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PART A

S1

THE EMPLOYMENT BILL, 2024

(Bill No. 12 of 2024)

(To be presented by the Minister of Labour and Social Security)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to -

- (a) give effect to Section 32 of the Constitution;
- (b) harmonise the laws governing employment and labour relations;
- (c) align employment legislation with international labour standards;
- (d) repeal the Employment Act, 1980; and
- (e) provide for incidental matters.

SIFISO M. M. KHUMALO
ATTORNEY-GENERAL

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**A BILL
ENTITLED**

AN ACT to give effect to section 32 of the Constitution, harmonize the laws governing employment and labour relations, align employment legislation with international labour standards, repeal the Employment Act, 1980 and provide for incidental matters.

ENACTED by the King and Parliament of Eswatini.

PART I PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Employment Act, 2024.

(2) This Act shall come into force on a date to be determined by the Minister by notice in the Gazette and the Minister may designate different dates for the coming into operation of different Parts or provisions of this Act.

Interpretation

2. In this Act, unless the context otherwise requires -

“approved form” means a form, register or record approved by the Commissioner of Labour for the purposes of this Act;

“attesting officer” means an administrative officer, inspector or an officer designated as such by the Minister in writing;

“business” includes any trade, enterprise, undertaking or establishment;

“calendar year” means the period commencing on the 1st January and ending on the following 31st December;

“casual employee” means an employee engaged for a period of no longer than 24 hours per week and shall be paid on weekly basis or as the parties may agree.

“casual work” means work for which the worker is engaged by an employer for an aggregate period of not more than four weeks in any four consecutive months.

“chief” has the meaning ascribed to it by the Swazi Administration Act, 1950 or its successor;

“child” means a person under the age of fifteen(15) years;

“child labour” means work that is harmful to a child because it is economically exploitative, hazardous, interferes with a child’s education, or is harmful to a child’s health or physical, mental, spiritual, moral, or social development;

“collective agreement” means an agreement in writing covering terms and conditions of employment and procedures for the settlement of disputes and grievances, concluded by a Joint Negotiation Council or by an employer, a group of employers or an employers’ association on the one hand and a trade union or staff association on the other hand;

“CMAC” means the Conciliation, Mediation and Arbitration Commission established under Part VIII of the Industrial Relations Act, 2000 or its successor;

“Commissioner” means the Commissioner of Labour or any other person acting in the capacity of the Commissioner of Labour;

“competent person” means a person possessing qualifications, skill or experience necessary for some purpose under this Act;

“competent authority” has the meaning ascribed to it by the Swazi Administration Act, 1950; or its successor;

“childbirth” means -

- (a) labour resulting in the birth of a living child; or
- (b) labour after 28 weeks of pregnancy resulting in the birth of a child, living or dead;

“Constitution” means the Constitution of the Kingdom of Swaziland (Act No. 001 of 2005)

“continuous employment” means a period of unbroken service with the same employer, except that for the purposes of this definition, all or any of the following do not constitute a break in service -

- (a) absence from work due to sickness, injury or maternity certified by a medical practitioner;
- (b) absence from work due to a dispute where the employee resumes employment on the next working day following the settlement of the dispute;
- (c) absence from work due to a temporary cessation of work in the undertaking;
- (d) absence from work on leave or for any other cause approved by the employer; or
- (e) absence from work due to protest action that complies with the Industrial Relations Act, 2000, and “continuously employed” shall have a corresponding meaning;

“contract” in Part XVIII means a public contract;

“contract of employment” means a contract of service, apprenticeship or traineeship whether it is express or implied and, if it is express, whether it is oral or in writing, whether it is on an indefinite or fixed term basis;

“contractor” means -

- (a) in respect of this Act in general, an employer working under a contract for services;
- (b) in relation to a principal, a person who has contracted directly with a principal to perform any work for that principal; or,
- (c) in Part XVIII, a contractor within the general meaning assigned to the work who has entered into a public contract; and
- (d) the term “sub-contractor” shall have a corresponding meaning;

“court” means the Industrial Court of Eswatini, Magistrate Court, High Court, as the case may be;

“disciplined forces” has the same meaning as provided in section 39 of the Constitution;

“dispute” means any dispute over -

- (a) the entitlement of any person or group of persons to any benefit under an existing collective agreement or works council agreement;
- (b) the existence or non-existence of a collective agreement or works council agreement;
- (c) the dismissal, employment, suspension from employment, re-employment or re-instatement of any person or group of persons;
- (d) the recognition or non-recognition of an organization seeking to represent employees in the determination of their terms and conditions of employment;
- (e) the application or the interpretation of any law relating to employment; or
- (f) the terms and conditions of employment of any employee or the physical conditions under which that employee may be required to work;

“domestic worker” means an employee who performs domestic work in the home of the employer and includes -

- (a) a gardener;
- (b) a person employed by a house hold as a driver of a motor vehicle; and
- (c) a person who takes care of children, the aged, the sick, the frail or the disabled, but shall not include a farm worker;

“employee” means a person, whether or not the person is an employee at common law, who works for pay or remuneration under a contract of service or under any other arrangement involving control by, or sustained dependence for the provision of work on, another person;

“employer” means any person who or undertaking, contractor, corporation, company, public authority or body of persons which has entered into a contract of employment with an employee and includes -

- (a) any agent, representative, foreman or manager of that person, undertaking, corporation, public authority or body of persons who is placed in authority over that employee; or
- (b) in the case of any person -
 - (i) who has died, the executor of that person’s estate;
 - (ii) who has become of unsound mind, the curator bonis of that person ;
 - (iii) who has become insolvent, the trustee of the insolvent estate of that person;
 - (iv) which is a company in liquidation, the liquidator of that company;

“Employment agency” means a person providing market services including -

- (a) matching offers of, and applications for, employment without the employment agency becoming a party to the employment relationship which may arise;

(b) employing persons with a view to making them available to a third party, who may be a natural or legal person (referred to as “user enterprise”) that assigns their tasks and supervises the execution of these tasks; or

(c) services relating to job seeking as may be prescribed by the Minister, in consultation with the Labour Advisory Board.

“federation” means a body registered in terms of the Industrial Relations Act which is wholly comprised of employers, a combination of employers’ associations, trade unions or staff associations as the case may be;

“forced labour” means all work or service which is exacted from any person under threat of any penalty and for which the said person has not offered that person’s work or services voluntarily;

“gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.

“immediate family” means in relation to a person, the father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, half sister, wife, husband, common-law wife or common-law husband of the person;

“Industrial Court” means the Industrial Court established under section 6 of the Industrial Relations Act, 2000 or its successor;

“Industrial Court of Appeal” means the Industrial Court of Appeal established under section 20 of the Industrial Relations Act, 2000 or its successor;

“Indvuna” has the meaning ascribed to it by the Swazi Administration Act, 1950 or its successor;

“inspector” means any person appointed or deemed to have been appointed as Deputy Commissioner of Labour, Assistant Commissioner of Labour, Principal Labour Officer, Senior Labour Officer, Labour Officer, Factories Inspector or Labour Inspector in the public service and includes any other person to whom the Commissioner has delegated, in writing, the powers of an inspector;

“Labour Advisory Board” means the Labour Advisory Board established under section 23 of the Industrial Relations Act, 2000;

“Labour agent” means a person who engages in the business of procuring, recruiting, hiring, engaging, supplying or forwarding of persons to be employed wholly or partly outside Eswatini.

“legal tender” means the monetary unit of Eswatini prescribed under the Central Bank of Eswatini Order, 1974 and the currency referred to under Article 2, paragraph 1 of the “MONETARY AGREEMENT BETWEEN THE GOVERNMENTS OF Eswatini, LESOTHO AND SOUTH AFRICA” signed on the 11th December, 1974 or its successor;

“liquor” has the meaning ascribed to it by the Liquor Licences Act, 1964 or its successor;

“maternity leave” means leave granted to an employee arising from, or in contemplation of her childbirth;

“Magistrate’s Court” means the Magistrate’s Court established under the Magistrates Courts Act, 1938;

“medical practitioner” has the meaning ascribed to it by the Medical and Dental Practitioners Act, 1970 or its successor;

“midwife” has the meaning ascribed to it by the Nurses and Midwives Act, 1965 or its successor;

“Migrant employee” means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on that person’s own account and includes any person regularly admitted as a migrant worker;

“Minister” means the Minister responsible for labour;

“mine” includes any undertaking, whether public or private, for the mining, treatment or extraction of minerals from the earth, sea, rivers or inland waters;

“mineral” has the meaning ascribed to it in the Mining Act, 1958 or its successor;

“month” means a period commencing on any day in a calendar month and expiring on the day preceding the corresponding date in the succeeding calendar month;

“night” means the period commencing at 9.00 p.m. on one day and ending at 7.00a.m. the following day;

“notice” means in respect of the termination of employment, notice of termination of employment;

“organization” means a trade union, staff association, or employers’ association as the context may require;

“out-sourcing” means a practice used by companies to focus on core business by transferring portions of work to outside suppliers rather than completing it internally;

“outworker” means a person to whom materials or articles are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in that person’s own home or on other premises not under the control or management of the person who gave out the materials or articles;

“overtime” means work performed outside normal working hours, including work performed on paid public holidays;

“paid public holiday” means a public holiday on which an employee is entitled to a holiday on full pay in pursuance of a Wages Regulation Order or a collective agreement covering the terms and conditions of employment of that employee or in the contract of employment;

“pay day” means the day or date fixed by the employer or by agreement between parties, as the day on which the employer shall pay an employee wages due to that employee;

“parent” in relation to a child or young person, includes a guardian and adoptive parent;

“part-time employee” means an employee who is not ordinarily employed on a full time basis and is working less than the normal hours of work and allowed to work for other employers;

“permanent contract” means a contract of employment, if not terminated in accordance with this Act, expires on the employee’s attainment of the retirement age specified under a written law or contract;

“piece work” means any work the payment for which is calculated by the amount of work performed, irrespective of the time spent in its performance;

“place of employment” means any place at or in which an employee works and the term “workplace” shall be construed accordingly;

“private employment agency” means the business (whether or not, it is carried on for profit or it is carried on in conjunction with any other business) of providing services or information for the purpose of finding employment in Eswatini with employers in Eswatini or supplying employers with persons for employment by such employers;

“public authority” means the Government, a local authority, the Ingwenyama in Council or any other authority in the Eswatini Administration Council;

“public contract” means a contract involving the expenditure of funds by the Government or by any statutory body, whether or not incorporated, for -

- (a) the construction, alteration, repair, or demolition of public works;
- (b) the manufacture, assembly, handling or shipment of materials, supplies or equipment;
- (c) the performance or supply of services; or
- (d) the supply of goods;

“public officer” includes any officer of a public authority;

“ratified Convention” means a convention adopted by the International Labour Organization, ratified by the Kingdom of Eswatini and not renounced;

“Recruitment” refers to the process of identifying, attracting, interviewing, selecting, hiring and onboarding a candidate or employee.

“redundant employee” means an employee whose contract of employment has been terminated -

- (a) because the employer has ceased or intends to cease to carry on the business or activity in which the employee was employed; or
- (b) because the employer has ceased or intends to cease to carry on business in or at the place in which the employee was employed;
- (c) because of any of the following reasons connected with the operation of the business -
 - (i) modernization, mechanisation or any other change in the method of production which reduces the number of employees necessary;
 - (ii) the closure of any part or department of the business;
 - (iii) marketing or financial difficulties;

- (iv) alteration in products or production methods necessitating different skills on the part of employees;
- (v) lack of orders or shortage of materials;
- (vi) scarcity of means of production; or,
- (vii) contraction in the volume of business; or
- (d) because of a natural disaster if the termination is wholly or mainly attributable to the destruction of, or damage caused to, the employers place of business by any act of his major including fire, hurricane, or earthquake;

“seasonal contract” means a contract of service the period of which cannot be pre-determined, entered into for a particular season or for work to be performed on or in connection with a special project;

“severance allowance” means the terminal benefit to which an employee is entitled to under section 82;

“service benefit” means the terminal benefit to which an employee is entitled to under section 82 as compensation for the service rendered to the employer;

“social security benefits” refers to any one or more of the following -

- (a) pension benefit;
- (b) gratuity;
- (c) medical care;
- (d) sickness benefit;
- (e) maternity benefit;
- (f) invalidity benefit;
- (g) survivors’ benefit;
- (h) benefit in respect of occupational injury or disease;
- (i) unemployment benefit; and
- (j) any other benefit similar to the foregoing.

“sibling” means each of two or more children or offspring having one or both parents in common.

“staff association” means any combination of staff, the principal purpose of which is the regulation of relations between staff and an employer or employers;

“subcontracting” means the practice of assigning, or outsourcing, part of the obligations and tasks under a contract to another party known as a subcontractor.

“temporary cessation of work” means a situation where a business or part of a business temporarily ceases or is diminished but where the employer and employee relationship subsists and where it is the intention of the employer to resume normal working relations as soon as possible;

“trade union” means a combination of employees, the principal purpose of which is the regulation of relations between employees or employers;

“triangular form of employment” means any form employment relationship in which an employer uses the services rendered by any person procured or provided by a private employment agent, intermediary or a third party and where the wages are paid through the agent, intermediary or a third party as opposed to being paid directly to such person;

“umgijimi” has the meaning ascribed to it under the Eswatini Administration Act, 1950;

“undertaking” means any industrial undertaking or public authority and any of the following establishments, businesses or undertakings whether public or private, which is wholly or mainly engaged in -

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed, including undertakings engaged in ship building or in the generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in building and civil engineering work, including constructional repair maintenance, alteration and demolition work;
- (d) undertakings engaged in the transport of passengers or goods, including the handling of goods at docks, quays, wharves, warehouse or airports;
- (e) the sale, purchase, distribution, insurance, negotiation, loan or administration of goods or services of any kind;
- (f) the provision of an administrative service in which the persons employed are mainly engaged in clerical work;
- (g) the production, printing or publication of a newspaper;
- (h) the treatment or care of children or aged, destitute, infirm, mentally unfit or sick persons;
- (i) the operation of a boarding house, cafe, club, hotel, restaurant or any other place for refreshment or public entertainment;
- (j) the operation of any broadcasting, postal or telecommunication service or the production of cinematographic films; and
- (k) any other service similar to the foregoing.

“violence and harassment” in the world of work means a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;

“world of work” means -

- (a) workplace, including public and private spaces where they are a place of work;
- (b) places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;
- (c) work-related trips, travel, training, events or social activities;
- (d) work-related communications, including those enabled by information and communication technologies;
- (e) employer-provided accommodation; and
- (f) commuting to and from work

“wages” means remuneration or earnings including allowances, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law which are payable by an employer to an employee for work done or to be done under a contract of employment or for services rendered or to be rendered under the contract;

“week” means any period of seven consecutive days;

“wife” means a person married according to Eswatini law and custom or other law or custom recognised in terms of the law on marriages, and if under that law or custom more marriages than one validly exist at the relevant time, then the persons married under that law or custom;

“work” means any work or labour, whether skilled or unskilled, carried out by an employee for an employer for wages; and

“young person” means a person who has attained the age of 15 years but is under the age of 18 years.

PART II PURPOSE AND SCOPE OF THE ACT

Purpose of the Act

3. (1) The purpose of this Act is to advance decent work, economic development, social justice, labour peace and equity by fulfilling the primary objects of this Act, which are to -

- (a) ensure adherence to international labour standards;
- (b) give effect to the obligations incurred by the Kingdom as a member state of the International Labour Organization;
- (c) advance social justice and democracy in the workplace by -
 - (i) the promotion of fair labour standards and employment equity;
 - (ii) the promotion of the participation by employees in decisions affecting their interests in the workplace; and

- (iii) securing the just, effective and expeditious resolution of disputes;
- (d) promote and create employment and investment;
- (e) stimulate economic growth, development and competitiveness; and
- (f) provide a friendly environment for both small and big business development.

(2) Any person, court or tribunal applying or interpreting any provision of this Act shall take into account and give meaning and effect to the purposes and objectives referred to in subsection (1) and to the other provisions of this Act.

