause shown, apply to the Judge in Chambers to extend the duration of a protective order until the Court case referred to in section 32(2)(a) is disposed of or for such period as the Judge in Chambers thinks fit.

### **35. Order in respect of immovable property**

(1) Following the grant of a protective order in respect of immovable property of a particular kind and where any enactment provides for the registration of title to, or charges over, property of that kind, the Judge in

Chambers may, on application by the supervising officer, order the Registrar-General to make entries in a register which may be consulted by a notary, an attorney or any other person who can show that he has a legitimate interest to do so.

(2) An order made under subsection (1) shall be registered free of any tax, duty or fee.

(3) An order under subsection (1) may include a restriction that the property shall not, without the order of the Judge in Chambers –

- (a) be mortgaged or otherwise burdened;
- (b) be attached or sold in execution;
- (c) vest in the liquidator when the estate of the owner of that immovable property is sequestrated; or
- (d) where the owner of the property is a corporate body, form part of the assets of that corporate body where it is wound up.

(4) Where an order is made under this section, the supervising officer shall –

- (a) cause notice of the order to be published in the next issue of the Gazette and in at least 2 newspapers having wide circulation; and
- (b) give notice of the order to –
  - (i) all notaries;
  - (ii) all banks, financial institutions and cash dealers.

### **36. Variation and discharge of protective order**

(1) Any person may apply to the Judge in Chambers for the variation and discharge of the protective order granted under section 33.

(2) The Judge in Chambers –

- (a) may vary or discharge the protective order where necessary in the interests of justice; or

- (b) shall discharge the Order where –
  - (i) the remuneration due to the worker or group of workers has been paid;
  - (ii) the court case referred to in section 32(2)(a) has been disposed of; or
  - (iii) it is in interests of justice to do so.

(3) Where a protective order in respect of an immovable property is varied or discharged, the Judge in Chambers shall direct the Registrar-General to make appropriate entries in the Register of Protective Orders specified in section 38A of the Notaries Act.

### **37. Wage Guarantee Fund Account**

(1) The Workfare Programme Fund set up under section 71 shall hold an account to be known as the Wage Guarantee Fund Account.

(2) The purpose of the Wage Guarantee Fund Account shall be to pay, –

- (a) remuneration due to a worker up to an amount of 50,000 rupees; and
- (b) any amount due as may be prescribed in relation to the Portable Retirement Gratuity Fund,

where contributions have not been made where an enterprise in which the worker is employed is considered to be insolvent by the Supreme Court.

(3) In this section –

“remuneration” means basic wage for not more than 3 preceding months, wages as indemnity in lieu of notice and end of year gratuity paid in accordance with the End of Year Gratuity Act or any other relevant enactment.

### **38. Particulars of Wage Guarantee Fund Account**

(1) The Workfare Programme Fund shall hold an account to be known as the Wage Guarantee Fund Account.

- (2) There shall be paid into the Wage Guarantee Fund Account –
  - (a) a seed investment as may be prescribed;
  - (b) interests on investment;
  - (c) any money recovered after the realization of assets –
    - (i) not exceeding the remuneration paid to a worker under the Wage Guarantee Fund Account; and
    - (ii) by the Director-General in respect of non-contribution to the Wage Guarantee Fund.

### **39. Redemption of claim**

(1) A worker who is not paid remuneration where his employer is insolvent shall register a complaint with the supervising officer to be entitled to unpaid remuneration.

(2) Where a claim is made under subsection (1), the supervising officer shall inform the employer in writing of the amount claimed by the worker within 7 days of the date of registration of the claim.

(3) The employer shall, subject to subsection (4), submit to the supervising officer the details in connection with the remuneration paid and or due to a worker in the form set out in the Fourth Schedule within 7 days of the date of receipt of the claim made under subsection (1).

(4) Where the supervising officer is satisfied that the claim is bona fide, he shall, within 7 days of the date of the claim, give written notice to the employer, to pay any remuneration due within 7 days.

(5) Where an employer has received a notice under subsection (4), he shall inform the supervising officer –

- (a) of the date on which payment of remuneration will be effected to the workers; or
- (b) where funds are not available, of the date on which the employer intends to effect payment to the workers.



(6) Where the employer fails to pay remuneration under subsection (4), the supervising officer shall, within a period of 7 days, pay to the worker from the Fund Account under section 37, any remuneration due.

(7) The liquidator, other than the Official Receiver, a receiver, an administrator, a special administrator or any person appointed under the Insolvency Act shall, after realisation of the assets of the company –

- (a) inform the supervising officer of the amount available in respect of the balance of remuneration due to the worker;
- (b) pay the amount due to the worker up to a sum not in excess of 50,000 rupees to the Fund Account; and
- (c) where funds are available, pay to the worker any remaining balance in excess of 50,000 rupees as the supervising officer may determine.

#### **40. Recovery of overpayment**

(1) (a) Where a person receives a benefit to which he is not entitled or which he is not qualified to receive or was disqualified from receiving, the amount of the benefit shall be recovered in accordance with paragraph (b).

(b) The Director-General shall recover any benefit referred to in paragraph (a) in the same manner as income tax is recoverable under Part XI of the Income Tax Act.

(2) Where any unpaid remuneration is paid into the bank account of a worker and it is subsequently found by the supervising officer that the benefit should not have been so paid, the bank shall, on written request to that effect by the supervising officer, refund the amount so paid to the Wage Guarantee Fund Account and may debit the bank account accordingly.

(3) The Court may, where it thinks fit and whether or not a claim to that effect has been made, order an employer to pay interest at a rate not exceeding 12 per cent per annum on the amount of wages due from the date of non-payment or short payment to the date of payment.

### **PART VII – OTHER CONDITIONS OF EMPLOYMENT**

#### **41. Transport of workers**

(1) An employer shall, where the distance between a worker's

residence and his place of work exceeds 3 kilometres, provide the worker with free transport from his residence to his place of work and back, or pay him the equivalent of the return bus fare.

(2) An employer shall, irrespective of the distance between a worker's residence and his place of work, provide the worker with free transport from the worker's residence to his place of work and back, where the worker is required by his employer to attend or cease work at a time when no public transport service by bus is available.

(3) (a) Subject to the distance limit specified in subsection (1), every worker who attends work by his own means of transport shall be entitled to an allowance equivalent to the corresponding return bus fare.

(b) Where, in the course of his employment, a worker is called upon to attend duties from a site of work to another site of work at the request of the employer, the worker shall be paid the return bus fare and if no bus is available, the amount actually spent on transport.

(4) Where an employer provides a worker with free transport under subsection (1), the employer shall pay to the worker wages at the basic rate in respect of any waiting time exceeding 30 minutes after the worker has stopped work.

(5) No employer shall transport a worker or cause a worker to be transported from his residence to his place of work or from his place of work to his residence in a goods vehicle.

(6) Any vehicle, other than a bus or a motor car, used to transport a worker to and from his place of work, shall be licensed for that purpose by the National Transport Authority under the Road Traffic Act.

## **42. Annual leave**

(1) Subject to subsection (11), every worker, other than a part-time worker, who remains in continuous employment with the same employer for a period of 12 consecutive months shall be entitled, during each subsequent period of 12 months while he remains in continuous employment, to 20 working days' annual leave.

(2) Every worker shall be entitled to 2 days' leave in every year, in addition to the leave specified in –

(a) subsection (1) or any other enactment; or

(b) any agreement, collective agreement or award of the Tribunal or an arbitrator.

(3) Leave specified in subsection (1) or (2) may be taken on full day, half day or such shorter period as agreed between an employer and a worker.

(4) Every worker, other than a part-time worker, who remains in continuous employment with the same employer for a period of 6 consecutive months and who has been present on all the working days during that period, shall be entitled to one day's annual leave during each subsequent month up to the twelfth month, while he remains in continuous employment with the same employer.

(5) Where a part-time worker remains in continuous employment with the same employer for a period of 12 consecutive months, he shall be entitled during each subsequent period of 12 months, to such number of days of annual leave on full pay computed in accordance with the following formula –

$N/W \times Y$ , where –

“N” means the number of days of work he is required to perform in a week;

“W” means the number of working days in a week of a comparable full-time worker;

“Y” means the number of days of annual leave to which a worker is entitled under subsection (1), any other enactment including any Remuneration Regulations or Wages Regulations, or any agreement, collective agreement or an award of the Tribunal or an arbitrator.

(6) Where an employer and a worker are unable to agree as to when the leave under this section is to be taken, half of the leave period shall be fixed by the employer and the other half by the worker.

(7) A worker who wishes to take more than one day's annual leave consecutively shall, except where reasonable cause is shown, give his employer at least 48 hours' advance written notice.

(8) Where a worker has not taken or been granted all the leave to which he is entitled under subsection (1), (2) or (5), he shall be paid a normal day's wage in respect of each day's leave still due to him at the end of the period of 12 consecutive months.

(9) An employer shall not, without reasonable cause, withhold the granting of leave to a worker under this section.

(10) Any agreement by a worker to relinquish his annual leave entitlement under this section shall be null and void.

(11) Subject to subsection (2), this section shall be subject to any other enactment, a collective agreement or an award.

#### **43. Sick leave**

(1) (a) Subject to subsections (4) and (5), every worker, other than a part-time worker, who remains in continuous employment with the same employer for a period of 12 consecutive months shall be entitled, during each subsequent period of 12 months while he remains in the continuous employment, to 15 working days' sick leave on full pay.

(b) Where, at the end of a period of 12 consecutive months, a worker has not taken the sick leave to which he is entitled to under paragraph (a), any outstanding sick leave shall be accumulated to a maximum of 90 working days.

(2) (a) Where a part-time worker remains in continuous employment with the same employer for a period of 12 consecutive months, he shall be entitled, during each subsequent period of 12 months, to the number of days of sick leave on full pay computed in accordance with the following formula –

$N/W \times Y$ , where –

“N” means the number of days of work he is required to perform in a week;

“W” means the number of working days in a week of a comparable full-time worker;

“Y” means the number of days of sick leave to which a worker is entitled under subsection (1)(a) or any other enactment including any Remuneration Regulations or Wages Regulations, or any agreement, collective agreement or award of the Tribunal or an arbitrator.

(b) Where, at the end of a period of 12 consecutive months, a part-time worker has not taken the sick leave to which he is entitled under paragraph (a), any outstanding sick leave shall be accumulated up to a maximum number of days according to the following formula –

$N/W \times 90$  normal working days, where –

“N” means the number of days of work he is required to perform in a week;

“W” means the number of working days in a week of a comparable full-time worker.

(3) Every worker, other than a part-time worker, who remains in continuous employment with the same employer for a period of 6 consecutive months and who has been present on all the working days during that period shall be entitled to one day’s sick leave during each subsequent month up to the twelfth month, while he remains in continuous employment with that employer.

(4) Where a worker has exhausted the sick leave provided for under subsection (1)(a) or (2)(a) and has thereafter been granted sick leave –

- (a) for time wholly spent in a hospital, or other medical institution; or
- (b) for convalescence purposes after discharge from a hospital or other medical institution,

such additional sick leave duly certified by a medical practitioner may be deducted from the accumulated sick leave, under subsection (1)(b) or (2)(b) and shall be on full pay.

(5) Where a worker absents himself on ground of illness, he shall, unless reasonable cause is shown and except where the employer is aware of the nature of the illness, notify his employer of his illness on the first day of absence.

(6) Where a worker remains ill for more than 3 consecutive working days, he shall forward to his employer a medical certificate –

- (a) on the fourth day of absence; or
- (b) where the worker is admitted to a hospital or other medical institution, within 3 days of his discharge from the hospital or medical institution.

(7) A medical certificate referred to in subsection (6) shall not be valid in respect of any period exceeding 3 days before the day on which it is issued.

(8) (a) Every employer may, at his own expense, cause a worker who is absent on ground of illness to be examined by a medical practitioner.