(3) Subject to the Constitution, this Act shall prevail over any other law inconsistent with it, including any enactment, any contract of employment, agreement or collective agreement whether entered into before or after the coming into operation of this Act.

Application of the Act

4. This Act shall apply to employment relations, other than to employment relations in the Royal Eswatini Police Force, the Umbutfo Eswatini Defence Force and His Majesty's Correctional Services.

Contracts not to conflict with law

5. (1) A contract of employment shall not provide for any employee any less favourable condition than is required by any law.

(2) Any condition in a contract of employment which shall not conform to this Act or any other law shall be null and void and the contract shall be interpreted as if for that condition there were substituted the appropriate condition required by law.

More favourable terms not affected by this Act

6. (1) Nothing in this Act shall prevent a collective agreement, an employment rule, policy, agreement or arrangement between an employer and an employee or any other law, including Wages Regulation Orders enacted under the Wages Act, 1964 or its successor from providing more favourable terms and conditions of employment than those provided in this Act.

(2) Where more favourable terms and conditions referred to in subsection (1) apply, an employer shall keep a record of the terms and conditions of employment, including the relevant source of the terms and conditions.

Exemptions by the Minister

7. (1) The Minister may publish a notice in the Gazette exempting any person or public authority, or any class of persons or public authorities, from -

- (a) all or any of the provisions of this Act; or
- (b) any regulation, order or direction made under this Act.

(2) The notice shall include details relating to the reason for the exemption and the duration of the exemption.

(3) The Minister may grant an exemption only where -

- (a) the exemption is consistent with any ratified Convention or any other relevant law; and
- (b) the Minister has -
 - (i) published a notice in the Gazette informing members of the public of the intention to exempt any person or public authority in terms of subsection (1);
 - (ii) given any interested person or organization 60 days within which to lodge an objection against the proposed exemption; and
 - (iii) heard any objection lodged within the time period stipulated in the notice.

(4) The Minister may, in writing, delegate an appropriate person to hear any objection lodged in terms of subsection (2)(b)(ii).

(5) A decision made or act performed by a person designated by the Minister under subsection (3) shall be deemed to be a decision or act of the Minister.

(6) Where an objection is refused either in whole or in part, and the party lodging the objection wishes to pursue their objection, they may refer the matter to court for review.

(7) Any exemption granted in contravention of this section shall be null and void.

PART III PROHIBITION OF CHILD LABOUR AND EMPLOYMENT OF YOUNG PERSONS

Meaning of employment

8. (1) A child or young person is engaged in employment where the child or young person takes part or assists in any business carried on for profit -

- (a) whether or not the child or young person receives payment or other reward for that participation or assistance; or
- (b) whether the child or young person is engaged under a contract of service, a contract for services, or any other arrangement.

(2) A person who causes or permits a child or young person to engage in employment shall be deemed to -

- (a) employ the child or young person; and
- (b) be the employer of that child or young person.

Prohibition on employment of a child and a young person

9. (1) A person shall not employ, engage or otherwise cause or permit the participation by a child or a young person in any of the following activities -

- (a) any form of slavery or practice similar to slavery involving a child or a young person, including but not limited to -
 - (i) debt bondage and serfdom;
 - (ii) forced or compulsory labour; or
 - (iii) the forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child or young person for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child or young person for illicit activities, in particular for the production and trafficking of drugs;
- (d) any activity conducted in or on any premises or any part of any premises which are wholly or mainly used for the sale of liquor for consumption on the premises;
- (e) any work underground;
- (f) any dangerous or unhealthy work; and
- (g) any other work which, by its nature or the circumstances in which it is carried out, is hazardous or otherwise likely to harm the health, safety or morals of a child or a young person, including but not limited to -
 - (i) work which exposes the child or young person to physical, psychological or sexual abuse;
 - (ii) work underwater, at dangerous heights or in confined spaces;
 - (iii) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
 - (iv) work in an unhealthy environment which may expose the child or young person to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; or
 - (v) work under particularly difficult conditions such as work for long hours or during the night or work where the child or young person is unreasonably confined to the premises of the employer.

(2) The Minister may, after consulting the Labour Advisory Board and by notice in the Gazette, specify particular types of work contemplated by subsection (1)(g) and prohibit the employment of a child and a young person in that work.

Limitations on employment of a child or young person

10. (1) Subject to subsection (3), a child or young person may perform work -

- (a) in a family business, which in relation to the child or young person, means a business carried on only by a parent or guardian of the child; or

(b) as otherwise provided for in this section.

(2) A person who has attained the age of fourteen (14) years may perform work in any undertaking as an integral part of -

- (a) a course of education or training for which a school or training institution is primarily responsible;
- (b) a programme of training mainly or entirely in an undertaking, which has been approved by the Commissioner; or
- (c) a programme of guidance or orientation, approved by the Commissioner, to facilitate the choice of an occupation or training.

(3) Any child or young person who performs work in terms of subsection (1) may not work-

- (a) during school hours, meaning the school hours prescribed by the Education Act, 1964 or its successor;
- (b) between the hours of 6.00 p.m. of one day and 7.00 a.m. of the following day;
- (c) for more than six (6) hours in any one day;
- (d) for more than thirty three (33) hours in one week; or
- (e) for more than four (4) hours continuously, without a meal interval of at least one hour for a meal or rest.

(4) A person shall not employ a person who has not attained the age of sixteen (16) years in any trade, business or undertaking between the hours of 6:00 p.m. on one day and 7:00 a.m. on the following day.

(5) Subsection (4) shall not apply to any apprenticeship or vocational training approved by the Minister, in writing, after consultation with the Labour Advisory Board, in any industry or occupation required to be carried on continuously.

(6) Where the Minister approves the employment of any person in terms of subsection (5), that person shall be granted a period of rest of at least thirteen (13) consecutive hours between any two (2) periods of employment.

Minister may grant exemptions

11. (1) Notwithstanding the provision of sections 9 and 10, a child or young person may be employed during any prohibited hours in the interest of art, science or education, or any form of public entertainment or for the purposes of making cinematographic films, under and in accordance with the conditions of a licence granted by the Minister.

(2) The Minister may at any time, in the absolute discretion of the Minister, revoke, vary or suspend the conditions of any licence granted in terms of subsection (1).

(3) The Minister may not grant a licence under this section where, because of the nature of the entertainment or the circumstances in which it is carried on or the nature of the cinematographic film or the conditions under which it is made, participation in the entertainment or in the making of the film may be dangerous to the life, health or morals of a child or young person.

(4) A licence issued by the Minister under subsection (1) shall contain the following -

- (a) a prohibition on employment after midnight;
- (b) a requirement that the child or young person shall be allowed a rest period of at least fourteen (14) consecutive hours; and
- (c) safeguards to protect the health and morals of the child or young person and to avoid interference with the education of the child or the young person.

Medical examination of young persons

12. (1) An employer who employs a young person shall ensure that the young person is medically examined by a medical practitioner at the time of first being taken into employment and thereafter at intervals of twelve (12) months until the employee reaches the age of eighteen (18) years.

(2) A person may not employ a young person in any undertaking where a medical practitioner certifies that the young person is unfit for employment in that undertaking.

(3) Where a young person who, having been employed, is afterward certified by a medical practitioner to be unfit to continue in that employment, then -

- (a) the contract of employment between the employer and the young person (employee) terminates automatically; and
- (b) the young person (employee) shall be paid all benefits to which the employee is entitled by virtue of the contract of employment, including wages in lieu of any notice to which the employee would have been entitled under Part XII.

(4) The employer shall bear the costs of any medical examination required under this section.

Offences.

13. (1) A person who contravenes the provisions of this Part commits an offence and is liable on conviction liable to a fine of not less than Fifteen Thousand Emalangeni (E15 000) or to imprisonment for a term of not less than two (2) years or both.

(2) Notwithstanding subsection (1), any person who contravenes the provisions of sections 10 commits an offence and -

- (a) on first conviction is liable to a fine of not less than One Hundred Thousand Emalangeni (E100 000) or to imprisonment for a term of not less than five (5) years or both; and
- (b) on second or subsequent conviction, to imprisonment for a minimum term of ten (10) years without the option of a fine.

**PART IV
EQUALITY AT WORK**

Interpretation

14. In this Part -

- (a) “equal pay” means the rate of wages and remuneration in cash and in kind actually and legally payable to an employee in which there is no differentiation between male and female employees; and
- (b) “work of equal value” means work performed by male and female employees in which the duties and services to be performed require similar or substantially similar levels of qualification, experience, skill, effort, responsibility and which is performed under similar or substantially similar working conditions.

Equal pay for work of equal value

15. (1) An employer shall not discriminate between male and female employees employed by that employer by failing to pay equal pay for work of equal value.

(2) Differential rates of pay between male and female employees shall not contravene subsection (1) where they correspond to -

- (a) differences in the levels of qualification, experience, skill, effort, responsibility required to perform the duties and services involved;
- (b) differences in the levels of seniority; and
- (c) the quality or amount of the work performed.

(3) For purposes of subsection (1) men and women employees are considered to perform equal work and work of equal value where-

- (a) the work undertaken is the same or the conditions are similar or men or women employees could substitute one another at the workplace;
- (b) the work undertaken is of a similar nature and the differences between the work and conditions under which it is performed have no significance in relation to the overall nature of the work; or
- (c) the work is of equal value taking into account the criteria such as qualifications, skills, whether the work is of manual nature or not, and the responsibilities and conditions under which the work is performed.

Prohibition of discrimination on grounds of gender, race and other.

16. (1) An employer shall not discriminate against a job applicant or an employee, in any employment policy or practice or in any contract of employment, on any one or more grounds, including but not limited to colour, gender, race, religion, marital status or family responsibility, ethnic or social origin, pregnancy or intended pregnancy, tribal or clan extraction, political affiliation or opinion, culture, language, trade union, staff association or organization affiliation, social origin or status, health status, real or perceived HIV/AIDS status, age or disability, conscience, belief.

(2) The real or perceived HIV/AIDS status shall not be a lawful ground of discrimination for preventing the recruitment or continued employment, or the pursuit of equal employment opportunities.

(3) It is not discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

Prohibition of harassment and violence at work

17. (1) An employer, a representative of that employer, a co-worker or any other person in the workplace shall prohibit any conduct which directly or indirectly exhibits harassment or violence against an employee in the work place.

(2) Without prejudice to any provision of this Act, the employer shall ensure a safe workplace with clearly defined policies that prohibit harassment and violence in the work place, including gender based violence and harassment.

**PART V
PROHIBITION AGAINST FORCED LABOUR**

Exclusions

18. For purposes of this Part, forced labour shall not include -

- (a) any work or service exacted by virtue of any compulsory military service laws for work of a purely military character;
- (b) any work or service exacted from any person as a consequence of a conviction in a court of law; provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- (c) any work or service exacted in case of emergency, such as, in the event of war or a calamity or threatened calamity such as fire, flood, famine, earthquake, epidemic, or epizootic disease, invasion by animals or insect pests or plant diseases or pests and in general any circumstances which might endanger the existence or well-being of the whole or part of the population;
- (d) communal services of a kind which are to be performed by the members of a community in the direct interest of the community and not being for purposes of financial gain; or
- (e) any work or service which forms part of the normal civic and cultural obligations of the citizens.

Prohibition of forced labour

19. (1) Forced labour may not be imposed as a means of -

- (a) political coercion or education or as punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

- (b) mobilising and using labour for purposes of economic development;
- (c) any form of discipline for having participated in strikes or peaceful protest in terms of the Industrial Relations Act, 2000;
- (d) racial, social, national or religious discrimination; or
- (e) labour discipline.

(2) The exclusions specified in section 18 may not be carried out on behalf of or for the benefit of a private person.

Concessions not to include forced labour

20. No concession granted to any person shall involve any form of forced labour for the production or collection of products which such private person utilizes or in which the person trades.

**PART VI
CONTRACTS OF EMPLOYMENT**

Application of this Part

21. This Part shall apply to every contract of employment concluded and to be performed in Eswatini.

Probationary period

22. (1) An employer may require a newly appointed employee to undergo a period of probation.

(2) During any period of probationary employment as stipulated either in the form to be given to an employee under section 24, or in a contract of employment or a collective agreement covering the terms and conditions of employment, either party may terminate the contract of employment between them on one week's notice.

(3) A probationary period shall not, except in the case of employees engaged on supervisory, technical or confidential work, extend beyond three (3) months.

(4) In the case of employees engaged on supervisory, technical or confidential work, the probation period shall be fixed, in writing, between the employer and the employee at the time of engagement.

(5) Notwithstanding the provision of subsection (3) the probationary period may be extended one time by written agreement between the parties for a further period not exceeding three (3) months.

Types of contracts of employment

23. (1) Subject to this Act an employer may employ a person in any of the following categories -

- (a) permanent contract;
- (b) fixed term contract;

- (c) casual employment;
- (d) part-time employment; and
- (e) seasonal employment;

(2) An employer shall not employ a person on the categories mentioned in subsection (1) (b) to (e) with the aim of avoiding the protection resulting from this Act or any other law governing workers' rights.

(3) An employer may not vary a permanent contract of employment to any of the categories of employment contracts listed under subsection (1) (b) to (e) without the approval of the Labour Commissioner.

Written particulars of employment to be provided

24. (1) An employer shall supply an employee when the employee commences employment with written particulars of employment.

(2) The written particulars of employment shall conform to the form set out in the Second Schedule.

(3) The Minister may, after consultation with the Labour Advisory Board, amend the form.

(4) Subsection (1) may not apply to an employee –

- (a) who normally works or is expected to work less than twenty one (21) hours per week;
- (b) who is engaged to work for a fixed period of six (6) weeks or less and is not re-engaged at the end of that period;
- (c) who is a member of the immediate family of the employer; or
- (d) whose conditions of employment are governed by a collective agreement and the employer has -
 - (i) lodged a copy of the collective agreement with the Commissioner, and
 - (ii) made a copy of the agreement available in the workplace for perusal by employees.

(5) Both the employer and the employee shall sign the written particulars of employment, in the presence of witnesses.

(6) Where an employee refuses to sign the written particulars of employment the employer shall notify the Commissioner in writing.

(7) On receipt of a notice in terms of subsection (6), the Commissioner shall arrange for an inspector to interview the employee and explain the written particulars of employment and their purpose to the employee.

(8) Where the employee for any reason continues to refuse to sign the written particulars of employment, the inspector shall -

- (a) endorse the form to that effect;
- (b) hand the form to the employee; and
- (c) notify the employer in writing that the form has been endorsed.

Form not to be deemed written contract

25. (1) In any proceedings under this Act, written particulars of employment signed by both the employer and the employee shall be accepted as evidence, on the face of it, of the matters contained in the form at the time that it was signed.

(2) Nothing in this Part deems the form of written particulars of employment to constitute the complete record of any contract of employment.

Changes in terms of employment

26. (1) Where the terms of employment specified in the copy of the form set out in the Second Schedule given to the employee under section 24 or a contract of employment or a collective agreement entered into between the parties, are changed, the employer shall notify the employee, in writing, specifying the changes which are being made and, subject to subsections (2) to (4), the changed terms set out in the notification shall be deemed to be effective and to be part of the terms and conditions of service of that employee.

(2) Where, in the employee's opinion, the changes notified to the employee under subsection (1) would result in less favourable terms and conditions of employment than those previously enjoyed by the employee, the employee may, within fourteen (14) days of the notification, request the employer, in writing, (sending a copy of the request to the Labour Commissioner), to submit to the Labour Commissioner a copy of either the form given to the employee under section 24 or the contract of employment or the collective agreement entered into between the parties, together with the notification provided under subsection (1) and the employer shall comply with the request within three days of it being received by the employer.

(3) On receipt of the copies of the documents sent under subsection (2), the Labour Commissioner shall examine the changes in the terms of employment contained in the notification and, where, in the opinion of the Commissioner, the changes would result in less favourable terms and conditions of employment than those enjoyed by the employee in question prior to the changes set out in the notification, the Commissioner shall, within fourteen (14) days of receiving the notification, inform the employer in writing of the opinion of the Commissioner and the notification given to the employee under subsection (1) shall be void and of no effect.

(4) Any person dissatisfied with any decision made by the Commissioner under subsection (3) may refer the matter to arbitration within the auspices of CMAC.

Special provisions for fixed term contract employees

27. (1) For the purposes of this section, fixed term contract of employment means a contract of employment that terminates on-

- (a) the occurrence of a specified event;
- (b) the completion of a specified task or project; or
- (c) a fixed date, other than the employees' normal or agreed retirement age.

(2) a fixed term contract shall clearly state its purpose and shall not exceed a period of five (5) years.

(3) For the avoidance of doubt, notwithstanding that a fixed term contract may be renewed, it shall not carry any expectation of renewal.

(4) The number of times for renewal of fixed term contracts for the different sectors shall be determined by the Minister through Regulations.

Special provisions for part-time employees

28. (1) A person may not be engaged as a part-time employee where the nature of the work for which that person is to be employed is fulltime and permanent.

(2) The Minister may on the advice of the Labour Advisory Board grant exemption to the provisions of subsection (1) to any sector or categories of employees.

(3) A part-time employee shall be granted -

- (a) the same protection and rights enjoyed by comparable full-time employees, including -
 - (i) protection against discrimination in employment and occupation;
 - (ii) the right to occupational safety and health;
 - (iii) the right to organise;
 - (iv) the right to bargain collectively; and
 - (v) the right to act as a representative of the workers;
- (b) on a pro rata basis, the benefits of social security schemes or any other similar benefits, as near as possible to comparable full-time employees; and
- (c) conditions of employment equivalent, having regard to the part-time status of the employee, to those of comparable full-time employees, concerning-
 - (i) maternity protection,
 - (ii) termination of employment;
 - (iii) paid annual leave;
 - (iv) paid public holidays;
 - (v) sick leave; and

- (vi) a fair and reasonable wage, not lower than the prescribed minimum wages for a comparable full-time employee, but calculated proportionally on an hourly or performance-related or piece-rate basis, or as stipulated by any collective agreement.

(4) For purposes of subsection (3), conditions afforded to a part-time employee may be calculated or determined in proportion to hours of work, contribution or earnings or other methods consistent with fair labour practices.

Special provisions for casual employees

29. (1) In this section, a casual employee shall -

- (a) not work for more than twenty four (24) hours a week;
- (b) be paid at the end of each week unless otherwise agreed upon by the parties; provided that no agreement shall provide for payment in excess of one (1) month from the date of engagement.

(2) A person may not be engaged as a casual employee where the nature of the work for which the employee is to be employed is fulltime and permanent.

(3) A casual employee shall be granted -

- (a) the same protection and rights enjoyed by comparable full-time employees, including -
 - (i) protection against discrimination in employment and occupation;
 - (ii) the right to occupational safety and health;
 - (iii) the right to organize;
 - (iv) the right to bargain collectively; and
 - (iv) the right to act as a representative of the workers; and
- (b) on a pro rata basis, the benefits of social security schemes

Special provisions for seasonal employees

30. (1) In this section, unless the context otherwise requires -

“returning seasonal employee” means an employee who has served the same employer for at least four (4) consecutive seasons of not less than six (6) months each and that subsequent seasonal contracts of employment after the first four consecutive seasons or years of service, even where less than six (6) months, shall not change the status of a returning seasonal employee;

“seasonal employee” means an employee who is employed to perform seasonal work, which by its nature, is not permanent but exclusively seasonal; and

“seasonal work” means work, which by its nature, is not permanent but exclusively seasonal, in that it only becomes available at a particular time or season of the year.

(2) The purpose of this section is to -

- (a) recognize the service of a seasonal employee who has worked for the same employer for a consecutive period of four years or seasons and whose contract of employment requires the employee to work for a period of at least six months each year; and
- (b) give preference of employment to that employee in favour of new individuals seeking employment at the beginning of each season.

(3) A returning seasonal employee may have to pass an annual medical fitness test to qualify for re-employment, unless that employee suffered an injury on duty during any one previous season with the same employer and that the injury did not result in the employee becoming incapacitated from carrying out normal duties.

(4) A seasonal employee's contract of employment may be terminated at the end of each season, but the employee shall however retain the same employment number when that employee is re-employed in the next season.

(5) At the end of each season, a returning seasonal employee shall be issued with an off-season pass which will confirm the designation of the employee as a returning seasonal employee.

(6) The pass issued under subsection (5) shall stipulate the estimated date of the commencement of the next season.

(7) The employer shall remind employees once the due date for commencing work is close by and failure by an employee to report for duty on the stipulated date may limit the employee's opportunities of re-employment to the employee's previous position.

(8) The re-employment of a seasonal employee to any other position other than the one previously occupied shall not in any way prejudice the status of the employee as a returning seasonal employee.

(9) A returning seasonal employee who has completed four (4) consecutive years of service or seasons with the same employer shall be paid, at the time of the employee's normal retirement or retirement based on medical grounds, severance allowance as provided under section 81 (1).

(10) A seasonal employee who dies after completing four (4) consecutive years of service or seasons with the same employer shall have severance allowance and any other benefits due to that employee paid to the estate of that employee.

(11) Notwithstanding subsection (9) severance allowance shall be paid on a pro rata basis, taking into account the total number of months the employee worked throughout the seasonal period of service over the seasons or years, divided by twelve (12) months.

(12) Severance allowance shall be payable on the retirement of a returning seasonal employee other than in any case where services are terminated for other reasons.

Special provision for migrant employees

31. (1) No employer shall employ a migrant employee in contravention of this Act or any other law governing migrants.

(2) No person shall organize or assist in any movement of migrants for purposes of employment, contrary to the applicable laws and regulations, or bilateral or multilateral agreements.

(3) Migrant employees legally employed in Eswatini shall enjoy equality of treatment with nationals.

(4) A migrant employees referred to in subsection (3) shall not suffer any discrimination or abuse in relation to -

- (a) the recruitment for employment;
- (b) the creation, classification or abolition of jobs or posts;
- (c) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits;
- (d) the choice of persons for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment;
- (e) the provision of facilities related to or connected with employment;
- (f) the termination of employment; or
- (g) any other matter related to employment.

(5) Migrant employees legally resident in Eswatini shall not be regarded as illegal migrants by the mere fact of loss of employment, which shall not in itself imply the withdrawal of the migrant's authorization of the migrant's residence or, as the case maybe, work permit.

(6) An employer shall at all times keep details of any migrant worker who is an employee as maybe prescribed by the Minister from time to time and such information shall include but not be limited to the following -

- (a) name of employee;
- (b) nationality and identity number;
- (c) physical address in country of origin;
- (d) name and contact details of next of kin;
- (e) date employed;
- (f) duration of contract;
- (g) job and grade; and
- (h) details of former employer, if any, in Eswatini;

(7) Without prejudice to any other remedy that may be available to a person in any competent court, any person who is aggrieved by any act or omission of any person in contravention of this section shall be entitled to claim or apply for, either or both of the following remedies -

(a) damages from such person for any loss caused either directly or indirectly as a result of the contravention;

(b) an order directing such person to redress the contravention.

(8) Where it becomes necessary for a migrant worker or the migrant's family to be repatriated, the cost of such repatriation shall be met by the employer.

(9) Nothing in this section shall prevent a migrant who has been employed contrary to this section and whose position cannot be regularized from enjoying equality of treatment for the migrant and the migrant's family in respect of rights arising out of past employment as regards remuneration, social security and any other benefits that would have applied had the migrant been legally employed.

(10) In pursuing the migrant's rights in terms of this section, the migrant worker shall be entitled to present the migrant's case before an adjudicating authority in person or through a representative.

(11) The Minister may after consulting the Labour Advisory Board make regulations to facilitate the employment of migrant workers which regulations may include measures for inbound migrant workers and pre-departure measures for outbound migrant workers.

(12) A migrant employee and where applicable the migrant's family shall, regardless of their nationality and irrespective of their place of residence be entitled to paid employment and social security benefits.

(13) The State may enter into bilateral or multilateral agreements with other states for the purposes of implementation of subsection (11).

PART VII PAYMENT OF WAGES

Exclusion of Application of this Part

32. The Minister may, after consultation with the Labour Advisory Board and by notice in the Gazette, exclude the application of any or all of the provisions of this Part to any employee or category of employees.

Wages to be paid in legal tender

33. (1) Subject to section 31, an employer shall pay the wages of an employee in legal tender.

(2) Any term of a contract of employment that provides for the whole or any part of the wages of an employee to be paid other than in legal tender, has no legal effect.

(3) Nothing in this part prevents an employer from paying an employee, with the consent of the employee -

(a) by cheque drawn on a bank;

(b) by postal order;

(c) by money order; or

- (d) by direct deposit into a financial institution or bank account number- submitted to the employer by the employee for the purpose.

Wages to be paid when due

34. (1) An employer shall pay wages to an employee at the following intervals –

- (a) where an employee is employed daily, weekly, fortnightly or monthly, at the end of each day, week, fortnight or month, as the case may be;
- (b) in the case of an employee employed for a period of more than one (1) month, at intervals of not more than one (1) month; or
- (c) in the case of an employee under a daily contract where, by agreement or custom, wages are not paid daily but at intervals not exceeding one (1) month, in accordance with that agreement or custom.

(2) In the case of an employee whose wages are calculated on the basis of piece work, the employer shall pay wages to the employee at intervals of not more than one (1) month.

(3) The amount of wages paid in terms of subsection (2) shall relate to the proportion of the piece-work that the employee has completed either during the time from which the employee commenced employment or from the date on which the employee was last paid wages, whichever is applicable.

(4) Where a contract referred to in subsection (1)(c) terminates and no new contract is entered into or presumed to be entered into prior to the time at which wages are due under this section, the employer shall pay to the employee the wages due at the time that the contract terminates.

Remuneration other than wages

35. An employer and an employee may agree, in writing, that in addition to monetary wages, the employee will be paid allowances in kind -

- (a) that are of personal benefit to the employee and the family of the employee ;
- (b) that comprise a fair and reasonable value appropriate to the monetary value placed on the allowance by the employer; and
- (c) which do not comprise noxious drugs.

Times and places of payment

36. (1) Wages shall be paid during working hours at or near the workplace of the employee.

(2) An employer may, if authorised in writing by an employee and subject to that authority, pay the whole or any part of the wages due to the employee to a person named in the authorisation.

(3) The employer shall determine the day on which wages shall be paid to the employee and shall notify the employee of that date.

(4) Where an employee is entitled in terms of a contract of employment to a share of the

profits of the undertaking in which that employee is employed, the employer shall, at least once every year, furnish the employee with a statement of accounts relating to that share.

Wages not to be paid on certain premises

37. (1) An employer may not pay wages to an employee at or in any shop or other place at which liquor is sold or in any office or other place adjacent to premises at which liquor is sold.

(2) Subsection (1) shall not apply to an employer who is a resident, owner or occupier of a shop, office or place, if the employee is employed in that retail shop, office or place.

Sale of goods or services by employer to employees

38. (1) An employer shall not force an employee to buy any goods or services either from that employer or from any other person.

(2) An employer shall not compel or attempt to compel an employee or any dependent of an employee to buy any goods or services from that employer or from any other person.

(3) Where for any reason an employer sells goods or services to an employee, the employer may not sell those goods or services to the employee at prices above those at which they are generally available elsewhere in Eswatini.

Special provisions for service charges

39. (1) Where an employer levies a service charge in any undertaking by adding to any invoice a percentage of the value of any services rendered by an employee, that service charge shall be distributed to the employees in the undertaking either-

- (a) in a manner to be agreed between the employer and the employees; or
- (b) in terms of any collective agreement that applies to the employees.

(2) The employer shall, as and when required by the Commissioner, produce evidence as to -

- (a) the total amount of the service charges levied during any given period; and
- (b) the manner and form in which that amount was distributed to the employees.

Agreements as to place and manner of spending wages illegal

40. (1) An employer may not include in any contract of employment a condition, restriction or requirement on the manner in which the wages paid to the employee are to be spent.

(2) Any condition, restriction or requirement included in a contract of employment in breach of subsection (1) has no legal effect.

Priority of wages

41. (1) An employee is entitled to recover in court any wages, exclusive of any sums lawfully deducted from those wages, owing to the employee in terms of this Act.

(2) Notwithstanding any other law, whenever an attachment is issued against the property of any employer in execution of any judgment, the employer shall notify the Commissioner.

(3) Where the wages of any employee employed by an employer referred to in subsection (2) are outstanding, the Commissioner may immediately obtain an order against the employer in respect of those wages.

(4) A person may not pay to any plaintiff the proceeds realised in pursuance of the execution of any judgment against any employer until any judgment obtained in terms of subsection (3) has been satisfied.

(5) The preference established by subsection (4) is limited to a sum not exceeding the equivalent of four (4) months' wages in respect of each employee.

Interest on advances prohibited

42. Where an employer advances any wages to an employee in anticipation of the regular period of payment, the employer may not deduct from the wages of the employee any amount that is a discount, interest or similar charge in respect of that advance.

Authorised deductions from wages

43. (1) An employer may deduct the following amounts from the wages due to an employee -

- (a) any amount due by the employee in respect of any tax or rate that the employer is required to deduct from the wages of an employee under any law;
- (b) any amount due by the employee in respect of a contribution to the Eswatini National Provident Fund;
- (c) the actual or estimated cost to the employer of any materials, clothing, tools and implements supplied by the employer to the employee at the written request of the employee and which are to be used by the employee at work;
- (d) any money advanced to the employee by the employer, whether paid directly to the employee or to another person at the written request of the employee in anticipation of the regular period of payment of the wages of the employee;
- (e) any amount paid to the employee in error in excess of the wages due to that employee; or
- (f) any amount deducted in terms of a collective or recognition agreement.

(2) Subsection (1)(c) shall not apply to any protective clothing or other equipment that the employer is required to supply in terms of any law or any collective agreement.

(3) An employer may, if the employee gives the employer authority in writing, deduct an amount stipulated in the authority as an amount due by the employee in respect of a membership fee or contribution to an organization of which the employee is a member.

(4) An employee may assign a part of any wages due under a contract of employment.

(5) An employer may not deduct a total amount of more than one third of the wages due to the employee in respect of any pay period in respect of any -

- (a) deduction from the wages of an employee under subsection (1) (c) and (e) or under subsection (3);
- (b) assignment by an employee under subsection (4); and
- (c) an attachment made under any law.

Further restrictions on deductions

44. (1) An employer may not make any deduction from the wages due to an employee, or make any agreement or arrangement for any payment by the employee, in respect of any alleged bad or negligent work by the employee.

(2) An employer may, with the written consent of an employee, make deductions from the wages due to the employee in respect of the loss or damage to any tools, materials or other property belonging to the employer and issued to the employee, where the employee caused the loss or damage by fault or negligence.

(3) The amount of any deductions made under subsection (2) shall be fair and reasonable and may not exceed the actual cost to the employer of the loss or damage in question.

(4) An employer may not make any deductions from wages, in terms of this section and together with any deductions permitted by section 42(1), that exceed more than one half of the wages of the employee payable for any period in which the deductions are made.

Deduction for obtaining employment prohibited

45. An employer shall not deduct any amount from the wages of an employee as-

- (a) payment of recruitment fees or related costs;
- (b) any form of payment for retention by the employer; or
- (c) payment to a third party for the purpose of obtaining or retaining employment.

Illegal advances to be irrecoverable

46. Any advance that is made to an employee that shall not comply with this Act is unlawful and may not be recovered in any court whether by way of counter-claim, set off or otherwise.

Saving as to judgment debts

47. (1) During the period of a contract of employment, the fact that an employee has received an advance of wages shall not, by reason only of that advance, deem the employee to have or to have had means and ability to pay any sum due from that employee under any judgment of a court.

(2) Subsection (1) shall not apply to a maintenance order under section 12 of the Maintenance Act of 1970 or other relevant law

Employers to issue details of wage payments

48. (1) An employer shall, at the time of paying wages to an employee, provide that employee

with the following written details (referred to as a wage slip) in respect of the wage period to which the wages relate, that is, the -

- (a) name of the employee;
- (b) occupation of the employee;
- (c) wage rate of the employee;
- (d) period to which the wage relates;
- (e) number of hours paid for at ordinary time;
- (f) number of hours paid for at overtime rate;
- (g) nature and amount of any bonuses or allowances paid;
- (h) gross wages earned by the employee;
- (i) amounts and reasons for any deductions made from the gross wages; and
- (j) amount of the net wage paid to the employee.