(b) Where a worker is required to attend a medical examination under paragraph (a), the employer shall, at his own expense, provide free transport to the worker to attend the medical examination.

(c) Where a worker is bedridden, the employer may, with the consent of the worker, cause a medical practitioner to examine the worker at the residence of that worker.

(9) Where an agreement of a worker is terminated by an employer on ground of redundancy or where a worker retires and the worker has not exhausted all the accumulated sick leave to which he is entitled under this section, the worker shall be paid a normal day's wage in respect of each day's of accumulated sick leave still due to him.

#### **44. Medical facilities**

(1) Every person who employs at least 10 workers shall provide appropriate arrangements for the medical and health requirements of the workers.

(2) (a) Where a worker suffers injury or illness at work and there is need to transport him back to his place of residence or to convey him to a hospital or other medical institution, the employer shall, as soon as reasonable and at his own expense, provide an appropriate means of conveyance for the worker.

(b) The worker referred to in paragraph (a) shall be accompanied by a person designated by the employer.

#### 45. Maternity benefits

(1) A female worker shall, on production of a medical certificate, be entitled to 14 weeks' maternity leave on full pay to be taken –

- (a) before confinement, provided that at least 7 weeks' maternity leave shall be taken immediately following the confinement; or
- (b) after confinement.

(2) Subject to subsection (3), where a female worker who remains in continuous employment with the same employer for a period of 12 consecutive months gives birth to a child, she shall, on production of a medical certificate, be paid, within 7 days of her confinement, a maternity allowance, in such amount as specified in the Second Schedule.

(3) Where a part-time female worker remains in continuous employment with the same employer for a period of 12 consecutive months immediately preceding the beginning of leave specified in subsection (1), she shall, on production of a medical certificate, be entitled to an allowance computed in accordance with the following formula –

$N/H \times$  amount of maternity allowance specified in the Second Schedule, where –

“N” means the number of days of work she is required to perform in a week;

“H” means the number of working days in a week of a comparable full-time worker.

(4) Where a female worker suffers a miscarriage which is duly certified by a medical practitioner, she shall be entitled to 3 weeks' leave on full pay immediately after the miscarriage.

(5) Where a female worker gives birth to a stillborn child, she shall, on production of a medical certificate, be entitled to 14 weeks' leave on full pay.

(6) Where a female worker, who has been in continuous employment with the same employer for a period of 12 consecutive months, adopts a child aged less than 12 months, the worker shall, on production of a certified copy of the relevant Court order and a copy of the act of birth of the child, be entitled to 14 weeks' leave on full pay.

(7) (a) Where a female worker referred to in subsection (1) or (3) is nursing her unweaned child, she shall, for that purpose, be entitled on a daily basis at a time convenient to her and having regard to the needs of the child to, at least –

- (i) 2 breaks of half-hour each; or
- (ii) one break of one hour.

(b) The female worker shall be entitled to the break specified in paragraph (a) for a period of 6 months from the date of confinement or such longer period as a medical practitioner may recommend and the period of the break shall not be deducted from the number of hours of work of the worker.

(8) An employer shall not require a female worker to perform work in excess of a normal day's work for a period of at least 2 months before her confinement.

(9) A female worker who is pregnant shall not, on a medical certificate produced to this effect and unless a medical practitioner certifies otherwise, be required to perform duties requiring continuous standing that may be detrimental to her health or the health of the baby.

(10) An employer shall not, except with the consent of a female worker, require the female worker to work between 6 p.m. and 6 a.m. during the 12 months following her confinement.

(11) An employer shall not, at any time, during the period where a female worker is on maternity leave or is nursing an unweaned child, give to the female worker notice of termination of employment for any reason, unless the grounds relates to the economic, technological, structural or similar nature affecting the employer's activities.

(12) Where, following a complaint made by, or representation received by or on behalf, of a worker, the supervising officer is of the opinion that no adequate arrangements have been made to nurse the unweaned child of a worker, the supervising officer may, after consultation with a medical practitioner, give such directions by written notice to the employer as he thinks fit.

#### **46. Paternity leave**

(1) Where the spouse of a male worker, who is in the continuous



employment for a period of 12 consecutive months, gives birth to a child, the male worker shall –

- (a) be entitled to a paternity leave of 5 continuous working days; or
- (b) where he is a part-time worker, be entitled to the number of days of leave in accordance with the following formula –

$$\frac{N}{W} \times 5 \text{ normal working days, where –}$$

“N” means the number of days of work he is required to perform in a week;

“W” means the number of working days in a week of a comparable full-time worker.

(2) The entitlement of paternity leave under subsection (1) shall be subject to the production by the worker of –

- (a) a certificate issued by a medical practitioner certifying or notifying that his spouse has given birth to a child; and
- (b) a written statement signed by him that he is living with his spouse under a common roof.

(3) The paternity leave referred to in subsection (1) shall begin within 2 weeks from the date of birth of the child.

(4) A male worker who reckons less than 12 months’ continuous employment with an employer shall be entitled to the leave specified in subsection (1) without pay.

(5) In this section –

“spouse” means a person with whom the male worker has contracted a civil or religious marriage.

#### **47. Vacation leave**

(1) Subject to subsection (2), a worker who remains in continuous employment with the same employer for a period of at least 5 consecutive years shall be entitled to vacation leave of not more than 2 months for every period of

5 consecutive years, to be spent abroad, locally or partly abroad and partly locally.

(2) Any subsequent eligibility period of 5 consecutive years shall be computed after the worker resumes work after the vacation leave under subsection (1).

(3) The vacation leave under subsection (1) shall be with pay for at least one month, and such pay shall, in case the worker opts to spend the vacation wholly or partly abroad, be effected at least 7 working days before the worker proceeds abroad.

(4) The vacation leave under this section shall be deemed to constitute attendance at work and shall not be cumulative.

#### **48. Special leave**

Where a worker remains in continuous employment with the same employer for a period of 12 consecutive months, the worker shall be entitled to –

- (a) 6 working days' special leave on full pay on the occasion of the celebration of his first civil or religious marriage;
- (b) 3 working days' special leave on full pay on the occasion of the first civil or religious marriage of his son or daughter; and
- (c) 3 working days' special leave on full pay on the death of his spouse, child, father, mother, brother or sister.

#### **49. Juror's leave**

A worker shall be granted leave with pay by his employer during the period of his absence from work pursuant to a summons issued to him to attend service as juror under the Courts Act.

#### **50. Leave to participate in international sport events**

Where a worker is selected or nominated to participate in an international sport event to represent Mauritius, the worker shall, subject to advance notice being given and documentary evidence adduced as to the duration of his absence, be granted leave with pay at his request by his employer for the duration of the event or such longer period as may be necessary.

## **51. Leave to attend Court**

(1) A worker shall be granted leave to attend Court regarding any matter in which he is a party or in which he is a witness.

(2) The leave under subsection (1) shall be with pay where the worker is attending Court as representative of the employer or on its behalf.

(3) For the purpose of subsection (1), an employer may require a worker to produce a certificate of attendance from the Court which the worker attended except where the worker attends Court under subsection (2).

## **52. End of year bonus**

(1) (a) Where a worker remains in continuous employment of an employer for the whole or part of a year and with the same employer as at 31 December of the year, the worker shall be entitled to the payment of a bonus equivalent to one twelfth of his earnings for that year.

(b) The bonus required under paragraph (a) shall be paid by the employer as follows –

- (i) a sum amounting to 75 per cent of the expected bonus required under paragraph (a) shall be paid to the worker not later than 5 clear working days before 25 December of that year; and
- (ii) the balance shall be paid to him not later than on the last working day of the same year.

(2) Subsection (1) shall not apply to a worker whose conditions of employment are governed by the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983, the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985, the Field-Crop and Orchard Workers (Remuneration Order) Regulations 2008, the Livestock Workers (Remuneration Order) Regulations 2008 and the Bank Fishermen and Frigo-workers Remuneration Regulations 2016.

(3) Where a worker remains in continuous employment with the same employer for only part of the year and –

- (a) his employment is terminated in the course of the year for any reason; or

- (b) he retires in the course of the year in accordance with the provisions of any agreement or enactment other than the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983 and the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985; or
- (c) he resigns in the course of the year,

the worker shall be paid, not later than the last working day of the month in which his employment is terminated, he retires or resigns, as the case may be, a bonus equivalent to one-twelfth of his earnings for that year.

- (4) In this section –

“year” means a calendar year.

### **53. Promotion**

(1) Where a vacancy arises in a higher grade, an employer shall, in the case of higher grade promotion among monthly paid workers, give consideration, as far as practicable, to qualification, merit and seniority.

(2) Every employer shall post up in a conspicuous place a notice of any vacancy which may be seen by every worker at least 5 days before the promotion or selection exercise, as the case may be, is carried out.

### **54. Tools**

(1) Every employer shall provide to a worker the tools which may be required for the performance of work.

- (2) The tools provided under subsection (1) shall –

- (a) be replaced as soon as they become unserviceable; and
- (b) remain the property of the employer.

### **55. Communication facilities**

(1) Every employer shall provide to a watchperson, a security guard or security officer who is in his employment, a mobile phone for day and night duty and a monthly mobile allowance in such amount as specified in the Second Schedule.

(2) The mobile phone provided under subsection (1) shall remain the property of the employer.

## **PART VIII – ENTITLEMENT OF WORKERS IN SUGAR INDUSTRY**

### **56. Interpretation of Part VIII**

In this Part –

"employer" means a person who owns either a sugar factory or land under sugar cane cultivation of an extent exceeding 10.5522 hectares (25 arpents) in aggregate;

"Sugar Industry Remuneration Regulations" means –

- (a) the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983; or
- (b) the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985,

as the case may be;

"worker" –

- (a) has the same meaning as in regulation 2(1) of the Sugar Industry Remuneration Regulations; and
- (b) includes a person specified in regulation 2(2) of the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985.

### **57. Continuous employment of existing workers in sugar industry**

Subject to –

- (a) this Act;
- (b) sections 23 and 23A of the Sugar Industry Efficiency Act; and
- (c) section 30 of the Mauritius Cane Industry Authority Act,

every worker in employment on 31 May 2001 shall be entitled to remain in the employment of his employer.

## **58. Workers employed by job contractor**

(1) Where a worker is employed by a job contractor for the purpose of –

- (a) land preparation, growing, harvesting or processing of sugar cane and the construction, repair or maintenance of roads, bridges or water works, structures or buildings, wholly or substantially required for the purposes of the sugar industry and any other work incidental to the exploitation of land; or
- (b) the transportation of canes, sugar, materials or supplies used in connection with any work specified in paragraph (a),

this Act and the Sugar Industry Remuneration Regulations shall apply to the job contractor in the same manner as they apply to an employer in those enactments.

(2) (a) Subject to paragraph (b), where an employer has recourse to one or more job contractors, the total number of man-days performed in any crop year by –

- (i) workers employed by the job contractor; and
- (ii) seasonal workers employed by the employer,

shall be determined by the Mauritius Cane Industry Authority, in consultation with the Ministry responsible for the subject of labour, recognised trade unions and the employers, on or before 30 April of each year for the following crop year.

(b) Where an employer has recourse to one or more job contractors, or intends to employ seasonal workers, he shall, on or before 31 March of each year inform the Mauritius Cane Industry Authority of the number of seasonal workers he will require for the following crop year.

(c) The number of seasonal workers to be required under paragraph (b) shall be determined by the Mauritius Cane Industry Authority in consultation with the recognised trade unions and the employers.

(3) The amount referred to in subsection (2) shall be arrived at after taking into consideration the award of the Arbitration Panel dated 31 July 2015.

(4) Every employer shall, on or before 31 January of every year, submit to the supervising officer, separate returns on agricultural workers and non-agricultural workers, showing in respect of the preceding year –

- (a) the number of workers employed by job contractors under subsection (2)(a)(i);
- (b) the number of seasonal workers employed by him under subsection (2)(a)(ii);
- (c) the number of workers employed by him under section 57; and
- (d) the number of man-days performed by the workers referred to in paragraphs (a), (b) and (c).

(5) In this section –

“Arbitration Panel” means the Panel set up to look into unresolved issues relating to a labour dispute between the recognised Joint Negotiating Panel representing the recognised trade unions of the sugar industry and the then Mauritius Sugar Producers Association.

## **PART IX – TERMINATION OF AGREEMENT**

### **59. Termination of agreement**

(1) Every agreement entered into under section 6(1) shall terminate on the last day of the period agreed upon by the employer and the worker.

(2) A worker may claim that his agreement has been terminated by his employer where –

- (a) the worker is ill-treated by the employer;
- (b) the employer fails to pay the remuneration due under the agreement;
- (c) the employer fails to provide work and to pay remuneration under an agreement; or
- (d) the worker is made to resign by fraud or duress or is made to sign a letter of resignation or document in writing.

(3) An agreement shall not be broken by a worker where he absents himself from work for not more than 5 consecutive working days without good and sufficient cause for a first time.

(4) Where a matter, in relation to the absence of the worker, is referred to an officer or to the Court, the employer may not set up as a defence that the worker has abandoned his employment unless he proves that the worker has, after having been given written notice –

- (a) by post with advice of delivery; or
- (b) by delivery at the residence of the worker,

requiring him to resume his employment, failed to do so within a time specified in the notice which shall not be less than 24 hours on receipt of the notice.

#### **60. Termination of appointment under the Constitution**

(1) Subject to subsections (2) and (3), where an appointment is terminated under section 92 or 113 of the Constitution, the holder of the office whose appointment is terminated shall, notwithstanding any other enactment –

- (a) where he has served for a period of 3 years or more, be eligible to compensation representing 3 months' salary;
- (b) where he has served for a period of less than 3 years be eligible to compensation representing one month's salary.

(2) Notwithstanding anything to the contrary in any agreement, no gratuity or severance allowance shall be payable to the holder of any office the appointment to which is terminated under section 92 or 113 of the Constitution.

(3) Where the holder of an office to which subsection (1) applies was, immediately before his appointment to that office, the holder of a public office or in employment with a local authority or statutory body –

- (a) he shall be entitled to resume his former office; or
- (b) where the former office is no longer vacant, he shall be deemed, for the purposes of any other enactment, to have retired from the office vacated on the ground of abolition of that office.



## **61. Notice of termination of agreement**

(1) Subject to section 59(1), a party to an agreement may, except where he is prohibited by an enactment from doing so, terminate the agreement on the expiry of a notice, given by him to the other party, of his intention to terminate the agreement.

(2) An employer shall, at the time of notifying a worker of the termination of his employment, state the reason of the termination.

(3) Notice may be verbal or written and may, subject to subsection (4), be given at any reasonable time.

(4) Notwithstanding any provision contrary in any agreement, the length of the notice to be given under subsection (1) shall not be less than 30 days.

(5) Any party may, in lieu of giving notice of termination of agreement, pay to the other party the amount of remuneration the worker would have earned had he remained in employment during the period of notice.

(6) An employer shall, during the period when a worker is under notice of termination of agreement under subsection (1) and (4), allow, on satisfactory proof of the purpose of the request, the worker reasonable time off, without loss of pay, to seek further employment.

## **62. Protection against termination of agreement**

(1) An agreement shall not be terminated by an employer by reason of –

- (a) a worker's race, colour, caste, national extraction, social origin, place of his origin, age, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, impairment, marital status or family responsibilities;
- (b) a worker's absence from work during maternity leave and for the purpose of nursing her unweaned child;
- (c) a worker's temporary absence from work because of injury or sickness duly notified to the employer and certified by a medical practitioner;
- (d) a worker becoming or being a member of a trade union,

seeking or holding of trade union office, or participating in trade union activities outside working hours or, with the consent of the employer, within working hours;

- (e) a worker, in good faith, filing a complaint, or participating in proceedings, against an employer, involving alleged breach of any terms and conditions of employment;
- (f) a worker exercising any of the rights provided for in this Act or any other enactment, or in any agreement, collective agreement or award.

(2) Subject to subsections (3) and (4), no employer shall terminate a worker's agreement –

- (a) for reasons related to the worker's alleged misconduct, unless –
  - (i) the employer has, within 10 days of the day on which he becomes aware of the alleged misconduct, notified the worker of the charge made against the worker;
  - (ii) the worker has been afforded an opportunity to answer any charge made against him in relation to his alleged misconduct;
  - (iii) the worker has been given at least 7 days' notice to answer any charge made against him;
  - (iv) the employer cannot in good faith take any other course of action; and
  - (v) the termination is effected not later than 7 days after the worker has answered the charge made against him, or where the charge is subject of an oral hearing, after the completion of such hearing;
- (b) where an alleged misconduct is the subject of criminal proceedings unless –
  - (i) the employer, has within 10 days of the day on which he becomes aware of the conviction of the worker by the Court of first instance, notified the worker of the charge made against the worker;

- (ii) the employer has afforded the worker an opportunity, in the course of a disciplinary hearing, to answer any charge made against him in relation to his alleged misconduct;
  - (iii) the worker has been given at least 7 days' notice to answer the charge made against him; and
  - (iv) the termination is effected within 7 days of the completion of the hearing specified in subparagraph (ii);
- (c) in cases not covered by paragraph (a) or (b) unless the termination is effected within 7 days of the day the employer becomes aware of the misconduct.

(3) Notwithstanding subsection (2)(b) where the alleged misconduct is the subject of criminal proceedings, an employer shall not be precluded from terminating a worker's agreement where he has reasonable grounds to believe that the worker has committed an act which has impaired his suitability to do the work or an act which has affected the working relationship between the worker and the employer or other co-workers unless –

- (a) the employer has, within 10 days of the day on which he becomes aware of the alleged misconduct, notified the worker of the charge made against the worker;
  - (b) the worker has been afforded an opportunity to answer any charge made against him in relation to his alleged misconduct;
  - (c) the worker has been given at least 7 days' notice to answer any charge made against him;
  - (d) the employer cannot, in good faith, take any other course of action; and
  - (e) the termination is effected not later than 7 days after the worker has answered the charge made against him, or where the charge is subject of an oral hearing, after the completion of such hearing.
- (4) Before a charge of alleged misconduct is levelled against a worker,

an employer may carry out an investigation into all the circumstances of the case and the period specified in subsection (2)(a)(i), (b)(i) or (3)(a) shall not commence to run until the completion of the investigation.

(5) Where an investigation carried out under subsection (4) discloses a suspected misconduct, the employer may formulate a charge against the worker.

(6) Where the employer decides to hold a disciplinary hearing, he shall, at the request of the worker, provide him with such information or documents as may be relevant to the charge.

(7) No employer shall terminate a worker's agreement for reasons related to the worker's poor performance, unless –

- (a) the worker has been afforded an opportunity to answer any charge related to the alleged poor performance made against him;
- (b) the worker has been given at least 7 days' notice to answer any charge made against him;
- (c) he cannot, in good faith, take any other course of action;
- (d) the termination is effected within 7 days of the completion of the hearing under paragraph (a).

(8) Where the opportunity afforded to a worker to answer any charge made against him under subsection (2)(a)(ii), (b)(ii), (3)(b) or (7)(a) is the subject of a disciplinary hearing, he may have the assistance of –

- (a) a representative of a trade union or a legal representative, or both; or
- (b) an officer, where he is not assisted as specified in paragraph (a).

(9) The worker and the employer may, during disciplinary hearing referred to in subsection (8), negotiate for the payment of a compensation to promote a settlement.

(10) Any written statement acknowledging guilt by a worker obtained at the instance of his employer shall not be admissible as evidence before a disciplinary hearing, or any authority or any Court.

(11) An employer shall, within 7 days of the receipt of a written request, give a copy of the minutes of proceedings of the disciplinary hearing –

- (a) to the worker who has appeared before a disciplinary hearing; and
- (b) to the person assisting the worker in the disciplinary hearing.

(12) (a) The disciplinary hearing initiated against a worker under this section shall be completed within 30 days of the date of the first oral hearing save and except, and subject to paragraph (b), where owing to the illness or death of any of the parties or witnesses, or the reconstitution of the disciplinary panel or change in the legal or other representatives of the parties, such hearing cannot be completed during that delay.

(b) The parties may agree to extend the delay referred to in paragraph (a).

### **63. Notification of charge**

(1) A notification of a charge, a notice to answer a charge and a notification of a termination of agreement shall be issued by –

- (a) causing the notification or notice to be handed over to the worker in person; or
- (b) sending the notification or notice by registered post to the usual or last known place of residence of the worker.

(2) Where a worker –

- (a) refuses to accept delivery of the notification or notice; or
- (b) fails to take delivery of the notification or notice after being notified that it awaits him at a specified post office,

the notification or notice shall be deemed to have been duly served on the worker on the day he refuses to accept delivery thereof or is notified that it awaits him at the specified post office.

### **64. Suspension**

(1) Where an employer suspends a worker pending the outcome of

disciplinary proceedings on account of the worker's alleged misconduct or poor performance, such period of suspension shall be on full pay.

(2) No employer shall suspend a worker unless he has informed the worker of the reason for his suspension in writing.

(3) Any suspension without pay as disciplinary sanction following a hearing shall not exceed 4 working days.

## **65. Employment following transfer of undertaking**

(1) Where following a transfer or taking over of a trade or business by a new employer, a worker is offered employment on terms and conditions which are not less favourable than those of his previous agreement and the worker accepts the offer of employment, the worker's employment with the new employer shall be deemed to be continuous.

(2) Where a worker to whom an offer is made under subsection (1) refuses the offer, the worker shall not be entitled to claim that his employment has been terminated without justification.

(3) Where a transfer or taking over of a trade or business involves a substantial change in the working conditions of a worker, the worker may claim that his contract of employment has been terminated by the new employer without justification.

(4) Where either pending a transfer or taking over of a trade or business or after a transfer or taking over of a trade or business, the employment of any worker of the transferor or transferee is terminated, the termination shall, subject to section 62, be deemed to be without justification where the ground of the termination is other than economic, technological or structural ground.

(5) In this section, the trade or business of an employer is deemed to have been transferred or taken over by another employer where –

- (a) an employer dies and the business is forthwith being taken over by the personal representative or heir of the employer after the death;
- (b) a partnership ceases and the business is forthwith being taken over by a member of the dissolved partnership or a new partnership after the dissolution;

- (c) a body corporate is dissolved and the business is forthwith being taken over by some other body corporate in accordance with an enactment or a scheme of reconstruction after the dissolution;
- (d) the goodwill of the whole or part of a business has been disposed of and taken over by another person;
- (e) the owner of a leased undertaking takes over the management following a breach of the lease by the lessee;
- (f) the business was disposed of as an ongoing concern and its activities or operations are continued or resumed by a new employer with same or similar activities;
- (g) the company of an employer is merged with that of another employer.

#### **66. Certificate of employment**

(1) Every employer shall provide a worker, whose employment has been terminated or who has resigned from his employment, with a certificate of employment bearing the seal of the company wherever applicable, in the form set out in the Fifth Schedule within 7 days of the termination of his employment.

(2) No employer shall insert in the certificate issued under subsection (1) any particulars other than those specified in the Fifth Schedule.

#### **67. Reduction of workforce**

(1) An employer who intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise, shall notify and negotiate with –

- (a) the trade union, where there is a recognised trade union;
- (b) the trade union having a representational status, where there is no recognised trade union; or
- (c) the workers' representatives, elected by the workers where there is no recognised trade union or a trade union having representational status,

to explore the possibility of avoiding the reduction of workforce or closing down by means of –

- (i) restrictions on recruitment;
- (ii) retirement of workers who are beyond the retirement age;
- (iii) reduction in overtime;
- (iv) shorter working hours to cover temporary fluctuations in manpower needs;
- (v) providing training for other work within the same undertaking; or
- (vi) redeployment of workers where the undertaking forms part of a holding company.