(2) Where an employee accepts any wages or a wage slip without protest or reservation, that shall not prejudice the right of the employee to recover all or any part of any unpaid wages.

(3) Where an employee is entitled in terms of a contract of employment to a commission or a share of the profits of the undertaking in which that employee is employed, the employer shall at the time the share is paid to the employee, provide full details -

- (a) on the method of calculation of the commission or share; and
- (b) the total amount of profit of the undertaking in respect of the period to which the payment relates.

Unemployment Benefit Fund

49. (1) The Minister, in consultation with the Labour Advisory Board, shall establish an Unemployment Benefit Fund (referred to hereinafter as "the Fund").

(2) The Fund shall consist of financial contributions from employers, employees and Government.

(3) The Fund may be used for any purpose agreed to by the Labour Advisory Board, including, payment -

- (a) to employees on maternity leave;
- (b) of wages and terminal benefits due but not paid by an employer who closes a business without complying with this Act or any other law;
- (c) to employees on sick leave; or

(d) to beneficiaries upon death of a contributing employee.

(4) The Fund shall come into operation on a date determined by the Minister, after the Minister has, in consultation with the Minister for Finance and the Labour Advisory Board, by notice in the Gazette, promulgated regulations governing the operations of the Fund.

(5) Any proposed amendments to the regulations shall be referred to the Labour Advisory Board which shall, after considering such proposal, advise the Minister accordingly before such amended regulations are promulgated.

PART VIII HOURS OF WORK

Application of this Part

50. This Part shall not apply to –

- (a) employees in senior management;
- (b) employees engaged on sales staff who travel to the premises of customers and who regulate their own hours of work;
- (c) employees who work less than twenty-four (24) hours in a week for an employer;
or
- (d) a member of the immediate family of the employer.

Regulation of Working Time

51. An employer shall regulate the working time of each employee -

- (a) in accordance with the provisions of this Act and any other Act governing occupational safety and health laws;
- (b) with due regard to the safety and health of employees;
- (c) with due regard to the Regulation of Wages Orders issued under the Wages Act, 1964 or its successor; and
- (d) with due regard to the family responsibilities of employees.

Normal Hours of Work

52. (1) Except as otherwise provided for in this Act, the normal hours of work for any employee shall not exceed forty eight (48) hours of work per week.

(2) No employee shall be required to work continuously for more than five (5) hours without being given a rest period from work of not less than one (1) hour during which time the employee shall not be required or permitted to perform any work, provided that -

- (a) a driver of a motor vehicle whose sole duty during the rest period is to be or to remain in charge of the vehicle and its load, where any, shall not be deemed to be working during such rest period; and

- (b) a period of work interrupted by rest periods of less than one (1) hour shall be deemed to be continuous work.

(3) The provisions of this section shall not apply -

- (a) when it is necessary to perform urgent work to remedy any breakdown of machinery or plant;
- (b) in the case of an emergency to avoid or lessen danger to life or serious damage to property; or
- (c) in the case of a vis major in so far as necessary to avoid serious interference with the ordinary working of the undertaking.

(4) An employee's normal hours of work, may by agreement, be extended by up to fifteen (15) minutes in a day, but not more than sixty (60) minutes in a week to enable an employee whose duties include serving members of the public to continue performing those duties after the completion of normal hours of work.

Overtime

53. (1) Subject to this Part, an employer may not require or permit an employee to work overtime except in accordance with an agreement, provided that such an agreement may not require or permit the employee to work more than twelve (12) hours inclusive of normal hours and overtime on any day or fifteen (15) hours overtime a week.

(2) An employer shall pay an employee at least one and a half-times the employee's normal hourly rate for overtime worked on a normal working day.

(3) An employer shall pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer shall pay the employee at one and a half-times the employee's hourly rate for any overtime worked.

(4) Notwithstanding subsections (2) and (3), an agreement may provide for an employer to -

- (a) pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least thirty (30) minutes' time off on full pay for every hour of overtime worked;
- (b) grant an employee at least ninety (90) minutes' paid time off for each hour of overtime worked;
- (c) grant an employee at least one hundred and twenty (120) minutes' paid time off for each hour of overtime worked on a Sunday which is not the employee's normal working day.

(5) An employer shall pay or grant time off in terms of subsections (4) within one (1) month of the employee becoming entitled to and on the employee's usual pay day.

Paid Public holidays

54. (1) An employer may not require an employee to work on a paid public holiday except in accordance with an agreement.

(2) Where a paid public holiday falls on a day on which an employee would ordinarily work, an employer shall pay or grant -

(a) an employee who shall not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day; and

(b) an employee who shall work on a public holiday -

(i) at least double the amount for each hour worked on the public holiday; or

(ii) at least one hundred and twenty (120) minutes' paid time off for each hour worked on the public holiday.

(3) An employer shall pay or grant an employee in terms of subsection (2) within one (1) month of the employee becoming entitled to it on the employee's usual pay day.

(4) Where a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but where the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

Pay for work on Sundays

55. (1) An employer shall pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the Sunday is the employee's normal working day, in which case the employer shall pay the employee the employee's normal daily wage.

(2) Notwithstanding the provision of subsection (1) an employer may grant an employee who works on a Sunday at least one hundred and twenty (120) minutes paid time-off for each hour worked on the Sunday.

(3) Any time worked on a Sunday by an employee who shall not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work, but is taken into account in calculating the overtime worked by the employee in terms of section 52(3).

(4) Where a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

(5) An employer shall pay or grant an employee in terms of subsections (1) and (2) within one (1) month of the employee becoming entitled to it on the employee's usual pay day.

Night work and Limits on night work

56. (1) In this section, "night" means the period commencing at 18.00hours of one day and ending at 06.00hours of the following day.

(2) An employer shall not require -

(a) a pregnant employee to work night work -

(i) eight (8) weeks before childbirth; or

(ii) anytime before childbirth , where the employee produces a medical certificate that she is no longer fit to perform night work;

(b) an employee to undertake night work where the employee produces a medical certificate that the employee is not fit to perform night work; and

(c) an employee nursing a child who is aged six (6) months or below.

(3) Where an employee is required to undertake night work, the employer shall provide that employee with transport or other relevant social services that may be required in accordance with the nature of the night work.

(4) An employer shall provide additional compensation for night work either in the form of -

(a) reduced hours of working time;

(b) pay; or

(c) similar benefits.

(5) Night workers certified, for reasons of health, as unfit for night work shall be transferred, whenever practicable, to a similar job for which they are fit.

(6) Where transfer to such a job is not practicable, these workers shall be granted the same benefits as other workers who are unable to work or to secure employment.

(7) A night worker certified as temporarily unfit for night work shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for reasons of health.

Special provisions for domestic employees

57. (1) In this section, unless the parties agree otherwise, "actual work"-

(a) includes the time during which a domestic employee is at the disposal of the employer; and

(b) excludes any period of time during the night when a domestic employee is resident on the employer's premises, and is not at the disposal of the household to respond to possible calls of the employer.

(2) A person may not employ a domestic employee -

(a) for more than eight (8) hours actual work in any one day;

(b) for more than forty eight (48) hours actual work spread over six (6) days in any one week; or

(c) continuously for a longer period than four and half (4½) hours actual work without a break of at least one (1) hour, which shall not be included in the computation of actual hours worked.

(3) A domestic employee shall be granted, in each week, a period of rest of not less than one day to be taken at a time that is mutually agreed between the employer and the domestic employee.

(4) Notwithstanding subsections (1) and (2), a domestic employee may agree to work overtime in excess of the hours stipulated, in which case the domestic employee shall be paid for that overtime at not less than one and one-half times the normal wage rate.

PART IX ANNUAL LEAVE, SICK LEAVE AND COMPASSIONATE LEAVE

Employer to grant paid annual leave

58. (1) Notwithstanding any other law, every employer shall grant an employee paid annual leave in accordance with this Part.

(2) Nothing in this Part precludes an employer from granting an employee paid annual leave in excess of the minimum periods required by this Part.

Entitlement to paid annual leave

59. (1) After each completed period of six (6) months employment with an employer (an "annual leave cycle"), the employer shall grant an employee at least fifteen (15) working days annual leave, and pay the employee the wages that the employee would have been paid for the time, excluding overtime, that the employee would normally have worked during the period of annual leave.

(2) An employee shall not be entitled to paid annual leave in respect of any annual leave cycle during which the employee has been absent from work for more than thirty six (36) normal working days.

(3) Subsection (2) shall not apply to any absences from work -

- (a) on account of any illness, provided that the employee produces a certificate signed by a medical practitioner;
- (b) on maternity leave in terms of Part X; or
- (c) for any other reason for absence approved by the employer.

Paid holiday to be given within a certain period

60. (1) An employer shall grant an employee annual leave not later than six (6) months after the end of the annual leave cycle in which the leave has been accumulated.

(2) Annual leave in terms of this Part shall be taken in one unbroken period, except that an employee may request the leave to be granted in 2 or more periods, one of which shall be a continuous period of at least 1 week.

(3) Where an employer closes a section or sections of the workplace for a fixed period during the year, all or any part of the paid annual leave of an employee may, with the agreement of the employee, be taken before the completion of the annual leave cycle in which the paid annual leave accrued.

(4) Notwithstanding subsection (1), an employer and an employee may agree in writing that one week of the annual leave accumulated in each leave cycle may be deferred and accumulated over a period of not more than four (4) years.

Continuity of employment

61. For purposes of this Part, an employee is deemed to be in continuous service of employment if the employee is re-engaged by an employer within 7 days of any termination of employment with that employer.

Wages in respect of annual leave

62. (1) An employer may pay an employee who takes annual leave the wages due to that employee in advance, not later than the last working day before the period of leave commences.

(2) Any payments made to an employee in respect of annual leave under this Part shall be paid in addition to and not in substitution for any other payment or consideration to which the employee is entitled under a contract of employment or in terms of this Act.

(3) An employer may not require an employee to take annual leave during any notice period, where the notice of termination of employment was given by the employer.

Public holidays occurring during annual leave

63. The period of annual leave of an employee shall be increased by one day, on full pay, for each public holiday that falls in the period of annual leave taken by the employee in terms of this Part.

Record of annual leave

64. (1) Every employer shall at all times keep a record of each employee showing-

- (a) the name of the employee;
- (b) the dates of the commencement and termination of the employment of the employee;
- (c) the dates on which any paid annual leave was taken; and
- (d) the amount paid to the employee in respect of the paid annual leave to which the employee is entitled.

(2) The record of paid annual leave may be incorporated in the record required to be kept under section 152.

Forfeiture or waiver of annual leave

65. (1) An agreement, arrangement or policy which allows for the forfeiture or waiver by an employee of the whole or part of the period of paid annual leave granted under this Act shall be null and void.

(2) Notwithstanding subsection (1), an employee may agree, in writing, to waive not more than half of that employee's annual leave in return for compensation.

Compassionate leave

66. (1) An employee who has completed a period of probation is entitled to compassionate leave with pay per annum except under paragraphs (c) and (d), in the following circumstances -

- (a) in the event of the death of a husband, leave of fifteen (15) days on full pay and fifteen (15) days on half pay;
- (b) in the event of the death of a wife, leave of fifteen (15) days on full pay; why the difference between (a) and (b)
- (c) in the event of the death of a parent, legally adoptive parent, child or legally adopted child of the employee, five (5) days on full pay, per occurrence; and
- (d) for a grandparent, grandchild or sibling of an employee, three (3) days on full pay, per occurrence.

(2) Leave days and pay in excess of those provided in this section shall be at the discretion of the employer.

Sick leave

67. (1) After three (3) months continuous employment with the same employer, an employee shall be eligible, in each year of employment with that employer, for a maximum of fourteen (14) days sick leave on full pay and a maximum of fourteen (14) days sick leave on half pay.

(2) An employer shall pay the employee during sick leave the basic wage rate of the employee.

(3) Where the employee is not employed on a fixed wage, the payment to which the employee is entitled to in terms of this section shall be calculated using the average amount of wages the employee received for each day of employment during the week preceding the sick leave -

- (a) for each day of sick leave on full pay, the average daily wage is payable; and
- (b) for each day of sick leave on half pay, half that amount is payable.

Sickness to be certified by medical practitioner

68. (1) An employer shall not be required to pay an employee in terms of section 67 where the employee is unable to produce a medical certificate covering the period of sick leave claimed.

(2) The medical certificate shall be signed by a medical practitioner or by an authorized registered nurse where a medical practitioner is not available.

(3) Nothing in subsection (1) prevents an employer from granting an employee paid sick leave in excess of that provided for in this Part or from granting paid sick leave to an employee who satisfies the employer, other than by the production of a medical certificate, that the employee was, for reasons of sickness, unable to carry out normal duties on any day.

**PART X
MATERNITY LEAVE**

Entitlement to and payment during maternity leave

69. (1) Regardless of marital status a female employee who has been in the continuous employment of her employer for twelve (12) months or more shall be entitled to maternity leave with at least four (4) weeks full pay upon delivering to her employer-

- (a) a certificate issued by a medical practitioner or a midwife stating the expected date of childbirth;
- (b) a certificate issued by a medical practitioner or a midwife stating the actual date of childbirth; or
- (c) any other evidence in support of the entitlement to maternity leave as is reasonable, having regard to all the circumstances of the case.

(2) Notwithstanding subsection (1), a female employee entitled to maternity leave by virtue of subsection (1), shall be so entitled at least once after the lapse of a period of twenty four (24) months from the last maternity leave calculated from the date on which she returned to work after her last day of maternity leave.

(3) An employee who suffers any illness arising from childbirth shall be granted, in addition to the maternity leave to which she is entitled, any additional leave, not exceeding a period of six (6) weeks, which a medical practitioner may recommend.

Duration of maternity leave

70. (1) An employee shall be entitled to at least twelve (12) weeks of maternity leave, so arranged that the employee is allowed-

- (a) such period as she desires, not exceeding six (6) weeks before childbirth;
- (b) a period of not less than six (6) weeks after childbirth

(2) An employee may agree, in writing, to reduce the period of maternity leave to a period of less than twelve (12) weeks.

(3) Where childbirth takes place without an employee having been granted maternity leave or if the period of leave taken before childbirth is less than six (6) weeks, the period of maternity leave after childbirth shall, if the employee so requests, be extended so that the total period of maternity leave amounts to not less than twelve (12) weeks.

(4) Where an employee has been granted maternity leave and the date of childbirth is a date later than that stated in the certificate or other evidence delivered to the employer as being the date on which birth was expected, the maternity leave of the employee shall be extended to include the period that elapsed between those dates.

Protection from strenuous work

71. (1) An employer shall not require a female employee to perform work in excess of a normal day's work, two months before childbirth.

(2) Subject to a recommendation by a health practitioner, a female employee who is pregnant shall not perform duties-

- (a) requiring continuous standing; or
- (b) that may be detrimental to that employee's health and that of the employee's unborn child.

(3) An employer shall, where a pregnant or nursing employee performs work that is detrimental to the employee's health or that of the employee's child or unborn child, offer the employee suitable alternative employment, if practicable, on terms and conditions that are not less favourable than that employee's terms and conditions of employment.

(4) An employer shall exempt a female employee from working, where the employee produces medical certificate that the health of the employee's newly born child is compromised.

Nursing breaks

72. A female employee who returns to work after maternity leave is entitled to a one (1) hour nursing break each day, on full pay, for a period of three (3) months calculated from the date on which she returns to work.

Protection of employment

73. (1) An employer may not terminate the employment of an employee or require an employee to resign on the grounds that she is pregnant.

(2) An employer may not terminate the employment of an employee or give notice of any intention to do so -

- (a) at any time between the date on which the employee gives the employer a certificate or other evidence of her entitlement to maternity leave and the date on which her maternity leave or additional leave granted under section 71(3) expires; or
- (b) such that the notice of intention to terminate employment would expire during the employee's maternity leave or any additional leave granted under section 69(3).

(3) An employer may not require an employee to resign during any of the periods referred to in paragraphs (2) (a) and (b).