(2) In this section –

"employer" means a person employing not less than 20 workers in an undertaking or an undertaking having an annual turnover of at least 50 million rupees;

"recognised trade union" means a trade union which has been granted recognition under the Employment Relations Act;

"representational status" means a registered trade union representing a worker in defence of his legal rights under section 31A of the Employment Relations Act.

(3) Where the intended reduction of workforce or closure is the subject of negotiation under subsection (1), the recognised trade union, the trade union having representational status or the workers' representatives may agree with the employer on any of the possibilities specified in subsection (1) or on any alternative solution or on the payment of a compensation by way of a settlement.

(4) The supervising officer may, at the request of any of the parties specified in subsection (1), provide a conciliation service to assist parties in the negotiation in view of an agreement.

(5) Where no agreement is reached under subsection (3) or (4), or where there has been no negotiation, an employer who takes a course of action



as specified in subsection (1), shall give written notice to the Redundancy Board set up under section 68, together with a statement showing cause for the reduction or closure at least 30 days before the intended reduction or closing down, as the case may be.

(6) An employer shall not reduce the number of workers in his employment either temporarily or permanently before the time specified in section 70(8) and (9).

(7) Subject to subsection (8), a reduction of workforce or a closing down of an enterprise shall be deemed to be unjustified where the employer acts in breach of subsection (1), (5) or (6).

(8) An employer may reduce the number of workers in his employment, either temporarily or permanently, without giving to the Redundancy Board the notice specified under subsection (5), where good cause is shown.

(9) Subject to subsections (5) and (7), where a worker claims reinstatement, he may apply to the Board for an order directing his employer to reinstate him in his former employment with payment of remuneration from the date of the termination of his employment to the date of his reinstatement.

(10) Where an employer terminates the employment of a worker following an order of the Board, the worker shall be entitled to 30 days' wages as indemnity in lieu of notice.

(11) Where the Board finds that the reasons for the reduction of the workforce or the closing down are unjustified, the employer shall, subject to subsection (12), pay the worker severance allowance at the rate of 3 months' remuneration per year of service.

(12) Where the Board finds that the reasons for the reduction of the workforce are unjustified, the Board may, with the consent of the worker, order the employer to reinstate the worker in his former employment with payment of remuneration from the date of termination of his employment to the date of his reinstatement.

(13) Where the Board makes an order under subsections (11) and (12), the order shall be enforced in the same manner as an order of the Industrial Court.

## 68. Redundancy Board

(1) There shall be a Redundancy Board which shall deal with all cases of reduction of workforce and closure of enterprises for economic, financial, structural, technological or any other similar reasons.

(2) The Board shall consist of –

- (a) a President;
- (b) a Vice-president;
- (c) a representative of the Ministry;
- (d) a representative of the Ministry responsible for the subject of finance and economic development;
- (e) a representative of employers, to be appointed by the Minister for a period of one year;
- (f) a representative of workers, to be appointed by the Minister for a period of one year;
- (g) an economist; and
- (h) an accountant.

(3) A person shall not be appointed President or Vice-president of the Board unless he is qualified for appointment as a Judge of the Supreme Court or has held judicial office.

(4) The President and the Vice-president shall be appointed by the Minister on such terms and conditions, and for such period, as he may determine.

(5) The economist and the accountant shall be public officers and shall be designated by the Secretary to Cabinet and Head of the Civil Service.

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

(7) The Redundancy Board shall deal with all cases referred to the Board under section 67.

## **69. Functions of Board**

- (1) The Board shall –
  - (a) make orders in relation to the reduction of workforce or closing down of enterprise;
  - (b) make such orders for requiring the attendance of any person and the production of any document as it may determine; and
  - (c) take evidence on oath, and for that purpose administer oaths.
- (2) Any person whose attendance is required under subsection (1)(b) and who –
  - (a) fails to attend at the time and place specified in the order;
  - (b) refuses to answer faithfully any question put to him by the Board;
  - (c) gives any false or misleading information;
  - (d) refuses to produce a document required by the Board,shall commit an offence.

## **70. Organisation and sitting of Board**

- (1) The Board shall have an official seal.
- (2) The Board may sit –
  - (a) in one or more Divisions as may be necessary;
  - (b) at any time and at any place in Mauritius.
- (3) (a) Each Division of the Board shall be presided by the President or the Vice-president.
  - (b) Where it appears to the President or to the Vice-president that it is expedient to do so, 2 assessors with proven experience in industrial relations to assist the members of the Board may be appointed.

(4) The assessors specified in subsection (3)(b) shall be designated by the Minister after consultation with the representative of employers and representative of workers as he considers appropriate.

(5) At any meeting of the Board, the President or the Vice President and 2 other members shall constitute a quorum.

(6) Any order of the Board shall be that of the members and, in the event of an equality of votes, the President or Vice-president, as the case may be, shall have a casting vote.

(7) The Board shall regulate its proceedings in such manner as it may determine.

(8) The Board shall complete its proceedings within 30 days from the date of notification by the employer.

(9) The Board may extend the period specified in subsection (8) for such longer period as may be agreed by the parties to allow the Board to complete its proceedings.

## **PART X – WORKFARE PROGRAMME FUND**

### **71. Establishment of Workfare Programme Fund**

(1) There is established within the Ministry for the purpose of this Act the Workfare Programme Fund.

(2) Subject to subsection (3), the surplus money of the Workfare Programme Fund shall, after consultation with the Workfare Programme Fund Committee set up under section 77, be invested in such manner as the Minister may approve.

(3) The Workfare Programme Fund shall, in any proceedings, judicial or otherwise, be represented by the supervising officer.

(4) Where the Workfare Programme Fund is wound up, its assets and liabilities shall accrue to the Consolidated Fund.

### **72. Objects of Workfare Programme Fund**

The objects of the Workfare Programme Fund shall be to pay –

- (a) any transition unemployment benefit;
- (b) remuneration due to a worker where an enterprise is considered to be insolvent following a decision of the Supreme Court or in case of force majeure;
- (c) the amount representing the balance between the industrial injury allowance specified in section 25(2) of the National Pensions Act and the maximum basic wage or salary as specified in the Second Schedule to the National Savings Fund (Collection of Contribution) Regulations 1997; and
- (d) the financing of such social plan for the benefit of workers as the Minister may determine.

### **73. Payment into and out of Workfare Programme Fund**

- (1) There shall be paid into the Workfare Programme Fund –
  - (a) money collected by way of levy at the rates specified in the Sixth Schedule;
  - (b) all monies appropriated by the National Assembly for the purposes of the Workfare Programme Fund;
  - (c) interests on investment.
- (2) There shall be paid out of the Workfare Programme Fund –
  - (a) any transition unemployment benefit at the rate specified in the Seventh Schedule;
  - (b) unpaid remuneration in accordance with section 39(1) and (5);
  - (c) the amount representing the balance between the industrial injury allowance specified in section 25(2) of the National Pensions Act and the maximum basic wage or salary as specified in the Second Schedule to the National Savings Fund (Collection of Contribution) Regulations 1997;
  - (d) the funding of such social plan for the benefit of workers as the Minister may determine;

- (e) all expenses incurred in the administration of the Workfare Programme Fund.

#### **74. Contribution to Workfare Programme Fund**

(1) Every employer shall, in respect of a worker in his employment, pay to the supervising officer a contribution to be paid into the Workfare Programme Fund in accordance with the rate specified in the Sixth Schedule and in such manner and at such intervals as may be prescribed.

(2) Every employer shall, at the time of payment of the basic wage or salary to a worker for any period, deduct a sum representing one per cent of the basic wage or salary and pay over that sum to the supervising officer for credit into the Workfare Programme Fund.

#### **75. Transition unemployment benefit**

(1) A worker shall be entitled to a transition unemployment benefit where –

- (a) his agreement is terminated by an employer –
  - (i) for the reason specified in section 59(2);
  - (ii) in contravention of section 62(1), (2), (3) or (7);
  - (iii) for any other reason, whether justified or not; and
- (b) work has ceased for reasons of –
  - (i) force majeure;
  - (ii) death of the employer; or
  - (iii) a company removed from the register under the Companies Act;
- (c) no termination letter has been issued and the supervising officer is of the opinion that the complaint is bona fide;
- (d) he has registered himself with the supervising officer within a period of 60 days following the termination of his employment.

(2) A worker shall be entitled to a transition unemployment benefit for a period of not less than one month nor more than 12 months at the rates specified in the Seventh Schedule.

(3) Where a worker registers himself within 30 days of the date of his termination of employment, he shall be entitled to a transition unemployment benefit accruing as from the beginning of the month in which his employment is terminated or where he has been given a notice of termination on the expiry of the notice.

(4) (a) Subject to subsection (3), where the worker registers himself after 30 days of the date of his termination of employment, he shall be entitled to a transition unemployment benefit accruing as from date of his registration unless good cause is shown.

(b) In paragraph (a) –

“good cause” means –

- (i) illness or injury certified by a medical practitioner; or
- (ii) the failure of the worker to register his complaint was due to the fact that he was outside Mauritius.

(5) Where a worker has made a claim for the payment of the transition unemployment benefit and the supervising officer is satisfied that the claim is bona fide, the supervising officer shall, within 7 days of the date of the claim, notify the Ministry in the form set out in the Eighth Schedule.

(6) The supervising officer shall, on receipt of a claim under subsection (5), pay to the worker the transition unemployment benefit to which he is entitled under subsection (3) or (4).

(7) The transition unemployment benefit shall cease as from the end of the month in which the worker –

- (a) becomes gainfully employed on a full-time basis for a period of at least 30 consecutive days; or
- (b) reaches retirement age.

(8) Where a worker becomes gainfully employed, he shall, within 7 days of the date of his employment, notify the supervising officer accordingly.

(9) In this section –

“basic wage or salary”, in relation to a worker –

(a) means –

(i) where the terms and conditions of employment of the worker are prescribed, specified in an arbitral award or an agreement, whether oral or written, express or implied, the basic wage or salary prescribed, award or agreement, or where the employer pays a higher wage or salary, the higher wage or salary so paid, excluding any allowance by whatever name called, and whether paid in cash or in kind;

(ii) in any other case, all the emoluments received by the worker, excluding any bonus or overtime; but

(b) shall not exceed the maximum basic wage or salary as specified in the Second Schedule to the National Savings Fund (Collection of Contributions) Regulations 1997.

“part-time worker” means a worker in employment with a single employer and who does not perform more than 24 hours work in a week;

“worker” does not include –

(a) a public officer;

(b) a person employed by a statutory body falling under the purview of any Ministry or by a local authority, other than a worker who is an insured person under section 13(1) of the National Pensions Act;

(c) a part-time worker;

(d) a migrant worker or a non-citizen;

(e) a worker employed in the sugar industry who voluntarily retires –

(i) in the context of a Voluntary Retirement Scheme under section 23 of the Sugar Industry Efficiency Act;



- (ii) an Early Retirement Scheme under section 23A of the Sugar Industry Efficiency Act; or
- (iii) pursuant to a factory closure under section 30 of the Mauritius Cane Industry Authority Act;
- (f) a person reckoning less than 180 days' continuous employment with the same employer as at the date of the termination of his employment, whether on a determinate agreement or not;
- (g) a person enlisted in any training scheme set up by the Government or as a joint public-private initiative with a view to facilitating the placement of jobseekers in gainful employment.

#### **76. Industrial injury allowance**

The balance of injury allowance specified in section 73(2)(c), shall be transferred to the Ministry responsible for the subject of social security to guarantee a worker who has suffered industrial injury which has resulted in temporary total incapacity for work, an industrial injury allowance representing 100 per cent of the basic wages or salary as specified in the Second Schedule to the National Savings Fund (Collection of Contribution) Regulations 1997.

#### **77. Workfare Programme Fund Committee**

(1) There shall be, for the purposes of this Part, a Workfare Programme Fund Committee.

- (2) The Workfare Programme Fund Committee shall consist of –
  - (a) a chairperson, to be appointed by the Minister;
  - (b) a representative of the Ministry responsible for the subject of finance;
  - (c) a representative of the Ministry;
  - (d) a representative of the workers' organisation, to be appointed by the Minister;

- (e) a representative of the employers' organisation, to be appointed by the Minister; and
- (f) the administrator of the Fund.

#### **78. Functions of Workfare Programme Fund Committee**

(1) The functions of the Workfare Programme Fund Committee shall be to –

- (a) administer and manage the Workfare Programme Fund, including investment policies;
- (b) ensure that the investments of the Workfare Programme Fund are consistent with prudent investment policy;
- (c) preserve the need for an appropriate level of liquidity in the Workfare Programme Fund; and
- (d) have regard to the need to secure the future value of the Workfare Programme Fund.

(2) The Portable Retirement Gratuity Fund Committee may require the administrator of the Workfare Programme Fund to submit any report considered necessary concerning the financial position of the Portable Retirement Gratuity Fund.

(3) The supervising officer may, on the recommendation of the Committee, advise the Minister on any matter relating to the Workfare Programme Fund.

#### **79. Actuarial valuation of Workfare Programme Fund**

(1) The Minister shall, at intervals of not more than 5 years, or at such shorter interval –

- (a) cause an actuarial evaluation of the Workfare Programme Fund to be made by such actuary as he may appoint; and
- (b) determine, in the light of the evaluation, whether an adjustment is necessary to secure the future evaluation of the Workfare Programme Fund.

(2) In this section –

“actuarial evaluation” means a written report prepared and signed by an actuary, including any development affecting the Workfare Programme Fund and technical provisions since the last actuarial evaluation was prepared.

## **80. Financial statements of Workfare Programme Fund**

(1) The Workfare Programme Fund Committee shall, not later than 3 months after the end of every financial year, submit to the Director of Audit the financial statements of the Workfare Programme Fund for auditing.

(2) The Director of Audit shall, as soon as practicable, submit the statements under subsection (1) duly audited, together with his audit report, to the Workfare Programme Fund Committee.

(3) The Workfare Programme Fund Committee shall, on receipt of the statements and audit report referred to in subsection (2), submit a certified copy thereof to the Minister.

(4) The Minister shall, at the earliest available opportunity, lay a copy of the audited statements and the audit report submitted under subsection (3) before the National Assembly.

## **81. Recovery of overpayment**

(1) Where a transition unemployment benefit under section 75(3) and (4) has been paid into a bank account of a worker and it is subsequently found by the supervising officer that the lump sum or benefit should not have been so paid, the bank shall, on written request to that effect by the supervising officer, refund the amount so paid to the Workfare Programme Fund and shall debit the bank account accordingly.

(2) (a) Where a bank account is closed, the bank shall not be required to refund the amount paid under subsection (1) to the Workfare Programme Fund.

(b) When the amount standing in the bank account is less than the amount paid under subsection (1), the bank shall refund only the amount standing in the bank account.

(3) Notwithstanding any other enactment, where a refund is made under this section, no action shall lie against the bank in respect of the amount refunded.

## **PART XI – COMPENSATION**

### **82. Payment of severance allowance**

(1) Subject to subsection (2), an employer shall pay severance allowance to a worker as specified in this section where the worker has been in continuous employment for a period of not less than 12 continuous months with the employer –

- (a) on a contract of indeterminate duration and that employer terminates his agreement; or
- (b) under one or more determinate agreements with the same employer in respect of a position of a permanent nature and that employer terminates the agreement of the worker, subject to section 6(6).

(2) Subsection (1)(b) shall not apply to a migrant worker or a non-citizen.

(3) No severance allowance shall, unless otherwise agreed by the parties, be payable where a worker and an employer enter into an agreement under section 6(1) and the agreement comes to an end.

(4) Where a worker claims severance allowance under subsection (1), the supervising officer shall enquire into the matter with a view to promoting a settlement.

(5) Where the matter under subsection (4) does not result in being satisfactorily settled, the supervising officer may enter proceedings before the Court if he is of the opinion that the worker has a bona fide case.

### **83. Amount of severance allowance**

(1) Where a worker has been in continuous employment for a period of at least 12 months with an employer, the Court may, where it finds that –

- (a) the termination of agreement of the worker was due to the reasons specified under section 59(2);
- (b) the termination of agreement of the worker was in contravention of section 62(1), (2),(3), (6), (7), (8), (10) or (12);

- (c) the reasons related to the worker's alleged misconduct or poor performance under section 62(2), (3) and (7) does not constitute valid grounds for the termination of employment of the worker;
- (d) the employer could have in good faith taken any other course of action instead of terminating the employment of the worker;
- (e) notwithstanding paragraphs (a), (b), (c) and (d), the termination of agreement of the worker was unjustified,

order that the worker be paid severance allowance –

- (i) for every period of 12 months of continuous employment, a sum equivalent to 3 months' remuneration; and
- (ii) for any additional period of less than 12 months, a sum equal to one twelfth of the sum calculated under subparagraph (i) multiplied by the number of months during which the worker has been in continuous employment of the employer.

(2) The Court may, where it thinks fit and, whether or not a claim to that effect has been made, order an employer to pay interest at a rate not exceeding 12 per cent in a year on the amount of severance allowance payable from the date of the termination of the agreement to the date of payment.

(3) For the purpose of this section, a month's remuneration shall be –

- (a) the remuneration drawn by the worker for the last complete month of his employment; or
- (b) an amount computed in the manner as is best calculated to give the rate per month at which the worker was remunerated over a period of 12 months before the termination of his agreement, including payment for extra work, productivity bonus, attendance bonus, commission in return for services and any other regular payment,

whichever is higher.

#### **84. Deductions from severance allowance**

- (1) An employer may deduct from the severance allowance payable –
- (a) any gratuity granted by the employer;
  - (b) any contribution made to any fund or scheme by the employer;
  - (c) contributions made under the Portable Retirement Gratuity Fund.

- (2) In this section –

"fund" or "scheme" means any pension or provident fund or scheme set up by the employer for the benefit of a worker and which purports to provide retirement benefits to the worker.

#### **85. Death grant**

(1) Where a worker who has been in continuous employment with the same employer for not less than 12 consecutive months dies, the employer shall pay a death grant in the amount specified in the Second Schedule –

- (a) to his spouse on production of a written statement by him that he was living with the deceased under a common roof at the time of death; or
- (b) if he leaves no spouse, the person who satisfies the employer that he has borne the funeral expenses.

- (2) In this section –

"spouse" means the person with whom the worker contracted a civil or religious marriage and with whom the worker was living under a common roof at the time of the worker's death.

### **PART XII – PORTABLE RETIREMENT GRATUITY FUND**

#### **86. Interpretation of Part XII**

In this Part –

“accumulated fund”, insofar as it relates to the gratuity payable to a worker under section 98 or 99 –

- (a) means the accumulated contributions made by one or more employers, as the case may be, in the individual account of the worker in respect of the period during which the worker was employed by the employer or employers; and
- (b) includes investment income net of expenses accruing to the individual account of the worker;

“appropriate retiring age” means any age at which a worker may–

- (a) retire on or after the age of 60; or
- (b) in accordance with any other relevant enactment or any agreement, retire before the age of 60;

“contributions” means contributions payable by an employer under sections 93, 94 and 95;

“final remuneration” means –

- (a) the remuneration drawn by a worker for the last complete month of his employment with an employer; or
- (b) the average monthly remuneration drawn by a worker, including payment made over a period of 12 months before the worker ceases to be in the employment of an employer in any manner whatsoever as –
  - (i) commission in return of services up to 1,200,000 rupees;
  - (ii) end of year bonus;
  - (iii) any other regular payment,

whichever is higher;

“gratuity” means the gratuity payable under sections 98 and 99;

“monthly remuneration” means the sum total of –

- (a) the monthly basic wages paid to a worker; and

- (b) any productivity bonus, attendance bonus and payment for extra work performed,

on the basis of which monthly contribution is paid to the Portable Retirement Gratuity Fund in relation to the worker;

“private pension scheme” means a private pension scheme in respect of which a pension scheme licence is issued under the Private Pension Schemes Act;

“self-employed” means a person who works for his own account and does not employ any worker;

“worker” includes a worker specified in section 10.

#### **87. Establishment of Portable Retirement Gratuity Fund**

There is established for the purposes of this Part a Fund to be known as the Portable Retirement Gratuity Fund.

#### **88. Object of Portable Retirement Gratuity Fund**

The object of the Portable Retirement Gratuity Fund shall be to provide for the payment of a gratuity –

- (a) to a worker, on his retirement;
- (b) to the legal heirs of a worker, on the death of the worker;
- (c) to a self-employed who has contributed to the Portable Retirement Gratuity Fund, on his retirement; or
- (d) to the legal heirs of a self-employed who has contributed to the Portable Retirement Gratuity Fund, on the death of the self-employed.

#### **89. Eligibility to join Portable Retirement Gratuity Fund**

- (1) Any worker or self-employed, other than –
  - (a) a job contractor;
  - (b) a public officer or a local government officer; or



- (c) a worker whose retirement benefits are payable –
  - (i) under the Statutory Bodies Pension Funds Act; or
  - (ii) in accordance with a private pension scheme; and
- (d) a migrant worker or a non-citizen,

shall be eligible to join the Portable Retirement Gratuity Fund.

(2) The employer of a worker referred to in subsection (1)(c)(ii) shall submit to the supervising officer a certificate issued by the Financial Services Commission certifying that he has a private pension scheme.

#### **90. Administration of Portable Retirement Gratuity Fund**

(1) The Portable Retirement Gratuity Fund shall be administered in accordance with the Finance and Audit Act by the Minister to whom responsibility for the subject of social security is assigned.

(2) The Minister referred to in subsection (1) shall, at intervals of not more than 5 years, or at such shorter interval –

- (a) cause an actuarial evaluation of the Portable Retirement Gratuity Fund to be made by such actuary as he may appoint; and
- (b) determine, in the light of the evaluation, whether an adjustment is necessary to secure the future evaluation of the Portable Retirement Gratuity Fund.

(3) In this section –

“actuarial evaluation” means a written report prepared and signed by an actuary, including any development affecting the Portable Retirement Gratuity Fund and technical provisions since the last actuarial evaluation was prepared.

#### **91. Payment into and out of Portable Retirement Gratuity Fund**

(1) There shall be paid into the Portable Retirement Gratuity Fund –

- (a) contributions made by an employer or a self-employed under sections 93, 94 and 95;
  - (b) investment income net of expenses;
  - (c) such amount as may be prescribed, from the seed investment;
  - (d) such other money as may accrue to the Portable Retirement Gratuity Fund.
- (2) There shall be paid out of the Portable Retirement Gratuity Fund –
- (a) any gratuity payable under this Act;
  - (b) any expenses incurred in the administration of the Portable Retirement Gratuity Fund.

**92. Individual account in respect of every worker or self-employed**

(1) There shall be in the Portable Retirement Gratuity Fund, in respect of every worker or self-employed, an individual non-withdrawal account.

- (2) There shall be paid into each individual account –
- (a) the contributions payable by an employer under section 93, 94 or 95, or the contributions payable by the self-employed under section 93, as the case may be;
  - (b) any interest earned on the contributions; and
  - (c) such other payment as may be prescribed.

(3) There shall be paid out of any individual account such amount as may be incurred in the administration of the individual account.

**93. Contributions to Portable Retirement Gratuity Fund**

- (1) An employer other than –
- (a) an employer who has a private pension scheme;

- (b) a statutory body specified in the First Schedule to the Statutory Bodies Pension Funds Act, insofar as it relates to its workers by or on behalf of whom contributions are made,

shall, on the commencement of this Act, pay to the Director-General the contributions under this Act, in respect of each worker in his employment, at such rate as may be prescribed.