(4) Subsection (2) shall not apply to an employee whose employment is terminated for any of the reasons listed in section 89.

Retention of seniority

74. (1) Where an employee returns to work after maternity leave or any additional leave granted in terms of section 71(3), the employer shall allow her to continue holding the position which she held or the equivalent, prior to the maternity leave or additional leave.

(2) Where an employee returns to work as provided in subsection (1), the employee shall maintain her seniority in position as previously tenable before her departure.

(3) An employer shall not pay an employee lower wages or employ her on less favourable conditions than those which applied to her employment before she went on maternity leave, by reason only of the fact that the employee went on maternity leave.

PART XI ESWATINI NATIONAL PROVIDENT FUND

Interpretation

75. In this Part, the expression -

“Fund” means the Eswatini National Provident Fund established by the Eswatini National Provident Fund Order 1974, or its successor.

Delivery of documents from the Fund

76. (1) Every employer who is liable to make contributions to the Eswatini National Provident Fund shall deliver to the Chief Executive Officer of the Fund, a certified copy of every document of registration.

(2) The Chief Executive Officer shall forward a copy of the documents referred to in subsection (1) to the Commissioner.

(3) The Chief Executive Officer of the Fund shall, on the date that this Part comes into operation, deliver to the Commissioner a certified copy of the most recent quarterly return in respect of employees which was received by the Chief Executive Officer from each employer who is, on that date, registered as a contributing employer to the Fund.

(4) The Chief Executive Officer shall deliver to the Commissioner a certified copy of each quarterly return referred to in subsection (3).

PART XII SUSPENSION AND TERMINATION OF CONTRACTS OF EMPLOYMENT

Application of this Part

77. (1) This Part of the Act applies to every contract of employment concluded in Eswatini and to be performed wholly within Eswatini.

(2) An employee whose contract of employment is suspended or terminated under this Part shall not be precluded by any provision in this Part from disputing the fairness of the suspension or termination of that contract, either in terms of Part XIII of this Act, or any other law.

Suspension of employee

78. (1) An employer may suspend an employee from employment without pay where the employee is -

- (a) remanded in custody; or
- (b) has or is suspected of having committed an act which, where proven, would justify dismissal or disciplinary action.

(2) Where the employee is suspended under subsection (1) (b), the suspension without pay shall not exceed a period of one (1) month.

(3) Where the employer finds that the employee did not commit the act referred to in subsection (1) (b), the suspension shall be lifted and the employer shall pay to the employee an amount equal to the remuneration the employee would have been paid during the suspension.

(4) Where the employee is suspended because the employee was remanded in custody, and subsequently acquitted of the charge and any other related charges for which the employee was remanded in custody, the suspension shall be lifted, and subject to subsection (5), the employer shall not be obliged to pay any wages to the employee for the period the employee was in custody.

(5) Where an employee who is remanded in custody as a result of a complaint laid by the employer in relation to the employment of that employee, naming the employee as an accused, is subsequently acquitted of that charge or any other related charges, the employer shall pay to the employee an amount equal to the remuneration the employee would have been paid during the period of suspension.

Probationary employment

79. During any period of probationary employment as stipulated either in the form to be given to an employee under section 23 or in a collective agreement or contract of employment governing the terms and conditions of employment, either party may terminate the contract of employment between them on one (1) week's notice.

Periods of notice by employer and employee

80. (1) Where an employee has completed a period of probation, a contract of employment may be terminated by either the employer or the employee giving notice to the other of not less than -

- (a) one (1) week, if the employee has been continuously employed for less than three (3) months;
- (b) two (2) weeks, or two (2) days for each completed month (whichever is the greater) if the employee has been continuously employed between three (3) months and twelve (12) months up to and including the twelfth (12th) month; and
- (c) where the period of continuous employment is more than twelve (12) months, one (1) month and an additional four (4) days for each completed year of continuous employment after the first year of that employment.

(2) An employer shall not terminate a contract of employment in terms of this subsection without a valid and fair reason for terminating the contract.

(3) Notwithstanding any other provision in this section, where an employee has completed a period of probation and is employed on a contract of employment which provides for the payment of wages at monthly or fortnightly intervals, the employer shall give the employee a minimum period of notice of termination of employment of one (1) month or a fortnight, as the case may be.

(4) An employee who has been continuously employed for more than three (3) months shall give the employer a notice of at least one (1) week or any longer period specified in -

- (a) any written particulars of employment issued in terms of section 23;
- (b) any contract of employment; or
- (c) a collective agreement that applies to the employee.

(5) A period of notice given in terms of this section commences on the working day following the day on which the notice is served.

(6) Nothing in this section prevents either an employer or an employee from terminating a contract of employment by paying to the other party, in lieu of notice, an amount equal to the basic wages that the employee would have earned during the notice period.

(7) During the period of notice given by an employer in terms of this section, the employee is entitled, without any reduction in wages, to be absent from work for twelve (12) hours each week, to seek other employment.

(8) The time off to which an employee is entitled in terms of subsection (7) shall be agreed between the employee and the employer and may be taken in one or more complete days during the period of notice.

(9) Nothing in this section affects the right of an employer or an employee to terminate a contract of employment without notice for a reason that warrants the immediate termination of the employment relationship.

(10) An employee who is dismissed without notice is entitled to the wages due up to and including the date on which the contract of employment terminated.

Severance allowance and service benefit

81. (1) Subject to subsections (2) and (3) where the services of an employee are terminated by the employer other than under the provisions of paragraphs (a) to (i) of section 82 (2) the employee shall be paid, as part of the benefits accruing under the contract of service, a severance allowance amounting to the wages of ten working days for each completed year in excess of one year that the employee has been continuously employed by that employer.

(2) Where the services of an employee are terminated by operation of law, the employee shall be paid, as part of the benefits accruing under the contract of service, a service benefit amounting to the wages of ten working days for each completed year in excess of one year, provided that in the event of termination by death, the employee shall have worked for the employer for at least two (2) years.

(3) Notwithstanding any other law, whether specific or general, where any employer operates or participates in, and makes any contribution to any gratuity, pension or provident fund (other than the Eswatini National Provident Fund established by the Eswatini National Provident Fund Order, 1974) that is operated for the benefit of employees, the employer, on termination of employment of an employee, shall be repaid from the gratuity, pension or provident fund, an amount equal to the total contribution of the employer to that gratuity, pension or provident fund in respect of the employee who is entitled to severance allowance or service benefit under this section.

(4) The amount of the repayment under subsection (2) may not exceed the total amount of the severance allowance or service benefit paid by the employer under subsections (1) and (2) respectively.

Payment for accrued annual leave when employment is terminated

82. (1) Where the employment of an employee is terminated after the employee has been employed for more than three (3) months but for less than one (1) year, the employer shall, on or before the date on which the employment of an employee is terminated, pay that employee an amount equal to at least the wages of one (1) day for every completed month of employment.

(2) Where the employment of the employee is terminated after the completion of an annual leave cycle in respect of which the employee has taken annual paid leave, the employer shall, on or before the date on which the employment of the employee is terminated, pay that employee an amount equal to the wages of at least one (1) day for every completed month of employment in the current annual leave cycle of that employee.

(3) Where the employment of the employee is terminated after the completion of an annual leave cycle in respect of which the employee has not taken the paid annual leave accrued in that cycle, the employer shall, on or before the date on which the employment of an employee is terminated, pay that employee an amount equal to -

- (a) the wages due in respect of annual paid leave accrued during the previous annual leave cycle but not taken; and
- (b) the wages of at least one (1) day for each completed month of employment during the current annual leave cycle.

(4) Any payment made in terms of this section shall be paid in addition to payment of all or any part of the wages of the employee for any period during which the employee is entitled to continue in employment after notice of termination of employment has been given.

Certificate of employment

83. On termination of employment of an employee, the employer shall issue a certificate, at the request of the employee, specifying -

- (a) the dates between which the employee was employed; and
- (b) the nature of the work in which the employee was engaged.

Employer to give notice of redundancy

84. (1) In this section the term "employee" shall not include any person -

- (a) engaged on a seasonal contract; or
- (b) engaged on a fixed term contract for a period of six weeks or less and which does not provide for re-engagement at the end of that period.

(2) Where an employer contemplates terminating the contracts of employment of five or more employees for reasons of redundancy, the employer shall give notice of at least one (1) month in writing to the Commissioner and to any organization that has been recognised or is a party to a collective agreement or where no organization is recognized, the notice shall be given to the individual employees.

(3) A notice in terms of subsection (2) shall include -

- (a) the number of likely redundant employees;
- (b) the occupations and remuneration of the employees affected;
- (c) the reasons for the redundancies;
- (d) the date when the redundancies are likely to take effect;
- (e) the latest financial statements and audited accounts of the undertaking; and
- (f) options that have been looked into to avert or minimize the redundancy.

(4) After giving notice in terms of subsection (2), the employer shall consult with the organization, where any, which is a party to any recognition or collective agreement, about avoiding or minimizing the effects of the contemplated termination.

Repatriation of employees

85. (1) Where an employee has been transported to the place of employment by the employer or by a person acting on behalf of the employer and the contract of employment of the employee is subsequently terminated by that employer for any reason, the employer shall bear the cost of repatriating the employee, by reasonable means, to the employee's permanent residence as recorded in the written particulars of employment or contract of employment of the employee.

(2) The expenses of repatriation shall include -

- (a) the cost of traveling and subsistence expenses for the journey; and
- (b) the subsistence expenses during the period, where any, between the date of the termination of the contract and the date of repatriation.

PART XIII UNFAIR DISMISSAL

Application of this Part

86. (1) This Part applies generally except to an employee -

- (a) who is employed for a fixed term and whose contract of employment has expired by effluxion of time;
- (b) whose contract of employment has terminated by operation of law such as in the following circumstances -
 - (i) death of the employee;
 - (ii) because the employee has attained the age which, in the undertaking in which the employee was employed, is the normal retirement age for employees in the position in which the employee is engaged;
 - (iii) for incapacitation of the employee due to illness; or
 - (iv) where, because of a vis major it is impossible to continue employing the worker.

(2) In this Part, and subject to subsection (1), a dismissal is -

- (a) a termination of employment, with or without notice, at the initiative of an employer;
- (b) a termination of employment by an employee, with or without notice, because the employer conducted herself in a way that the employee could not reasonably be expected to continue in employment.

Employee's services not to be unfairly terminated

87. (1) An employer may not unfairly terminate an employee.

(2) The termination of an employment is unfair if the reason for termination is any one or more of the following -

- (a) the employee is a member of an organization;
- (b) participation in the activities of an organization outside working hours or, with the consent of the employer, within working hours;
- (c) the employee seeks office as or is an officer, or is acting or has acted in the capacity of, an employee representative;
- (d) the filing in good faith of a complaint or the participation in a proceeding against an employer involving any alleged violation of any law or the breach of the terms and conditions of employment under which the employee is employed;
- (e) the colour, gender, race, religion, disability, marital status, national origin, pregnancy or intended pregnancy, gender identity, sex, tribal or clan extraction, political affiliation or opinion, culture, language, trade union or staff association affiliation, social status, real or perceived HIV status or health status of the employee;
- (f) the inability of the employee to carry out normal duties because of a medical condition brought about by work performed for the employer, where a medical practitioner has certified that the employee is incapacitated, unless the employer proves that there is no suitable alternative employment to offer that employee; and
- (g) the absence of the employee from work for a period of 6 months or less, on account of any accident or injury arising out of employment, where a medical practitioner has certified that the employee is incapacitated, unless the employer proves that it was necessary to permanently replace the employee at the time.

Fair reasons for the termination of an employee's services

88. (1) An employee has the right not to have his contract of employment unfairly terminated and without due process of the law.

(2) It shall be fair for an employer to terminate the services of an employee for any one or more of the following reasons -

- (a) because the conduct or work performance of the employee has, after written warning, been such that the employer cannot reasonably be expected to continue to employ the employee;
- (b) because the employee is guilty of a dishonest act, violence, threats or ill treatment towards the employer, or towards any member of the employer's immediate family or any other employee of the undertaking in which the employee is employed;
- (c) because the employee willfully causes damage to the buildings, machinery, tools, raw materials or other objects connected with the undertaking in which the employee is employed;
- (d) because the employee, either by imprudence or carelessness, endangers the safety of the undertaking or any person employed or resident therein;
- (e) because the employee has willfully revealed trade or manufacturing secrets or matters of a confidential nature to another person which is, or is likely to be, detrimental to the employer;
- (f) because the employee has absented the person of the employee from work for more than a total of three working days in any period of thirty days without either the permission of the employer or a certificate signed by a medical practitioner certifying that the employee was unfit for work on those occasions;
- (g) because the employee refuses either to adopt safety measures or follow the instructions of the employer in regard to the prevention of accidents or disease;
- (h) because the employee has been committed to prison and thus prevented from fulfilling the employee's obligations under the contract of employment;
- (i) because the employer is unable to continue in employment without contravening this Act or any other law;
- (j) because the employee is redundant;
- (k) because the employee has attained the age which in the undertaking in which the employee was employed is the normal retiring age for employees holding the position that the employee held; or
- (l) for any other reason which entails for the employer or the undertaking similar detrimental consequences to those set out in this section.

Termination of services due to employer's conduct.

89. When the conduct of an employer towards an employee is proved by that employee to have been such that the employee can no longer reasonably be expected to continue in his employment and accordingly leaves his employment, whether with or without notice, then the services of the employee shall be deemed to have been unfairly terminated by his employer.

Burden of proof in dismissal disputes

90. (1) In the presentation of any complaint under this Part, the employee shall be required to prove that at the time the services of the employee were terminated, the employee was an employee to whom section 87 applied.

(2) The services of an employee shall not be considered as having been fairly terminated unless the employer proves that -

- (a) the reason for the termination was one permitted by section 89;
- (b) the termination has followed the due process of the law; and
- (c) taking into account all the circumstances of the case, it was reasonable to terminate the service of the employee.

PART XIV UNFAIR LABOUR PRACTICE

Meaning and determination of unfair labour practices

91. (1) In this section, an unfair labour practice means any unfair act or omission that arises between an employer and an employee including, but not limited to -

- (a) unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee;
- (b) requiring a person seeking employment or employee to submit to an HIV test to ascertain their HIV status or requiring a person seeking employment to disclose their personal HIV status or that of any other person;
- (c) the unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee;
- (d) the failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement;
- (e) discriminatory practice or conduct of the employer in relation to employee transfers; or
- (f) any other act or omission by the employer which the court, having regard to all circumstances of the case, may determine to be an unfair labour practice.

(2) Where the court or an arbitrator appointed in terms of the Industrial Relations Act, 2000 determines that an employer has committed an unfair labour practice, the court or arbitrator may make any order that the court or arbitrator deems fit, including reinstatement, re-employment or compensation.

(3) All unfair labour practice disputes shall be reported and determined in terms of Part VIII of the Industrial Relations Act.

PART XV TRANSFER OF A BUSINESS

Payment of all benefits before transferring business

92. (1) This section applies to the transfer of a business as a going concern.

(2) Where an employer transfers or allows a take-over of the business as a going concern -

- (a) the new employer shall be automatically substituted in the place of the old employer in all contracts of employment in existence immediately before the transfer or takeover of the business;
- (b) all the rights and obligations between the old employer and each employee at the time of the transfer or takeover shall remain rights and obligations between the new employer and each employee;
- (c) anything done by the old employer before the transfer or takeover, in respect of each employee shall be considered to have been done by the new employer; and
- (d) the transfer or takeover of the business shall not interrupt the employee's continuity of employment and the employee's contract of employment shall continue with the new employer as if with the old employer.

(3) A collective agreement or arbitration award binding on the old employer immediately before the transfer or takeover shall become binding on the new employer and the employees covered by that collective agreement or arbitration award.

(4) An employer (the old employer) who transfers or allows a takeover of the business or any part of a business, other than as a going concern, to any other employer (the new employer) shall pay the employees all benefits accruing to them and any wages due before transferring or allowing the takeover of the business.