(2) The payment of the contributions under subsection (1) shall be made to the Director-General not later than on the twentieth of the month following the month in respect of which the contributions are due.

(3) The Director-General shall remit the contributions collected under subsection (2) to the Ministry responsible for the subject of social security and the contributions shall be credited into the individual account of each worker in the Portable Retirement Gratuity Fund.

(4) A self-employed may pay such contributions to the Director-General as may be prescribed and such contributions shall be made and credited in the individual account of the self-employed in the same manner provided for in subsections (2) and (3).

#### **94. Contributions for past services**

(1) Subject to subsections (2) and (3), an employer shall, in addition to any contribution paid under section 93, pay the contributions in respect of the past services of a worker who is in his employment on the commencement of this Act.

- (2) The contributions required to be paid under subsection (1) shall –
  - (a) in the case of a worker whose employment is terminated, be paid to the Director-General in the same manner as specified in section 93;
  - (b) be paid to the worker when he retires on attaining the appropriate retiring age;
  - (c) where the worker dies, be paid to the legal heirs of the worker,

not later than one month after the date the employment of the worker is terminated, or the date the worker retires or dies, as the case may be.

(3) The contributions under this section shall be computed on the last monthly salary drawn by the worker at the time the employment of the worker is terminated or at the time the worker retires or dies, as the case may be.

**95. Shortfall or surplus of contributions**

- (1) (a) Subject to subsection (3) and section 94(2), where –
- (i) the employment of a worker is terminated by his employer; and
  - (ii) the value of the accumulated fund standing in the individual account of the worker in respect of his length of service, including his past service with the employer, is less than the lump sum computed in accordance with subsection (4),

the administrator shall, not later than one month after the date of receipt of the statement specified in section 101(3), notify the employer, in writing, of the amount representing the difference between the value of the accumulated fund and the lump sum and the computation thereof.

(b) The employer to whom a notification is sent under paragraph (a) shall, not later one month after the receipt of the notification, pay into the Portable Retirement Gratuity Fund contributions equivalent to the amount representing the difference referred to in paragraph (a).

- (2) (a) Subject to subsection (3), where –
- (i) a worker ceases to be in the employment of an employer otherwise than where his employment is terminated; and
  - (ii) the value of the accumulated fund standing in the individual account of the worker in respect of his length of service with that employer is less than the lump sum computed in accordance with subsection (4),

the administrator shall, not later than one month after the date of receipt of the statement specified in section 101(3), notify the employer, in writing, of the amount representing the difference between the value of the accumulated fund and the lump sum and the computation thereof.

(b) The employer to whom a notification is sent under paragraph (a) shall, not later than one month after the receipt of the notification, pay into the Portable Retirement Gratuity Fund the amount representing the difference referred to in paragraph (a).

(3) Where a worker retires or dies and the value of the accumulated fund standing in the account of the worker in respect of his length of service with the employer, including his past service, is less than the lump sum computed in accordance with subsection (4), the administrator shall notify the employer, in writing, of the amount representing the difference between the value of the accumulated fund and the lump sum and the computation thereof.

(4) The lump sum referred to in subsections (1), (2) and (3) shall be computed –

(a) in the case of a worker other than a part-time worker, on the basis of –

(i) 15 days' final remuneration for every period of 12 months' employment; and

(ii) a sum equal to one twelfth of the sum payable for 12 months' employment multiplied by the number of months during which the worker has remained in the employment of the employer, for every period of less than 12 months;

(b) in the case of a part-time worker, on the basis of the following formula –

$N/H \times$  amount of lump sum payable under paragraph (a),  
where –

"N" means the number of days of work performed by the part-time worker in a week;

"H" means the number of days of work performed by a comparable full-time worker in a week.

(5) Where the value of the accumulated fund standing in the individual account of a worker in respect of his length of service, including his past service, with an employer exceeds the lump sum computed in accordance with subsection (4), the amount representing the amount representing the difference between the value of the accumulated fund and the lump sum shall –

- (a) be used to make up for any unpaid contribution due by the employer; or
- (b) be credited in the employer's account in the Portable Retirement Gratuity Fund and used by the employer to pay the contributions for the past services of his other workers, where appropriate.

(6) (a) A worker or the legal heirs of a worker, as the case may be, who is not or are not paid the amount representing the difference referred to in this section shall register a complaint with the supervising officer.

(b) The supervising officer shall enquire into the complaint in accordance with section 115.

(7) Where an employer fails to pay to the worker or legal heirs of a worker any payment due under this section, the employer shall commit an offence and shall, on conviction, be liable to a fine of not less than 50,000 rupees nor more than 150,000 rupees and to imprisonment for a term not exceeding 12 months.

(8) For the purposes of this Act, the formula referred to in subsection (4) provides for the computation of the minimum gratuity payable under this Part.

#### **96. Joint liability of employer and job contractor to pay contributions**

Where an employer has recourse to a job contractor, the employer and the job contractor shall be jointly and severally liable to pay the contributions in respect of every worker employed by the job contractor in the execution of the work or service.

#### **97. Circumstances in which gratuity may be granted**

- (1) The administrator shall pay a gratuity –
  - (a) to a worker who –
    - (i) voluntarily retires on or after attaining the age of 60;
    - (ii) retires before attaining the age of 60, in accordance with any other relevant enactment or any agreement;

- (iii) retires at the request of his employer on or after attaining the retirement age; or
  - (iv) retires before attaining the age of 60, on grounds of permanent incapacity, duly certified by a Government medical practitioner, to perform his work; or
  - (v) retires on grounds of incapacity to perform his normal work arising from injury sustained at work and where such incapacity is duly certified by a Government medical practitioner;
- (b) to a self-employed who has contributed to the Portable Retirement Gratuity Fund, where a request is made by him to the administrator, on or after attaining the age of 60;
  - (c) to the legal heirs of a worker, or the legal heirs of a self-employed who has contributed to the Portable Retirement Gratuity Fund, at the death of the worker or the self-employed.

(2) (a) An application by a worker or by the legal heirs of a worker for the payment of a gratuity under this Act shall be made in such manner as may be prescribed.

(b) The administrator shall determine the amount of gratuity payable to a self-employed or his legal heirs and pay such gratuity to the self-employed or his legal heirs.

#### **98. Payment of gratuity in case of employment with same employer**

(1) Subject to subsection (2), where a worker remains in the employment of one and same employer for the whole duration of his service, a gratuity made up of the accumulated fund standing in his individual account shall be paid to him on his retirement in the circumstances specified in section 97, or to his legal heirs, on his death.

(2) Where the value of the accumulated fund in the account of a worker referred to in subsection (1) is less than the lump sum calculated in accordance with section 95(4), or any payment provided in any other relevant enactment or any agreement –

- (a) the administrator shall pay to the worker or to his legal heirs, as the case may be, the gratuity equivalent to the value of

the accumulated fund standing in the individual account of the worker; and

- (b) the employer shall pay to the worker or his legal heirs, as the case may be, not later than one month after a notification is sent to him under section 95(3), the balance of the gratuity equivalent to the amount representing the difference between the value of the accumulated fund and the lump sum or the payment provided for in any other relevant enactment or any agreement, as may be applicable.

(3) The gratuity under subsection (2)(a) shall be paid not later than one week after the Director-General has remitted the contributions paid under this Part by an employer in respect of the last working month of a worker.

#### **99. Payment of gratuity in case of employment with one or more employers**

(1) Subject to subsection (2), where a worker has been in the employment of more than one employer, a gratuity made up of the accumulated fund standing in the individual account of the worker in respect of his total length of service with each employer shall be paid to him, on his retirement under the circumstances specified in section 97, or to his legal heirs, on his death.

(2) Where the value of the accumulated fund in the individual account of the worker insofar as it relates to the contributions, including interests, paid by the last employer in the account of the worker is, at the time of the retirement or death of the worker, less than the lump sum computed in accordance with section 95(4), or any payment provided in any other relevant enactment or any agreement –

- (a) the worker or his legal heirs, as the case may be, shall be paid the gratuity equivalent to the value of the accumulated fund in the individual account of the worker; and
- (b) the last employer shall pay to the worker or his legal heirs, as the case may be, in respect of the period during which the worker has been in his employment, the balance of the gratuity which is the amount representing the difference between the value of the accumulated fund and the lump sum or any payment as provided in any other relevant enactment or any agreement, whichever is higher.



## **100. Recovery of contribution by Director-General**

(1) Subject to subsection (2), Part IVC of the Mauritius Revenue Authority Act and section 148 of the Income Tax Act shall apply to the collection of contributions and recovery of unpaid contributions under this Act, with such modifications, adaptations and exceptions as may be necessary to enable the Director-General to comply with this Act.

(2) Where an enterprise is insolvent, any unpaid contribution due by the enterprise shall be recovered in such manner as may be prescribed.

## **101. Information to be furnished to Director-General and administrator**

(1) An employer who is required to contribute to the Portable Retirement Gratuity Fund under section 93 or 94 shall submit to the Director-General, every month not later than on the twentieth of the month, a return in respect of every worker setting out the remuneration paid to the worker and the amount of contribution made on behalf of the worker.

(2) An employer shall, not later than on 15 July of every year, submit to the Director-General an annual return in such form as he may approve, including an updated list consisting of the names and date of birth of the workers in his employment as at 30 June of that year, and such other information as may be prescribed.

(3) Where a worker's employment is terminated or where a worker dies before the retirement age, the employer shall, not later than one month after the termination of the employment or death of the worker, as the case may be, submit to the administrator a return setting out in respect of the worker –

- (a) his date of entry;
- (b) his remuneration for the last month;
- (c) the details of the remuneration paid for the last 12 months of employment; and
- (d) such other information as may be prescribed.

(4) The employer shall provide to the worker or legal heirs, as the case may be, a copy of the return specified in subsection (3).

(5) An employer shall, not later than one month after the cessation or termination of employment, change of employment, retirement or death, of a worker, give written notice of the occurrence to the Director-General.

## **102. Remittance of contributions by Director-General**

(1) The Director-General shall remit all contributions and surcharges collected under this Part to the Ministry responsible for the subject of social security not later than at the end of the month in which the payment is made.

(2) The Director-General shall, for the purpose of subsection (1), keep records, in respect of every financial year, of –

- (a) the amount of contribution, including surcharge, collected from every employer in respect of every worker;
- (b) any administration fee paid; and
- (c) the amount of unpaid contribution, or surcharge, due by every employer at the end of the financial year.

(3) The Director-General shall issue in such form and manner as may be prescribed –

- (a) a quarterly return to –
  - (i) the administrator, specifying the amount collected as contributions and surcharges from each employer; and
  - (ii) an employer in respect of such amount collected as contributions and surcharge from the employer; and
- (b) a statement to the worker at the end of each financial year, specifying the contributions made on his behalf by his employer for that financial year.

## **103. Privilege in respect of contributions**

(1) Any payment of gratuity required to be made by an employer under section 98 or 99 shall be secured by a privilege in favour of the Government ranking concurrently with the privileges for the wages of servants (*gens de travail*) under article 2148 of the Code Civil Mauricien.

(2) The privilege under subsection (1) shall –

- (a) be in respect of all payments required to be made by the employer;
- (b) extend over all the movables and immovables of the employer; and
- (c) not require to be transcribed by the Conservator of Mortgages.

#### **104. Establishment of Portable Retirement Gratuity Fund Advisory Committee**

(1) There is set up for the purpose of the Portable Retirement Gratuity Fund the Portable Retirement Gratuity Fund Advisory Committee.

(2) The Portable Retirement Gratuity Fund Advisory Committee shall –

- (a) make all necessary decisions for the operation of the Portable Retirement Gratuity Fund;
- (b) determine investment policies and strategies in relation to the Portable Retirement Gratuity Fund;
- (c) make recommendations to the Minister for the viability of the Portable Retirement Gratuity Fund, based on an actuarial evaluation;
- (d) make recommendations to the Minister in relation to matters pertaining to the grant of benefits to the workers or self-employed under the Portable Retirement Gratuity Fund;
- (e) make recommendations to the Minister on changes required to the legal and policy decisions with a view to enhancing the Portable Retirement Gratuity Fund and maintaining its viability;
- (f) perform any other function in relation to the operation of the Portable Retirement Gratuity Fund.