(5) In the case of a transfer or takeover of a business as a going concern, the old employer-

- (a) may agree with the new employer to a valuation as at the date of transfer or takeover, of -
 - (i) the leave pay accrued to the employees of the old employer;
 - (ii) the severance pay that would have been payable to the employees of the old employer in terms of this Act; and
 - (iii) any other payments that have accrued to the employees of the old employer but have not been paid to the employees; and
- (b) the old and new employers shall consult the employees and their representative organization, if any, in the conduct of a valuation of the employee's terminal benefits.

(6) The new employer may offer a written guarantee, which is understood by and acceptable to -

- (a) any staff association or trade union representing affected employees; or
- (b) the employees themselves, if there is no staff association or trade union.

(7) A guarantee offered in terms of subsection (6)(a) shall warrant that all benefits accruing at the time of the termination of the previous employment of the employee will continue to accrue in the new employment as if no termination of employment occurred.

(8) The new employer shall lodge any guarantee offered in terms of this section with the Commissioner.

**PART XVI
FOREIGN CONTRACTS OF EMPLOYMENT: RECRUITMENT AND
REGULATION OF LABOUR AGENTS**

Application

93. This Part applies to the recruitment in Eswatini of persons to be employed in another country and to contracts of employment (referred to in this Part as “foreign contracts”) to be performed in another country.

Restriction on recruitment

94. (1) A person shall not recruit anyone who is under the age of 18 years for employment in another country.

(2) A public officer shall not recruit any person for employment in another country whether directly or indirectly.

(3) A chief, umgijimi, indvuna or a competent authority shall not -

- (a) perform the functions of a labour or recruiting assistant;
- (b) induce any person to enter into a foreign contract of employment; or
- (c) receive any remuneration or inducement for assistance in recruiting any person for employment under this part.

Licensing of labour agents

95. (1) A person shall not act as a labour agent unless that person is licensed as a labour agent by the Commissioner.

(2) The licence of a labour agent -

- (a) expires on twelve (12) months after the date the licence was issued; and
- (b) may not be transferred from one person to another.

(3) The Minister may, after consultation with the Labour Advisory Board and by notice in the Gazette -

- (a) establish different categories of persons to whom a licence of a labour agent may be issued; and
- (b) prescribe the fee payable for a licence of a labour agent in each category.

Conditions of labour agent's licences

96. (1) A licence of a labour agent may be issued subject to any conditions that the Commissioner may impose, including -

- (a) the geographical limits within which recruiting may be conducted;
- (b) the number of persons to be recruited; and
- (c) any other conditions that the Commissioner considers reasonable.

(2) A labour agent shall not act other than in the manner authorized by the licence and, except as provided by subsection (3), shall not exercise any rights granted by the licence in any urban area or on any private property, except with the consent of the owner of that property.

(3) Notwithstanding subsection (2), a labour agent may recruit persons in an urban area if those persons present themselves for recruitment at the place of residence or business of the labour agent located inside an urban area.

(4) A licensed labour agent who contravenes this section shall in addition to any penalty imposed forfeit the license issued to that agent.

Recruiting assistants

97. (1) A labour agent who intends to employ any person as a recruiting assistant shall apply to the Commissioner in the approved form.

(2) Where the Commissioner approves an application made under subsection (1), the Commissioner shall issue a permit to the person named in the application.

(3) A labour agent may not employ a recruiting assistant unless the assistant is in possession of a valid permit.

(4) The following provisions apply to the permit of a recruiting assistant -

- (a) a permit shall not be valid for a period longer than twelve (12) months and in any event shall expire on 31 December in the year in which the permit was issued, or the date on which the licence issued to the labour agent employing the recruiting assistant expires, whichever date occurs first;
- (b) a permit shall not be transferable; and
- (c) subject to this subsection, a permit shall be valid only for so long as the licence held by the labour agent employing the recruiting assistant remains in force.

(5) The Minister may, by notice published in the Gazette, prescribe the fees payable for the permit of a recruiting assistant.

(6) The Commissioner may, at any time, cancel a permit issued under subsection (2), where the -

- (a) Commissioner is of the opinion that the recruiting assistant has committed an act of misconduct that renders it undesirable for the assistant to continue to be employed in that capacity;
- (b) recruiting assistant is convicted of an offence under this Act; or

- (c) Commissioner is of the opinion that it is undesirable that the recruiting assistant should continue to be employed in that capacity.

(7) Where a labour agent ceases to employ a recruiting assistant or where the Commissioner cancels a permit issued to a recruiting assistant, the labour agent shall return to the Commissioner the permit issued to the recruiting assistant, either by hand or by registered post.

- (8) The Commissioner may refuse to issue or renew the permit of a recruiting assistant.

Unauthorized recruiting assistants

98. A person who is not in possession of a valid permit issued in terms of section 96 shall not canvass or recruit any persons on behalf of a labour agent.

Liability for acts of recruiting assistants

99. (1) A labour agent is responsible for any act done or representation made by a recruiting assistant within the scope of the employment of the assistant.

(2) Notwithstanding subsection (1), where any act was done or representation made with the knowledge of the labour agent, the agent is personally liable for any penalties that are prescribed for that act or representation.

(3) On conviction of a labour agent under subsection (2), the permit issued to the recruiting assistant will be automatically forfeited and shall be delivered without delay, by hand or registered post, to the Commissioner.

Application for a labour agent's licence

100. (1) An application for a licence of a labour agent, or for the renewal of a licence, shall be submitted, in the approved form.

(2) Before issuing or renewing the licence of a labour agent, the Commissioner shall be satisfied that the applicant is a fit and proper person to carry out the functions of a labour agent.

- (3) The Commissioner may -

- (a) require the applicant to furnish and maintain, as a guarantee for proper conduct, any financial or other security that the Commissioner considers appropriate;
- (b) after consultation with the Labour Advisory Board, require the applicant to furnish security in Eswatini for the payment of wages which may become due to persons to be recruited by the labour agent; and
- (c) any further information that the Commissioner may require.

(4) The Commissioner shall have the sole discretion to refuse to issue or to renew the licence of a labour agent.

(5) A person aggrieved by a decision of the Commissioner may appeal against that decision to the Minister within fourteen (14) days of receipt of that decision.

- (6) The Minister's decision on the appeal shall be final.

Revocation or suspension of the labour agent's licence

101. (1) The Commissioner may revoke or suspend the licence of a labour agent where the Commissioner is satisfied that the agent -

- (a) has failed to furnish any security required by the Commissioner; or
- (b) has behaved in a manner that renders the continued holding of a licence undesirable or justifiable under this Act.

(2) A person whose licence is revoked or suspended under subsection (1) may, within 7 days of being notified in writing of the revocation or suspension, appeal in writing to the Minister.

(3) Where an appeal is lodged, the revocation or suspension of the licence of a labour agent is stayed until the Minister makes a decision on the appeal.

(4) The decision of the Minister on any appeal lodged in terms of this section shall be final.

(5) Where the licence of a labour agent is revoked in terms of this section, the labour agent shall immediately deliver the licence to the Commissioner by hand, or by registered post, together with all current permits issued to recruiting assistants employed by the labour agent.

Production of licences and permits

102. The Commissioner, an inspector or an administrative officer may, at any time, demand that a person performing the functions of a labour agent or a recruiting assistant produce a licence or permit issued in terms of this Part.

Court may order payments to be made from security

103. A court may, in its discretion, order that any security furnished in terms of section 103(4) or any portion of that amount that may be sufficient, be applied toward the payment of the sum of money or the fine, where-

- (a) a person who has been recruited by a labour agent sues the labour agent for any cause connected with a contract of employment and the court awards that person a sum of money whether in satisfaction of a debt or for wages or damages or costs; or
- (b) a labour agent fails to pay a fine imposed under the provisions of this Act.

Forms, documents and records to be kept by labour agents

104. Every labour agent shall maintain the following records in respect of all persons recruited by that agent -

- (a) copies of all contracts of employment attested, filed chronologically; and
- (b) a record of every person, who during the term of a contract of employment dies or suffers any injury resulting in permanent incapacity, (including incapacity resulting from cardio-respiratory diseases), listing -
 - (i) the name and home address of the employee;

- (ii) the name and address of employer;
- (iii) in the case of a deceased person, the date and cause of death and the name and address of any dependents, and in the case of an injured person, the date of the injury and the degree of incapacity;
- (iv) the amount of any compensation, wages, deferred pay or other money due to any person mentioned in subparagraph (iii); and
- (v) the date and method of settlement of all claims relating to wages, deferred pay, workmen's compensation or other payments due to any person or the dependents of any person mentioned in subparagraph (iii).

False representation

105. A person shall not induce any other person to become employed, either by making -

- (a) a representation as to terms and conditions that are known to be false; or
- (b) any promise as to terms and conditions of employment that the person knows are not capable of being fulfilled or has no intention of fulfilling.

106. (1) A person who engages in recruiting under this Part may make an advance of wages limited to one third of the contracted or promised monthly wage.

(2) For the purposes of this section, a person is deemed to engage in recruiting if that person enters into a foreign contract of employment with an employee.

(3) A labour agent or employer shall not authorize a recruiting assistant to make an advance of wages to an employee.

Particulars in foreign contracts and requirements as to attestation

107. (1) Every contract of employment under this Part shall be signed by the parties to the contract and attested to by an attesting officer.

(2) Each contract shall consist of -

- (a) the original document, which shall be given to the employer; and
- (b) copies of the contract which shall be distributed as follows, one copy to -
 - (i) the employee;
 - (ii) the labour agent, where any; and
 - (iii) be retained by the attesting officer.

(3) The following particulars shall be included in each contract -

- (a) the name of the employer or group of employers and, where practicable, the name of the undertaking and the place of employment;

- (b) the name of the employee, place of origin of the employee, address and all particulars necessary to identify the employee;
- (c) the nature of the employment;
- (d) the duration of the contract;
- (e) the rate of wages and the method of calculating wages;
- (f) the manner and intervals of payment of wages;
- (g) the advances, where any, given to the employee and the manner of repayment of advances;
- (h) the conditions of repatriation;
- (i) provision for the payment of not less than half wages to the employee during any period for which a qualified medical practitioner certifies that the employee is unable, for reasons of sickness, to carry out the employment set out in the contract; and
- (j) any special conditions of the contract.

(4) A contract of employment shall not be attested to unless the attesting officer is satisfied that -

- (a) the contract is in proper legal form;
- (b) the terms of the contract comply with this Act;
- (c) the terms of the contract have been fully understood by the employee before the employee signs the contract or otherwise indicates agreement to its terms; and
- (d) the employee has been certified medically fit to perform duties under the contract.

(5) The Minister may, by notice in the Gazette, prescribe the fee for the attestation of each contract of employment.

(6) The employer shall pay the prescribed fee to the attesting officer and shall not recover the fee, directly or indirectly, from the employee.

(7) The attesting officer shall, on payment of the prescribed fee -

- (a) affix to the copy of the contract to be retained by the attesting officer, a "face value" receipt of the amount of the fee; and
- (b) cancel the receipt.

(8) The employer or the labour agent responsible for the recruitment shall send a copy of every contract of employment to the Commissioner within 14 days of the day on which the contract is concluded.

(9) The Commissioner shall record the contents of each contract in a register kept for that purpose.

Paid annual leave

108. Where a contract of employment is concluded for a period of more than one (1) year, the contract shall entitle the employee, at the expense of the employer to return to Eswatini after each period of twelve (12) months employment, on full pay, for a period of not less than two (2) weeks annual leave, excluding any traveling time between the place of employment and the home of the employee in Eswatini.

Medical examination of employees

109. (1) When an employer brings a person before an attesting officer for attestation, the employer shall produce to the attesting officer a certificate, signed by a medical practitioner, to the effect that the practitioner has examined the person and found the person to be in a sound state of health and physically capable of performing the duties stated in the contract.

(2) The information referred to in subsection (1) shall be kept confidential.

Termination of contract

110. (1) A contract of employment under this Part terminates -

- (a) on the expiry of the agreed term of employment;
- (b) on the death of the employee before the expiry of the agreed term of employment;
- (c) by mutual consent, expressed in writing, of the employer and the employee;
- (d) by either party giving 2 week's notice to the other; or
- (e) when the employee is unable to fulfill the conditions of the contract because of sickness or an accident.

(2) Where a contract of employment is terminated by the death of the employee, subject to subsection (3), any benefits or other payments owing out of that contract shall be assigned to the estate of the employee.

(3) The pension benefits of a deceased employee shall be paid in the following manner -

- (a) first, to any dependents;
- (b) where there are no dependents, to any nominated beneficiary; or
- (c) where there is no nominated beneficiary, to any other beneficiary.

(4) Where a contract of employment is terminated for any reason other than the death of the employee, the employer shall provide the employee with a written statement -

- (a) certifying that the employee has been paid all wages due up to and including the date of termination;

- (b) showing the amounts of any wages due to the employee which have been deferred during the period of the contract; and
- (c) setting out the arrangements for payment of any compensation which may be due to the employee as a result of any accident or disease suffered by the employee during the course of employment.

(5) Where a contract of employment is terminated because of death of the employee, a statement containing the particulars referred to in subsection (4) shall be provided to the person administering the estate of the deceased employee.

(6) Where a contract is terminated because of sickness or death of the employee, or because of an accident to the employee suffered during the course of employment, a statement containing the particulars referred to in subsection (4) shall be delivered to the Commissioner and, if applicable, to the labour agent who signed the contract of employment on behalf of the employer.

(7) Where the statement required by subsection (6) has not been delivered to the Commissioner within four (4) weeks of the termination of the contract and the employee concerned was recruited by a labour agent, the Commissioner may order the labour agent to provide the statement immediately.

Transport and welfare of employees

111. The employer or labour agent, as may be applicable, shall -

- (a) provide an employee with transport to the place of employment and for repatriation, subject to availability of resources; and
- (b) take all necessary steps to ensure that -
 - (i) the vehicles used to transport the employees are suitable for the purpose, in good sanitary condition and not overcrowded;
 - (ii) where it is necessary to break the journey for the night, suitable accommodation is provided for the employees; and
 - (iii) the employee is provided with everything necessary for their welfare, including food and drinking water.

Repatriation of an employee

112. (1) The employer or the labour agent, as may be applicable, shall at their own expense repatriate an employee who -

- (a) becomes incapacitated, by sickness or accident, during the journey to the place of employment;
- (b) is found, on medical examination, to be unfit for employment;
- (c) is not engaged after recruitment; or
- (d) is found to have been recruited by misrepresentation or mistake.

(2) An employee who was brought to the place of employment by the employer or a labour agent has the right to be repatriated, at the expense of the employer or the labour agent, as the case may be, to the place of origin or engagement of the employee, whichever is the nearer to the place of employment -

- (a) on the expiry of the period of employment stipulated in the contract;
- (b) on the termination of the contract by reason of the inability of the employer to fulfill the contract; or
- (c) on the termination of the contract by agreement between the parties.

(3) The expenses of repatriation shall include subsistence expenses during the journey, and if applicable, for the period between the date of expiry of the contract and the date of repatriation, except in the case where the repatriation of the employee is delayed by the choice of the employee.

(4) Where a member of the immediate family of an employee has been authorized to accompany the employee to the place of employment, the provisions of this section and section 112 shall, with the changes required by the context, apply to that member.

Printing of summaries in the English and siSwati languages

113. The Commissioner may print concise summaries of this Part of the Act in the English and siSwati languages and -

- (a) make these summaries available to affected employers and employees; and
- (b) direct such employer or labour agent to post and keep a summary posted in a place where the summary can be easily seen and read by persons who are being engaged on a foreign contract of employment.

Age of employees entering into contracts

114. A person shall not enter into a foreign contract of employment with a person who is under the age of eighteen (18) years.

Regulations

115. Without prejudice to the power of the Minister to make regulations under any other provision of this Act, the Minister may make regulations -

- (a) prescribing the security to be provided by an employer in respect of money deposited with the employer by an employee for safekeeping; and
- (b) approving financial institutions in which money deposited by an employee with the employer may be placed.

**PART XVII
PUBLIC AND PRIVATE EMPLOYMENT SERVICES**

Interpretation

116. In this Part -

“private employment agency” means the business (whether or not it is carried on for profit or whether or not it is carried on in conjunction with any other business) of providing services or information for the purpose of finding employment in Eswatini with employers in Eswatini or supplying employers with persons for employment by such employers; and

“public employment exchange” means any office or place established by the Commissioner for any one or more of the following purposes -

- (a) maintaining a register or registers of persons seeking employment and of employers seeking to engage workers in Eswatini;
- (b) directing persons seeking employment to vacancies for which, by their training, skill and previous experience they may be suited;
- (c) collecting and providing information to work seekers regarding employment opportunities and to prospective employers regarding work seekers; and
- (d) devising plans for special employment placement for persons with disabilities, or who have been declared redundant and who require vocational retraining.

Evidence of skill, experience and particulars of employment vacancies

117. (1) Any person who seeks employment through a public employment exchange may be requested to produce any documents and other evidence of skill and experience, together with other particulars that may reasonably be required by the officer in charge of the exchange.

(2) Any person wishing to engage another person through a public employment exchange shall provide the officer in charge of the exchange with full details of the conditions of employment offered, together with any other particulars that may reasonably be required.

Private employment agencies to be authorized

118. (1) A person may not carry on the business of a private employment agency without the written authority of the Commissioner.

(2) A person intending to carry on a private employment agency shall apply in writing to the Commissioner.

(3) The Commissioner may authorize a person to operate a private employment agency for any period and subject to any terms and conditions that the Commissioner considers just and fit.

(4) The Commissioner may refuse any application to operate a private employment agency, and may suspend or cancel any authority issued under this section.

(5) A person who has applied for authority to operate a private employment agency may appeal to the Minister where -

- (a) the application is refused by the Commissioner;
- (b) the person is aggrieved by any conditions attached by the Commissioner to any authority; or
- (c) the person is aggrieved by the cancellation or suspension of authority.

(6) The decision of the Minister on any appeal lodged in terms of subsection (5) shall be final.

Power to inspect and more

119. An inspector may, in addition to any other powers conferred by this Act on an inspector -

- (a) enter any premises used or to be used for, or in connection with the carrying on of a private employment agency or any premises which the inspector has reasonable cause to believe are used for, or in connection with, the carrying on of a private employment agency;
- (b) inspect the premises and any records or other documents kept in pursuance of this Act; and
- (c) require any person on the premises to furnish any information that may reasonably be required for the purposes of ascertaining whether the provisions of this Act or any authority granted under section 119 are being observed.

Records and registers

120. A person who is licensed to operate a private employment agency shall -

- (a) keep all prescribed registers and records; and
- (b) submit all prescribed returns to the Commissioner.

Restriction on charges and triangular contracts of employment

121. A person carrying on a private employment agency shall not charge any prospective employer fees or expenses exceeding those contained in a scale of fees and expenses prepared by the Commissioner, in consultation with the Labour Advisory Board and published in the Gazette by the Minister.

Exemptions

122. This Part shall apply generally, except where -

- (a) any service is provided without charge by an organization of employers or any organization of employees for its members;
- (b) any business is carried on by a licensed labour agent for the purpose of engaging persons for employment on foreign contracts of employment; and
- (c) any business is carried on, or any services are provided by any person or classes of persons that may be prescribed.

Regulations

123. The Minister may make regulations for any of the following purposes -

- (a) regulating the conduct of employment exchanges;

- (b) regulating the conduct of and the provision of services by private employment agencies in respect of persons seeking employment;
- (c) prescribing the forms and records to be used or kept by employment exchanges; and
- (d) prescribing the registers and records to be kept and the form of returns to be submitted by private employment agencies.

PART XVIII LABOUR CLAUSES IN PUBLIC CONTRACTS

Provisions deemed to be included in public contract

124. Every public contract is deemed to include and to incorporate the provisions contained in this Part as if they were expressly set out as conditions to be observed and performed on the part of either or both of the parties to the contract.

Wages to be paid and conditions of employment to be observed

125. A contractor shall pay rates of wages and observe hours and conditions of employment (referred to as established rates and conditions) that are not less favourable than those established by any collective agreement covering a substantial proportion of employees and employers in the trade or industry concerned in the contract.

Commissioner of Labour to prepare schedule of wages and more

126. In the absence of any established rates and conditions the Commissioner shall, after consultation with the representatives of employers and representatives of employees in the trade or industry concerned, prepare a schedule of wages and conditions of employment to be observed in the execution of the contract, having regard to -

- (a) established rates and conditions of employment of persons employed in a similar capacity and in similar circumstances to those persons who are likely to be employed on the contract; or
- (b) in the absence of such established rates and conditions, to fair standards of rates and conditions commonly recognized in respect of persons employed in a similar capacity and in similar general circumstances to those persons who are likely to be employed on the contract.

Contractor to certify wages and conditions

127. Before being awarded a public contract, a contractor shall certify in writing that the wages and hours and conditions of work of persons to be employed by the contractor on the contract are not less favourable than -

- (a) the established rates and conditions set out in section 126, or
- (b) if applicable, the rates and conditions set out in the schedule as, prepared by the Commissioner in accordance with section 127, as the case may be.

Industrial Court to decide questions on wages and more

128. (1) Where any question arises as to whether or not the wages to be paid or the hours or other conditions of employment to be observed in the fulfillment of any contract awarded or to be awarded to any contractor are less favourable than the established rates and set out in section 126 or the rates and conditions set out in the schedule prepared by the Commissioner in accordance with section 127, the Commissioner shall refer the question to the Industrial Court.

(2) The Industrial Court, in arriving at its decision on any question referred to it under subsection (1), shall have regard to -

- (a) any established rates and conditions, or
- (b) any agreement, custom, practice or award that may be brought to its notice relating to the wages, hours or conditions of work of persons employed in a similar capacity and in a similar trade or industry to that of the person to whom the matter relates.

Prohibition of Triangular forms of employment

129. (1) A person carrying on a private employment agency or any other person shall not enter into a triangular form of a contract of employment with any person for the purpose of supplying an employer with the labour of that other person either for profit, gain or any other reason.

(2) All persons in any triangular employment agreement or arrangement in force immediately before the date of commencement of this Act shall terminate the agreement or arrangement, as the case may be, not later than twelve (12) months after the commencement date of this Act and any contrary agreement or arrangement shall be null and void.

(3) After the period referred to in subsection (2), employers shall give preference of employment to employees who were engaged in triangular employment.

Contractor to file certificates

130. A contractor shall not be entitled to payment of any money which would otherwise be payable under the terms of the contract unless the contractor has filed, together with the claim for payment, a certificate stating -

- (a) whether any wages due to employees are in arrears; and
- (b) that all the employment conditions of the contract are being observed.

Contractor to supply information

131. A contractor shall provide the Commissioner with all information that the Commissioner may require to be satisfied that the contractor is complying with the provisions of this Part.

Commissioner of Labour may arrange for employees to be paid

132. (1) Where the Commissioner is satisfied that a contractor has defaulted in the payment of wages due to any employee employed on a contract the Commissioner may, failing payment of the wages by the contractor, arrange for the payment of the wages to the employee out of any sum payable to the contractor under the contract.

(2) An amount paid in terms of subsection (1) is deemed to be a payment to the contractor.

Contractor to display notices containing conditions of work

133. A contractor shall display a notice containing the conditions of work printed in a form that can easily be read by all employees.

Failure to comply with this Part

134. Where a contractor fails to comply with any of the requirements of this Part, the Government, other authority or statutory body may, on the recommendation of the Commissioner, withdraw its approval of that contractor as an approved contractor for a period and on any conditions that the Government, other authority or statutory body may determine.

PART XIX ADMINISTRATION AND ENFORCEMENT

Enforcement and Administration

135. The Commissioner is responsible to the Minister for the application, enforcement and administration of this Act and, subject to the direction of the Minister, for any other matters relating to employment.

Powers and duties of the Commissioner of Labour

136. In addition to any other powers or duties given to the Commissioner under this Act or any other law, the Commissioner -

- (a) has the powers of an inspector under the Act;
- (b) may receive, investigate and, if requested, conciliate on any question, dispute, complaint or grievance arising out of an employment relationship whether or not it specifically falls to be dealt with under this Act;
- (c) shall provide information and advice to employers and employees on the application of this Act or any other law relating to employment;
- (d) shall prepare reports and statistics on employment as may be required by the Minister;
- (e) shall advise the Government on labour matters generally and industrial relations in particular;
- (f) shall keep each document received in a register of employers maintained to facilitate the administration and enforcement of this Act and any other statutory provision establishing any administrative or enforcement function; and
- (g) shall carry out any other duties that may be required of the Commissioner by the Minister.

Powers and duties of Inspectors.

137. (1) An inspector shall carry out inspections in or at workplaces, investigate compliance with the provisions of this Act, and carry out any other duties that maybe assigned.

(2) In addition to any other powers or duties given to or imposed on an inspector by this Act or any other law, an inspector shall -

- (a) periodically inspect places of employment as directed by the Commissioner;
- (b) ensure that all laws relating to conditions of employment and the protection of employees in their occupations are being fully applied;
- (c) provide information and advice, when necessary, on the means of complying with the laws, if necessary, by fixing time limits within which an employer shall comply with any law;
- (d) bring to the notice of the Commissioner any difficulty or abuse relating to employment that is not covered by existing laws; and
- (e) make any studies and collect any data relating to employment that may be required by the Commissioner.

(3) An inspector may -

- (a) at any reasonable time during the day or night, with or without notice, enter, examine and inspect -
 - (i) any premises or place in which the inspector has reason to believe that any employee or recruit may be employed or housed, or which the inspector believes to be otherwise liable to inspection;
 - (ii) any hospital or dispensary, or any latrines or other sanitary arrangements used or intended for use by employees; and
 - (iii) any place in which food for the use of employees is stored, prepared or eaten, and take samples of that food;
- (b) require an employer to provide any information requested by the inspector about the wages, hours of work or other conditions of employment of persons employed by that employer; and
- (c) carry out any examination, test or other enquiry that the inspector considers necessary in order to be satisfied that the employer is complying with any applicable legal provision and, in particular, may -
 - (i) question, alone or in the presence of witnesses, any employer or employee on any matter concerning the application of any law relating to employment or apply for information to any other person whose evidence the inspector may consider necessary;
 - (ii) require the production of any books, registers or other documents required to be kept by this Act or any other law relating to employment and copy or make extracts from any books, registers or other documents and, if the inspector considers it necessary or expedient, remove the book, register or other document;
 - (iii) direct the posting of notices required by this Act or any other law relating to employment; and

- (iv) take or remove for purposes of analysis, samples of materials or substances used or handled by employees in the course of their employment, subject to the employer or the employer's representative's right to be notified of the removal of samples or substances taken or removed for analysis.

(4) An inspector may, when carrying out any inspection under the provisions of this section, be accompanied by any competent person, including a police officer, to enable the inspector to carry out any duties under this Act.

(5) An inspector shall, on the occasion of an inspection, notify the employer or the representative of the employer of the inspection, unless the inspector considers that notice may be prejudicial to the performance of any duties prescribed by this Part.

(6) An employer shall, when requested by an inspector or any employee, provide facilities for employees to communicate freely with the inspector.

(7) Where an inspector removes a book, register or other document, the inspector shall provide a receipt to the employer or the representative of the employer.

Certificates of appointment

138. Every inspector shall be given a certificate of appointment in the prescribed form and when visiting any premises in the execution of duty an inspector shall, where required by an employer, employee or their representatives, produce the certificate as proof of identity.

Duties and obligations of inspectors

139. (1) An inspector shall not have any direct or indirect financial or similar interest in any undertaking liable to inspection by that inspector.

(2) An inspector shall not reveal any industrial or commercial secret or any manufacturing or management process which may have come to the knowledge of the inspector in the course of duty.

(3) The obligation in subsection (2) extends beyond the period of appointment or employment of the inspector in the public sector.

(4) An Inspector shall treat the source of any information or complaint concerning a breach of the provisions of this Act or any other law as confidential, even if that information or complaint is the reason for an inspection, visit or enquiry.

(5) Subsection (4) shall not apply to any information that an informant or complainant consents that it be disclosed.

Securing an undertaking and a compliance order

140. (1) An inspector who has reasonable grounds to believe that an employer has not complied with any provision of this Act shall endeavour to secure a written undertaking by the employer to comply with the relevant provisions.

(2) An inspector may endeavour to secure a written undertaking by the employer to comply with subsection (1) by -

- (a) meeting with the employer or a representative of the employer, or
- (b) serving a document, in the prescribed form, on the employer.

(3) In an endeavour to secure a written undertaking, an inspector -

- (a) may seek to obtain agreement between the employer and employee on the amount owed to the employee in terms of this Act;
- (b) may arrange for payment to an employee of any amount paid as a result of an undertaking;
- (c) may, at the written request of an employee, receive payment on behalf of that employee; and
- (d) shall provide a receipt for any payment received in terms of paragraph (c).

(4) Where an inspector has reasonable grounds to believe that an employer has not complied with this Act or any Wages Orders issued in terms of the Wages Act, the inspector may issue a compliance order.

(5) A compliance order shall set out -

- (a) the name of the employer and the location of the workplace to which it applies;
- (b) any provision of this Act or Wages Order with which the employer has not complied, and the details of the conduct constituting non-compliance;
- (c) any amount that the employer is required to pay to an employee;
- (d) any steps that the employer is required to take including, if necessary, the cessation of the contravention in question and the period within which they shall be taken; and
- (e) the maximum fine that may be imposed on the employer for failure to comply with this Act or the Wages Order.

(6) The inspector shall deliver a copy of the compliance order to the employer and to each employee affected by it or to a representative of the employees.

(7) The employer shall comply with the compliance order within a reasonable period after the compliance order is issued.

(8) An inspector may not issue a compliance order in respect of an amount payable to an employee as a result of any failure to comply with a provision of this Act if -

- (a) the employee is covered by a collective agreement that provides for resolution by arbitration of disputes concerning amounts owing in terms of this Act;
- (b) the employee is employed in a category of senior managerial employees or a category in respect of which a notice has been issued in terms of section 8;
- (c) any proceedings have been instituted for the recovery of any amount payable or, if proceedings have been instituted, the proceedings have been withdrawn; or

- (d) the amount has been payable by the employer to the employee for longer than twelve (12) months before the date on which a complaint was made to an inspector by or on behalf of the employee or, if no complaint was made, the date on which an inspector first endeavoured to secure a written undertaking by the employer in terms of this section.

(9) An employer may object to a compliance order by making representations, in writing, to the Commissioner within twenty one (21) days of receipt of the order.

(10) After considering any representations by the employer and any other relevant information, the Commissioner -

- (a) may confirm, modify or cancel an order or any part of an order; and

- (b) shall specify the period within which the employer is required to comply with any part of an order that is confirmed or modified.

(11) The Commissioner shall serve a copy of the order on the employer and on each employee affected by it or on the representative of the employees.

(12) If the Commissioner confirms or modifies the order or any part of a compliance order the employer shall comply with the order within a reasonable time.

(13) An employer may appeal to the Industrial Court against an order of the Commissioner within twenty one (21) days of receipt of the order.

(14) The Commissioner may apply to the Industrial Court for a compliance order to be made an order of the Court if the employer has not complied with the order and has not lodged an appeal against the order.

Annual reports to be published.

141. (1) The Commissioner shall prepare and publish an annual report on the work and activities of the Department and submit the report to the Minister within a reasonable time after the end of the year to which it relates but in any case, within twelve (12) months of the end of that year.

(2) Without prejudice to any other requirements which may be imposed by the Minister, the annual report shall deal with the following matters -

- (a) laws and regulations relevant to the work of the Department of Labour;

- (b) staff of the Department of Labour;

- (c) statistics of workplaces liable to inspection and the number of persons employed therein;

- (d) statistics of inspection visits;

- (e) statistics of offences against this Act or any other law relating to employment and penalties imposed;

- (f) statistics of industrial accidents;

(g) statistics of occupational diseases; and

(h) statistics of person-hours lost due to industrial action.

Supply of information

142. (1) For the purposes of compiling the report required by section 143, the Commissioner may require employers, in writing, to supply information, in the form and manner required, and within a specified time.