(3) The Portable Retirement Gratuity Fund Advisory Committee shall consist of –

- (a) the Financial Secretary, who shall be the chairperson;

- (b) a representative of the Ministry responsible for the subject of finance;
- (c) a representative of the Ministry;
- (d) a representative of the Ministry responsible for the subject of social security;
- (e) a representative of the Mauritius Revenue Authority;
- (f) a representative of the workers' organisation, to be appointed by the Minister;
- (g) a representative of the employers' organisation, to be appointed by the Minister; and
- (h) not more than 3 other members having experience in the field of finance or proven knowledge in pension matters, to be appointed by the Minister.

(4) The Portable Retirement Gratuity Fund Advisory Committee shall meet as often as is necessary but at least once every 6 months and at such time and place as the chairperson thinks fit.

(5) At any meeting of the Portable Retirement Gratuity Fund Advisory Committee, 5 members shall constitute a quorum.

(6) Subject to this section, the Portable Retirement Gratuity Fund Advisory Committee shall regulate its meetings and proceedings in such manner as it may determine.

(7) The Portable Retirement Gratuity Fund Advisory Committee may set up any such subcommittees as may be necessary for the administration of the Portable Retirement Gratuity Fund.

### **105. Investment Committee**

The Investment Committee set up under section 8 of the National Pensions Act shall act as the Investment Committee of the Portable Retirement Gratuity Fund.

## **106. Audited accounts of Portable Retirement Gratuity Fund**

(1) The Portable Retirement Gratuity Fund Advisory Committee shall cause to be published in the Gazette the audited annual accounts of the Fund, setting out –

- (a) the payments made into and out of the Portable Retirement Gratuity Fund;
- (b) the assets and liabilities of the Portable Retirement Gratuity Fund with particular reference to any investment held by the Portable Retirement Gratuity Fund.

(2) The Minister responsible for the subject of social security shall, at the earliest available opportunity, lay a copy of the audited annual accounts of the Portable Retirement Gratuity Fund before the Assembly.

## **107. Statement of account**

The administrator shall issue, in such manner as the Portable Retirement Gratuity Fund Advisory Committee may determine, an annual statement of account to each worker after the end of every financial year.

## **108. Surcharge on late contributions or late return**

(1) Without prejudice to any legal proceedings which may be instituted under this Part, where an employer fails, within the prescribed time, to –

- (a) pay into the Portable Retirement Gratuity Fund the whole or part of any contributions payable under section 93, 94 or 95, he shall pay a surcharge at the rate of 5 per cent or such other rate as may be prescribed for every month or part of the month during which any contributions remained unpaid;
- (b) submit a monthly return under section 101, he shall pay a surcharge of one per cent of the total contributions payable, for every day until the return in respect of each insured person for that month is submitted;
- (c) submit an annual return under section 101, a surcharge of 500 rupees for every day until the return for that year is submitted.

(2) The employer shall not recover from a worker any surcharge payable under subsection (1).

(3) For the purpose of determining whether a surcharge is leviable under this section, the contributions shall be deemed to have been made on the date of the postmark where payment of contributions is made by post.

### **PART XIII – VIOLENCE AT WORK**

#### **109. Violence at work**

(1) No person shall –

- (a) harass, sexually or otherwise;
- (b) assault;
- (c) verbally abuse, swear at or insult or humiliate in any manner whatsoever;
- (d) express the intention to cause harm to;
- (e) bully or use threatening behaviour towards;
- (f) use aggressive gesture indicating intimidation, contempt or disdain towards; or
- (g) by words or act, hinder,

a worker, in the course of or as a result of his work.

(2) An employer or his agent shall not carry out a search on a worker.

(3) An employer shall be vicariously liable for violence at work, including sexual harassment, committed by a worker and any third party where the employer knew or should have known of the violence at work and failed to take any action to prevent or stop the violence.

(4) An employer shall enquire into any case of alleged violence at work and take appropriate action to protect the rights of the worker.

(5) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years.

(6) The Minister may for the purpose of this section make such regulations as he thinks fit.

(7) In this section –

“bullying” includes a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour or an abuse or misuse of power or authority which attempts to undermine an individual or group of individuals, gradually eroding their confidence and capacity which may cause them to suffer stress;

“harassment”, in relation to a worker, includes any unwanted conduct towards the worker, whether verbal, non-verbal, visual, psychological or physical, based on age, impairment, HIV status, domestic circumstances, sex, sexual orientation, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, birth or other status, which occurs in circumstances where a reasonable person would consider the conduct as harassment of the worker;

“verbal abuse” includes screaming, yelling, name calling and making mean and disrespectful remarks with a view to humiliating a person.

## **PART XIV – ADMINISTRATION**

### **110. Register of employers**

(1) Every employer who employs at least 10 workers shall apply to the supervising officer for registration under this Act.

(2) Every application made under subsection (1) shall be made in such form as may be prescribed.

(3) The supervising officer shall maintain a register of employers.

### **111. Keeping of records**

(1) Every employer shall keep a register of workers, a record of remuneration paid, an inspection report book, and such other records as may be prescribed, and shall keep these records for a period of at least 3 years.

(2) An employer may keep the records specified in subsection (1) in an electronic form.

(3) Every employer shall enter –

- (a) in the register of workers, the name, date of birth and date of employment of every worker and the nature and conditions of the work he performs;
- (b) in the record of remuneration paid, the days or periods during which a worker has worked and the remuneration and other benefits paid to the worker.

(4) Every employer shall, on request –

- (a) produce to an officer any record kept in a register under subsections (1) and (3);
- (b) sign any entry made in the inspection report book by an officer; and
- (c) submit to the supervising officer such particulars as he may require.

## **112. Labour inspection**

The Ministry shall be responsible for maintaining a labour inspection service which shall –

- (a) administer and ensure the enforcement of this Act and any other relevant enactment relating to labour or employment;
- (b) bring to the notice of the Minister defects or abuses not specifically covered by this Act or any other relevant enactment relating to labour or employment.

## **113. Power to make enquiries**

(1) The supervising officer may –

- (a) enter without previous notice any place of work or any premises which he has reason to believe is a place of work other than premises used solely for residential purposes, except with the permission of the occupier;



- (b) carry out any examination or enquiry to ascertain that the provisions of this Act are complied with;
- (c) interview an employer or his representative and any person employed in the enterprise, regarding the application of this Act or any other relevant enactment relating to labour or employment, and any such person shall answer such questions;
- (d) require the employer to produce any book, record or other document relating to terms and conditions of employment, in order to ascertain whether the provisions of this Act or any other relevant enactment are complied with;
- (e) enforce the posting of such notices as may be required under this Act or any other relevant enactment;
- (f) require an employer to submit in writing any information relating to remuneration, the terms and conditions of employment of a worker, the worker's name, address, date of birth, date of commencing employment and category; and
- (g) require an employer or his representative to furnish the facilities and assistance required for entry, inspection, examination or enquiry in the exercise of any of the powers conferred under this Act or any other relevant enactment.

(2) The supervising officer shall, while conducting an inspection visit, notify the employer or the employer's representative of his presence, unless –

- (a) neither of them is present or easily accessible at that time; or
- (b) he considers that such notification may be prejudicial to the performance of his duties.

(3) The supervising officer may request the assistance of a police officer if he has reasonable cause to apprehend any serious obstruction in the execution of his duties.

(4) No person shall –

- (a) impede or delay the supervising officer in the exercise of any

power under this Act or any other enactment relating to labour or employment;

- (b) fail to comply with a request or to answer a question of the supervising officer under subsection (1); or
- (c) conceal or prevent any person from appearing before or being examined by the supervising officer or any officer delegated by him, or attempt to do so.

#### **114. Power to summon**

(1) Where the supervising officer –

- (a) has reason to believe that an offence under this Act or any other enactment relating to labour or employment has been committed by an employer or any other person; or
- (b) wishes to enquire into a labour matter between an employer and his workers or their representatives,

he may, by written notice, summon any person whom he believes can provide information relating to the offence or the enquiry, to attend and produce any document which he may require.

(2) Any person summoned under subsection (1) who –

- (a) having been served with the written notice, fails to comply with its requirements;
- (b) refuses to answer faithfully any question put to him by the supervising officer;
- (c) gives any false or misleading information;
- (d) refuses to produce a document required by the supervising officer,

shall commit an offence.

(3) (a) The written notice specified in subsection (1) shall be issued to the person concerned by causing it to be –

- (i) handed over to him in person; or

- (ii) left at, or sent by registered post to his registered office or, his usual or last known place of business or residence.

(b) Any person to whom a written notice is issued under paragraph (a) who –

- (i) refuses to accept delivery of the written notice; or
- (ii) fails to take delivery of the written notice after being informed that it awaits him at a post office,

shall be deemed to have been duly served with the written notice on the day on which he refuses to accept delivery thereof or he is informed that it awaits him at a post office.

### **115. Complaint procedure**

(1) Any worker may make a complaint to the supervising officer against his employer or any agent of the employer, in respect of any matter arising out of his employment.

(2) The supervising officer shall enquire into the complaint made under subsection (1) in the manner specified in section 113.

(3) No employer or any agent of an employer shall prevent a worker from making a complaint to the supervising officer under subsection (1).

(4) An employer or any agent of an employer who prevents a worker from making a complaint to the supervising officer under subsection (1) shall commit an offence.

### **116. Notice of compliance**

(1) (a) Where following an enquiry made under section 115(2), the supervising officer has reasonable grounds to believe that the employer has not complied with this Act or any other enactment relating to the employment of a worker, he may serve a notice to the employer requesting him to comply with the Act or other enactment.

(b) A notice under paragraph (a) shall specify, inter alia –

- (i) the name of the employer;

- (ii) the provision of this Act or the other enactment , which has not been complied with; and
- (iii) the penalty provided for non-compliance, referred to in subparagraph (ii).

(2) An employer to whom a notice under subsection (1) is issued may, within 7 days of the receipt of the notice, appeal against such notice before the Court, which may, after hearing the parties, revoke or affirm the notice.

(3) Where the Court affirms the notice, it shall order the employer to comply with the notice.

(4) The supervising officer may apply to the Court for a compliance order if an employer has not complied with a notice of compliance issued under this section or has not challenged the notice of compliance.

(5) Where an employer does not challenge a notice, or where he challenges the notice and the Court affirms the notice, the employer shall comply with the requirements thereof within 14 days of the date of receipt of the notice or the date of the decision of the Court.

(6) Subject to subsection (3), an employer who fails to comply with a compliance notice by the specified date shall commit an offence.

## **PART XV – MISCELLANEOUS**

### **117. Protection from liability**

No liability, civil or criminal, shall lie against an officer in respect of any act done or omitted to be done in good faith in the discharge of his functions under this Act.

### **118. Offences**

- (1) Any person who –
  - (a) fails to credit a worker with the full amount of remuneration for work done;
  - (b) makes, or knowingly allows to be made, any entry in a record required to be kept by an employer which he knows to be false or misleading in a material particular;

- (c) for the purposes of this Act, produces, furnishes or knowingly allows to be produced or furnished any register, report, book, remuneration sheet, record, list, documents or information which he knows to be false or misleading in a material particular;
- (d) prevents a worker from appearing before the supervising officer;
- (e) knowingly makes a false statement or false representation for the purpose of, or in connection with, the payment of contributions or claim made under section 81(1);
- (f) contravenes –
  - (i) a condition of any authority issued, or approval given, under this Act;
  - (ii) any order or direction given under this Act; or
  - (iii) an order made by the Court or the Board,

shall commit an offence.

(2) Any person who commits an offence for which no specific penalty is provided shall, on conviction, be liable to a fine not exceeding 25,000 rupees and to imprisonment for a term not exceeding 2 years.