(2) Information supplied to the Commissioner under this section may not be published except -

(a) as part of the general statistical information contained in the annual report compiled under section 143;

(b) with the previous written consent of the person who supplied the information; or

(c) for the purposes of a prosecution under this Act or any other law relating to employment.

(3) In any report, summary of statistics or other publication prepared from information supplied by employers under this section, information may not be disclosed or arranged in a manner that would enable the particulars to be identified as relating to any individual person or business.

Delegation of powers

143. (1) The Commissioner may, with the consent of the Minister, delegate in writing to any competent person the exercise of any powers and the performance of any of the duties in relation to any matter or thing provided for by this Act.

(2) The Commissioner may continue to exercise a power or perform a duty notwithstanding any delegation in terms of subsection (1) and may cancel or suspend any delegation that has been effected.

Persons not required to supply incriminating information

144. Notwithstanding any provision of this Act relating to the questioning of any person or supplying of information, a person may not be required to answer any question or supply any information that tends to incriminate that person.

Instituting of proceedings

145. The Commissioner or an inspector may institute proceedings in a court against any person for any contravention of, or offence committed under, this Act and may appear in person or be represented at the proceedings.

PART XX

GENERAL CONDITIONS, HEALTH AND SAFETY MEASURES

Records and registers

146. (1) An employer, shall keep the following records and registers of all employees -

- (a) a wages register, containing in respect of each employee, all the particulars required to be given to an employee in terms of section 47;
 - (b) a record of each employee containing the employee's name, address, date of birth, the date of employment and, where applicable, the date of leaving employment of the employee;
 - (c) the dates, where applicable, on which the employee was granted annual leave, sick leave and maternity leave;
 - (d) the date on which the employee was issued with any written warning;
 - (e) a register of all young persons and children containing all the details required by paragraphs (a) and (b); and
 - (f) in the case of young persons employed in an industrial undertaking, the date and results of the medical examinations, supported by a medical certificate, carried out under the provisions of section 13.
- (2) Records and registers kept by employers under this section shall -
- (a) be written in ink or in typescript or in a mixture of such writing and type-script or any other manner prescribed by the Minister; and
 - (b) be kept by the employer for a period of three (3) years from the date of the last entry in the record or register.

Collective agreements

147. An employer that is a party to a collective agreement covering the terms and conditions of employment of any of its employees shall, by fixing a notice in a place where it can be seen and read by all employees, indicate the -

- (a) existence of the agreement;
- (b) parties who are signatories to the agreement;
- (c) dates of commencement and expiry of the agreement; and
- (d) place where a copy of the agreement can be examined.

Working conditions

148. (1) An employer shall ensure that every workroom in which employees work is kept in a clean and sanitary condition and that in each workroom -

- (a) each employee is provided with not less than 14.8 mm of air space and not less than 8.75 square meters of floor space;
- (b) there is adequate ventilation and circulation of fresh air;
- (c) there is adequate and suitable lighting; and

(d) windows and fanlights are kept clean and free from obstruction.

(2) An employer shall ensure that -

- (a) there is an adequate supply of drinking water for employees at their place of work; and
- (b) sufficient and suitable sanitary conveniences are available for employees at or near their place of work and that -
 - (i) the conveniences are adequately lit and ventilated;
 - (ii) the conveniences are kept in a clean condition; and
 - (iii) where applicable, and where more than six (6) persons are employed, separate conveniences are provided for men and women.

(3) An employer shall, where a substantial proportion of their work is performed while sitting, provide suitable seating for employees.

First aid equipment and medical aid

149. (1) Notwithstanding any provision in any other Act relating to the availability or supply of first aid equipment at places of employment, an employer shall, at each place of employment provide -

- (a) adequate first aid facilities for the treatment of accidents; and
- (b) one or more suitably stocked first aid boxes, in the charge of a responsible person, which shall be readily available during working hours.

(2) The location of each first aid box and the name of the person in charge of the box shall be prominently displayed.

(3) An employer shall, at that employer's own expense, provide any prescribed first aid facilities that may be prescribed for employees and members of their families that live on the property of the employer.

(4) Where an employer has reasonable cause to believe that any of the employees or any of the dependents of the employees living on the property of the employer is suffering from any serious injury or ailment the employer shall -

- (a) take all reasonable measures to obtain skilled medical attention for that person without undue delay; and
- (b) where required to do so by the Commissioner, Regional Administrator or any labour officer or medical officer, or in case of danger to life or serious illness, transport the person, as soon as is reasonably practicable, to the nearest hospital where skilled medical attention is available.

(5) An employer shall not be liable for any medical or hospital fees charged for any treatment provided for the dependents of any employee under subsection (4) unless -

- (a) the employer specifically assumes liability for those fees; or
- (b) the employer is liable for the fees in terms of a contract of employment.

Housing

150. Where an employee is employed in circumstances where it is impracticable, for reasons of distance, for the employee to return home or to the normal place of residence of the employee at the end of a day's work, the employer shall provide the employee with housing in the prescribed manner.

Supply of food

151. (1) Where an employer is obliged to supply food to an employee in terms of any law, from the date of commencement of this Act the employer may, in lieu of that obligation, increase the basic wage of the employee who was entitled to be supplied with food by an amount equivalent to the value of the food supplied, or as the Minister may prescribe.

(2) Nothing in this section precludes an employer from supplying rations to any employee in pursuance of an agreement between them.

PART XXI OFFENCES AND PENALTIES

Offences

152. (1) An employer or any person who does any of the following acts or omissions commits an offence and shall, on conviction, be liable to a fine not exceeding Three Thousand Emalangeni (E 3000) or to imprisonment for a period not exceeding one year or both -

- (a) in Part V: exacting or imposing forced labour, or causing or permitting forced labour to be exacted or imposed in contravention of any of the provisions of that Part;
- (b) in Part VI:
 - (i) failing or refusing to provide an employee with a completed copy of the form in the Second Schedule as required by section 24;
 - (ii) failing or refusing to notify the employee in writing of changes in the conditions of employment as required by section 25;
 - (iii) failing or refusing to submit to the Commissioner any document as required by section 25;
 - (iv) breach of special provisions for fixed term contract employees;
 - (v) breach of special provisions for part-time contract employees;
 - (vi) breach of special provisions for casual employees;
 - (vii) breach of special provisions for seasonal employees;
 - (viii) breach of special provision for migrant employees;

(c) in Part VII:

- (i) failing to pay wages to an employee when the wages are due or payable;
- (ii) paying wages to an employee in a form, manner or place which is contrary to the provisions of that Part;
- (iii) making any deduction from the wages of an employee or receiving any payment from an employee contrary to the provisions of that Part;
- (iv) failing to provide an employee with the details of wages;
- (v) paying the wages of an employee, in whole or in part, in the form of liquor or noxious drugs;
- (vi) failing to distribute a service charge;

(d) in Part VIII:

- (i) requiring or permitting an employee to work any hours in contravention of the maximum hours stipulated by that Part;
- (ii) breaching special provision for domestic employees;

(e) in Part IX:

- (i) failing to grant an employee annual leave as required or failing to pay an employee the wages to which the employee is entitled;
- (ii) failing to pay to an employee any amount to which the employee is entitled in respect of paid sick leave.

(f) in Part X:

- (i) failing or refusing to grant an employee maternity leave or any additional maternity leave as required by that Part;
- (ii) failing or refusing to pay an employee for any period of maternity leave as required by that Part;
- (iii) terminating the employment of an employee or requiring an employee to resign in contravention of the provisions of that Part;

(g) in Part XII-

- (i) except where section 81(8) applies, failing or refusing to give an employee whose services are being terminated the minimum period of notice required by section 81;
- (ii) failing or refusing to allow an employee whose services are being terminated to be absent from work for the purpose of seeking other employment as required by section 81(7);

- (iii) terminating the contracts of employment of 5 or more employees for reasons of redundancy without giving prior notice;

(h) in Part XVI:

- (i) contravention by a public officer, chief, indvuna or umgijimi, of section 95;
- (ii) recruiting of a person under the age of 18 years;
- (iii) performing the function of a labour agent in ESwatini in contravention of section 96(1);
- (iv) contravening the conditions of a labour agent's licence;
- (v) employment by a labour agent of a recruiting assistant in contravention of section 98(3);
- (vi) failure by a labour agent to comply with the requirements of section 98(7);
- (vii) canvassing or recruiting in contravention of section 99;
- (viii) failure by a labour agent to comply with the provisions of section 102 (5);
- (ix) failure by a labour agent or recruiting assistant to produce a licence or permit in terms of section 103;
- (x) failure by a labour agent to maintain the forms, documents and records required to be maintained under section 105;
- (xi) contravening the provisions of section 106;
- (xii) advancing wages to an employee in contravention of section 10;

(i) in Part XVII;

- (i) knowingly making any false statement or false representation to an officer of an employment exchange;
- (ii) carrying on, after the appointed date, the business of a private employment agency without the written authority of the Commissioner;
- (iii) carrying on the business of a private employment agency and failing to keep or cause to be kept such registers and records or failing to submit such returns that may be required; and
- (iv) demanding or directly or indirectly receiving from any person any fee or charge, however described, for finding employment for that person; and
- (v) entering into a triangular form of a contract of employment with any person or employee for purposes of supplying an employer with the labour of another person or employee for profit, gain or for any other reason;

(j) in Part XVIII;

- (i) breach of section 130 on triangular forms of employment;
- (ii) breach of section 131 on regulation of outsourcing and subcontracting.

(k) in Part XIX:

- (i) willfully obstructing, hindering or delaying an inspector in the exercise of any of the powers conferred by this Act;
- (ii) without reasonable cause, failing to comply with any lawful direction given or made by an inspector under this Act;
- (iii) failing to produce any book, register or other document required to be produced under this Act;
- (iv) concealing, or attempting to conceal, any employee who is required to appear before or be examined by an inspector or who otherwise prevents, or attempts to prevent any such employee from so appearing or being examined;
- (v) willfully or without lawful cause refusing or neglecting to supply within the specified time, information required by the Commissioner under section 138 as read with section 139(3)(b);
- (vi) willfully supplying or causing to be supplied to the Commissioner or to an inspector any false information;
- (vii) refusing to answer any question lawfully put by the Commissioner or an inspector for the purposes of this Act;
- (viii) hindering or obstructing the Commissioner or inspector in the exercise of any of the powers conferred by law.

(2) A person who commits any offence defined in the Act to be a worst form of child labour shall be liable, on conviction, to imprisonment for a period not exceeding twenty (20) years without the option of a fine.

Occupational safety and health

153. (1) Any employer who, after being informed by notice in writing by an inspector of any contravention of a provision of section 148 or section 149 and who fails to rectify that contravention within the time prescribed by the inspector in the notice, commits an offence and shall, on conviction, be liable to the same penalties that are provided for under section 40 of the Occupational Safety and Health Act, 2001.

(2) An employer who fails to keep any register or record in the manner required by section 152 commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred Emalangeni or to any other penalty, including a term of imprisonment, that the court deems fit.

Penalty for official coercion

154. A person who, acting in an official capacity, coerces any person under the charge of that

person, or any individual member of the public to work for any private individual, company or association commits an offence and shall, on conviction, be liable to a fine not exceeding Three Thousand Emalangeni (E 3 000) or to imprisonment for a period not exceeding three years, or both, if the person is an officer of a body corporate.

155. (1) Where there is reasonable cause to believe that an offence under this Act has been committed by a body corporate, criminal proceedings may be instituted against any person who at the time of the commission of the offence was a director, manager, secretary or other office bearer of the body corporate or who was purporting to act in that capacity.

(2) Without prejudice to any other defence, where criminal proceedings are instituted against a person referred to in subsection (1) in respect of an offence committed by a body corporate, that person may not be convicted where it is proved that the offence was committed without consent or connivance, and that all diligence necessary to prevent the commission of the offence was exercised, having regard to the person's functions in that capacity, and to all the circumstances relating to the commission of the offence.

PART XXII FINAL PROVISIONS

Transitional arrangements

156. (1) All legal proceedings pending before a court under the repealed Act shall, on the day this Act comes into force, be continued by the court as if they had been initiated under this Act.

(2) Any process, matter or thing initiated under the provisions of the repealed Act shall, on the day this Act comes into force, be continued as where it had been initiated under this Act.

(3) Any person appointed under the repealed Act shall, on the day this Act comes into force, continue to perform such duties under this Act as where that person had been appointed under the provisions of this Act.

(4) All contracts of employment valid and in force at the commencement of this Act shall continue to be in force after commencement, and shall, to the extent that they are not in conflict with this Act, be deemed to be made under this Act and the parties to the contract shall be subject to and entitled to the benefits of the provisions of this Act.

Regulations

157. (1) The Minister may, by notice in the Gazette, prescribe anything under this Act which requires to be prescribed and may make regulations for giving effect generally to the purposes and provisions of this Act.

(2) Where the Minister has made regulations in terms of subsection (1), every contract, agreement, arrangement of any kind whatsoever, determination or regulation made in terms of any enactment which related to the employment of an employee to whom such regulations relate and which provides terms and conditions less favourable to the employee than those specified in the regulations, shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with such regulations.

(3) Regulations made in terms of subsection (1) may provide for penalties for any contravention thereof.

Repeal and savings

158. (1) The Employment Act of 1980 is hereby repealed.

(2) Notwithstanding subsection (1), any rules or regulations made or issued under the repealed Act shall, to the extent that they are not inconsistent with this Act, continue to be valid until otherwise revoked under this Act.

FIRST SCHEDULE

(Section 140)

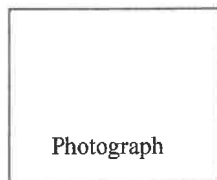
CERTIFICATE OF APPOINTMENT OF INSPECTOR**1. FRONT OF THE CERTIFICATE OF APPOINTMENT**

ESWATINI

CREST

CERTIFICATE OF APPOINTMENT ISSUED UNDER SECTION 140 OF THE
EMPLOYMENT ACT, 20 ...

This is to certify that whose
photograph appears hereon, has been appointed an Inspector for all the purposes of the
Employment Act, 20....



Commissioner of Labour

Date

.....
Signature of Inspector

2. BACK OF CERTIFICATE

1. Under the Employment Act, 20... an Inspector is required to produce this Certificate when asked to do so by an employer or his representative.
2. The Act sets out the powers and duties of an Inspector. These entitle him to -
 - Enter and inspect at any reasonable time, with or without notice, any premises which he believes to be liable to inspection.
 - Require an employer to provide him with information relative to wages, hours of work, etc. of his employees.
 - Carry out examinations, tests, or enquires relating to employment legislation.
 - Interrogate employers and employees concerning any employment law applying to them and require the production of books, registers etc., relating to employment.
 - Enforce the posting of notices required by employment legislation.
 - Take or remove for purposes of analysis substances or materials used or handled by employees.

SECOND SCHEDULE

(Section 24)

WRITTEN PARTICULARS OF EMPLOYMENT FORM

1. NAME OF EMPLOYER
2. NAME OF EMPLOYEE
3. DATE EMPLOYMENT BEGAN
4. WAGE AND METHOD OF CALCULATION
5. INTERVALS AT WHICH WAGES ARE PAID
6. NORMAL HOURS OF WORK
7. SHORT DESCRIPTION OF EMPLOYEE'S WORK
.....
.....
8. PROBATION PERIOD
9. ANNUAL HOLIDAY ENTITLEMENT

10. PAID PUBLIC HOLIDAYS
11. PAYMENT DURING SICKNESS
12. MATERNITY LEAVE (if employee female)
13. NURSING BREAK
14. NOTICE EMPLOYEE ENTITLED TO RECEIVE
-
15. NOTICE EMPLOYEE REQUIRED TO GIVE
-
16. PENSION SCHEME/ PROVIDENT FUND (if any, other than National Provident Fund Scheme)
-
17. ANY OTHER MATTER EITHER PARTY WISHES TO INCLUDE
-
-

NOTES – (a) An Industry Union is recognised by this undertaking. Any employee is free to join it. The address of the Industry Union is

.....

(b) The grievance procedure in this undertaking requires that a grievance should be first referred to

.....

(c) When any heading is inapplicable enter NIL

Signed Employer

..... Employee

..... Witness

..... Date