(3) The Court may, on the conviction of any person under this Act, where it thinks appropriate, make an order directing that person to comply with this Act or any order made by the Court within such time as may be fixed in the order.

(4) A person who fails to comply with an order made under subsection (3) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

### **119. Regulations**

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for –

- (a) the levying of fees and charges; and
- (b) the amendment of the Schedules.

## **120. Repeal**

The Employment Rights Act is repealed.

## **121. Consequential amendments**

- (1) The Human Resource Development Act is amended –
  - (a) in section 18, in subsection (3)(f), by deleting the words “section 45 of the Employment Rights Act” and replacing them by the words “section 71 of the Workers’ Rights Act 2019.”;
  - (b) in section 18A, in subsection (2), by deleting the words “section 33 of the Employment Rights Act” and replacing them by the words “section 56 of the Workers’ Rights Act 2019”;
- (2) The Income Tax Act is amended, in section 144A(2), by repealing paragraph (d) and replacing it by the following paragraph –
  - (d) a contribution, including surcharge in respect of the Portable Retirement Gratuity Fund under the Workers’ Rights Act 2019.
- (3) The Industrial Court Act is amended, in the First Schedule –
  - (a) by deleting the following words –

Employment Rights Act
  - (b) by inserting, in the appropriate alphabetical order, the following new words –

Workers’ Rights Act 2019
- (4) The National Pensions Act is amended –
  - (a) in section 17A(2), in the definition of “employer”, by

deleting the words “section 33 of the Employment Rights Act 2008” and replacing them by the words “section 56 of the Workers’ Rights Act 2019”;

(b) in section 17B, in subsection (2), by deleting the words “section 45 of the Employment Rights Act” and replacing them by the words “section 71 of the Workers’ Rights Act 2019”.

(5) The National Savings Fund Act is amended –

(a) in section 2, in the definition of “retirement”, in paragraph (b)(i), by deleting the words “Employment Rights Act” and replacing them by the words “Workers’ Rights Act 2019”;

(b) in section 5A, in subsection (2), in the definition of “employer”, by deleting the words “section 33 of the Employment Rights Act” and replacing them by the words “section 56 of the Workers’ Rights Act 2019”;

(c) in section 5C –

(i) in subsection (1), by deleting the words “section 41 of the Employment Rights Act” and replacing them by the words “section 71 of the Workers’ Rights Act 2019”;

(ii) by repealing subsection (2);

(iii) in subsection (3), in paragraph (b), by deleting the words “section 44(1) of the Employment Rights Act” and replacing them by the words “section 75 of the Workers’ Rights Act 2019”;

(iv) by repealing subsection (4);

(d) in section 5D, in subsection (1), by deleting the words “section 45 of the Employment Rights Act” and replacing them by the words “section 71 of the Workers’ Rights Act”.

(6) The Notaries Act is amended by inserting, after section 38, the following new section –

### **38A. Register of protective order**

(1) Where the Judge in Chambers makes an order for a protective order under the Workers' Rights Act 2019, the supervising officer of the Ministry responsible for the subject of labour and employment who made the application for such order shall forthwith forward to the Registrar-General the particulars of the order.

(2) The Registrar-General shall, from the information made available to him under subsection (1), make up and keep, in such form and manner as he may determine, a Register of protective order which may be consulted by a notary, an attorney or such other person who has a legitimate interest to do so.

(7) The Private Pension Schemes (Licensing and Authorisation) Rules 2012 is amended, in regulation 5 –

(a) in paragraph (3) –

(i) by revoking subparagraph (a);

(ii) in subparagraph (b), by deleting the words “before 2 years of service”;

(iii) in subparagraph (c), by deleting the words “after 2 years of service”;

(b) by adding the following new paragraph –

(7) Where the value of the accrued benefits with an employer is less than the amount specified in section 95 of the Workers' Rights Act 2019, the employer shall pay the balance in favour of the workers.

### **122. Savings and transitional provisions**

(1) Where, before the commencement of this Act, a worker and an employer have entered into one or more determinate agreements for a total period of not more than 24 months as specified in section 5(3) of the repealed Act, the agreement shall, at the commencement of this Act, be deemed to be an indeterminate agreement with effect from the date the first agreement was entered into.



(2) (a) Any disciplinary proceedings which has started under section 38(2) and (3) of the repealed Act and is pending at the commencement of this Act, shall be dealt with in accordance of the repealed Act as if this Act has not come into operation.

(b) Any disciplinary proceedings which has not started at the commencement of this Act shall be dealt with in accordance with this Act.

(3) The duration of suspension with pay specified in section 38(7) of the repealed Act shall, where the worker is still suspended from work on the commencement of this Act, be the duration of suspension with pay specified in the repealed Act.

(4) The Employment Promotion and Protection Division set up within the Tribunal under section 39A of the repealed Act shall continue to operate for such period as may be necessary to determine all matters referred to it by the Permanent Secretary under section 39B of the repealed Act.

(5) The ex gratia payment made to the former workers of Palmar Limitée (in receivership) and Future Textiles Limited (in receivership) before the commencement of section 73(2)(d) of this Act shall be deemed to have been made pursuant to that section.

(6) A reference in any enactment to the repealed Employment Rights Act shall be construed as a reference to the Workers' Rights Act 2019 or the corresponding section thereof.

(7) Where this Act does not make provisions for the necessary transition from the repealed Act to this Act, the Minister may make such regulations as may be necessary for such transition.

(8) In this section –

“repealed Act” means the Employment Rights Act repealed under section 120.

### **123. Commencement**

(1) Subject to subsections (2) and (3), this Act shall come into operation on a date to be fixed by proclamation.

(2) Section 73(2)(d) shall be deemed to have come into operation on 30 April 2019.

(3) Different dates may be fixed for the coming into operation of different sections of the Act.

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**FIRST SCHEDULE**

[Section 5(9)]

**PARTICULARS OF WORK AGREEMENT/CONTRAT DU TRAVAIL/  
KONTRA TRAVAY**

1. Name of employer/*nom de l'employeur/nom lanplwayer* .....
2. National pensions registration number/*numéro d'enregistrement de la pension nationale/nimero anrezistremansion nasional* .....
3. Business Registration Number/National Identity Card no. of employer/*numéro d'enregistrement de l'entreprise/numéro de Carte d'Identité Nationale de l'employeur/nimero anrezistremansion antrepriz/nimero kart idantite nasional lanplwayer* .....
4. Address of employer/*adresse de l'employeur/ladres lanplwayer* .....
5. Nature of activity /*nature de l'activité/natir laktivite* .....
6. Name of worker/*nom du travailleur/nom travayer* .....
7. Gender/*genre/genre* .....
8. National Identity Card no./passport no. (*non-citizens*)/*numéro de la carte d'identité nationale/numéro du passeport (étrangers)/nimero kart idantite nasional/ nimero paspor (etranzer)* .....
9. Date of birth of worker/*date de naissance du travailleur/dat nesans travayer* .....
10. Address of worker (specify district)/*adresse du travailleur (specifiez le district)/ladres travayer (presiz ki distrik)* .....
11. Date of commencement of agreement/*date du début du contrat/dat komansman kontra* .....

- 12. Place of work/*lieu du travail/plas travay* .....  
.....
- 13. Grade, class or category of employment/*qualité, classe ou catégorie d'emploi /kalite, klas ou kategori travay* .....  
.....
- 14. Rate and particulars of remuneration/*taux et détails de rémunération/tarif ek detay saler* .....  
.....
- 15. Interval at which remuneration is to be paid/*intervalle auquel rémunération doit être versée/period pou lapey* .....  
.....
- 16. Normal hours of work/*heures normales de travail/ler travay* .....  
.....

.....  
Date/date/dat

.....  
Signature of employer/signature de l'employeur/signatir lanplwayer

\_\_\_\_\_

**SECOND SCHEDULE**  
[Sections 22, 45, 55 and 85]

**ALLOWANCES OR GRANT**

	<b>(Rs)</b>
1. Meal allowance	70 per day
2. Maternity allowance	3,000
3. Mobile allowance	100 per month
4. Death grant	5,000

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**THIRD SCHEDULE**  
[Section 24(3)(a)]

**PAYSLIP**

Pay period .....

1. Name of employer .....
2. NPF Reg. no. of employer .....
3. Name of worker .....
4. National Identity Card no. of worker .....
5. Date of entry .....
6. Category .....
7. Basic rate of pay .....
8. Total no. of days present at work .....
9. No. of day(s) of leave taken .....
10. No. of hours of extra work performed and the corresponding extra payment
  - (a) ..... x 1.5 = .....
  - (b) ..... x 2 = .....
  - (c) ..... x 3 = .....
11. Allowance(s) paid (please specify) .....
12. Piece rate earnings .....
13. Total remuneration .....
14. Deduction(s) made and the reasons therefor .....

- 15. Net pay .....
- 16. Contribution to Portable Retirement Gratuity Fund .....

**FOURTH SCHEDULE**  
[Section 39]

**WAGE GUARANTEE FUND ACCOUNT**

**1. Particulars of insolvent employer**

- (1) Name and address of employer .....
- (2) Phone no. ....
- (3) National pensions registration number .....

**2. Particulars of worker**

- (1) National Identity Card no. ....
- (2) Name .....
- (3) Phone no. ....
- (4) Address .....
- (5) Occupation .....
- (6) Basic wage per month/fortnight/week .....
- (7) Details of remuneration paid .....
- (including wages, end of year bonus and notice)*
- (8) Details of unpaid remuneration .....

**3. Details of employment**

- (1) Date joined service .....

(2) Date of termination of employment .....

(3) Reason for termination of employment .....

I certify that the above information is incorrect.

.....  
Name of employer

.....  
Signature

.....  
Date

Seal of employer/company  
(where applicable)

\_\_\_\_\_



**FIFTH SCHEDULE**  
[Section 66]

**CERTIFICATE OF EMPLOYMENT**

This is to certify that ..... (*name of worker*), of ..... (*residential address*) was employed as ..... (*position held by worker*) with ..... (*name of employer*) from ..... (*date of commencement of agreement*) to ..... (*date of termination of agreement*).

.....  
Date

.....  
Signature of employer

\_\_\_\_\_

**SIXTH SCHEDULE**  
[Sections 73 and 74]

**FINANCING OF WORKFARE PROGRAMME FUND**

The Wage Guarantee Fund shall be financed from –

- (a) the one per cent contribution of the worker; and
- (b) a levy of one per cent as specified in the Second Schedule of the Human Resource Development Act and any interests accrued thereon.

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**SEVENTH SCHEDULE**  
[Sections 73(2) and 75(5)]

**TRANSITION UNEMPLOYMENT BENEFIT**

<b>Period after termination of employment</b>	<b>Rate of benefit per month</b>
First 3 months	90% of basic wage or salary
From 4 <sup>th</sup> month to end of 6 <sup>th</sup> month	60% of basic wage or salary
From 7 <sup>th</sup> month to end of 12 <sup>th</sup> month	30% of basic wage or salary

## EIGHTH SCHEDULE

[Section 75(5)]

### TRANSITION UNEMPLOYMENT BENEFIT

#### 1. Particulars of employer

- (1) Name .....
- (2) Phone no. ....
- (3) National Pensions registration no. ....
- (4) Address .....

#### 2. Particulars of worker

- (1) National Identity Card no. ....
- (2) Name .....
- (3) Phone no. ....
- (4) Address .....
- (5) Occupation .....
- (6) Basic wage per month/fortnight/week\* .....

#### 3. Details of employment

- (1) Date joined service .....
- (2) Date of termination of employment .....
- (3) Reason for termination of employment .....
- (4) Amount payable as recycling fee .....

I certify that the worker referred to in paragraph 1 is registered in the Workfare Programme and is entitled for the transition unemployment benefit.

.....  
Date

.....  
Supervising Officer  
Ministry of Labour, Industrial Relations,  
Employment and Training

\_\_\_\_\_