



TURKS AND CAICOS ISLANDS

CHAPTER 17.08
EMPLOYMENT ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 31 August 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

This edition contains a consolidation of the following laws—

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CHAPTER 17.08
EMPLOYMENT ORDINANCE

(Ordinance 21 of 2004)

AN ORDINANCE TO REGULATE THE TERMS OF EMPLOYMENT AND FOR CONNECTED PURPOSES.

Commencement

[26 November 2004]

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as the Employment Ordinance.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
“act” and “action” each includes omission;
“assessor” means, a person of skill and experience in the matter to which the proceedings of a tribunal relate;
“collective agreement” means a written agreement between an employer or an employers organisation authorised by the employer, and a trade union concerning terms and conditions of employment and other matters of mutual interest;
“commission agent” means an agent or employee who is remunerated by commission;
“Commissioner” means the person appointed as the Commissioner of Labour under section 31;
“confinement” means the birth of a living child or the birth of a child whether living or dead after twenty-eight weeks of pregnancy;
“constructive dismissal” means termination of a contract of employment by the employee as a result of conduct by the employer such as to make it unreasonable to expect the employment relationship to continue;
“continuous employment” means an employee’s period of uninterrupted employment with the same employer or the successor employer;
“contract worker” means a person who performs work for another person under a contract between the employer of the first-mentioned person and that other person;

“dependent contractor” means a person, whether or not employed under a contract of employment, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor;

“disabled person” means an individual whose prospects of securing, retaining, and advancing in suitable employment are substantially reduced as a result of a physical or mental impairment certified by a health practitioner;

“effective date of termination” has the meaning given by subsections (4) to (6) of section 68;

“employee” means a person who offers his or her services under a contract of employment, a dependent contractor and includes, where appropriate, a former employee;

“employee share ownership plan” means a plan by which employees acquire shares of the company they work for;

“employer” means a person or undertaking, corporation, company, public authority or body of persons who or which employs another person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker; and includes an associated employer, the heirs, successors and assigns of an employer;

“employment” includes—

- (a) part time employment and employment under an employment contract;
- (b) employment under a contract for services;
- (c) engagement as a commission agent;

“employment agency” means a person who, whether for payment, or not, assists persons to find employment or assists employers to find employees;

“employment contract” or “contract of employment” means a contract, whether expressed or implied and whether written in accordance with this Ordinance or oral, whereupon it is agreed that one person (the employee) will perform certain services or labour for another (the employer); and shall include a contract of apprenticeship or probation;

“family responsibilities” means responsibilities in respect of a dependent family member as a result of marital status;

“health practitioner” means a person registered under the Health Practitioners Ordinance as being authorised to practice in one or more Health Professions;

“homework” means the doing of work in the manufacture, preparation, improvement, repair, alteration, assembly or completion of an article or

part of an article by a person for wages in premises occupied primarily as living accommodation;

“homeworker” means an employee who works in the manufacture, preparation, improvement, repair, alteration, assembly or completion of an article or part of an article for wages in premises occupied primarily as living accommodation;

“independent trade union” means a trade union which—

- (a) is not under the domination or control of an employer or any group or association of employers; or
- (b) is not liable to interference by an employer or a group or association of employers arising out of the provision of financial or material support or by other means tending towards such control;

“inspector” means an inspector appointed under section 31;

“Labour Tribunal” means the Labour Tribunal established by section 93;

“lockout” means an employer’s closing of an enterprise or place of business, his or her suspension of work, or refusal to continue to employ any number of employees, with a view toward inducing or compelling employees directly or indirectly, through their bargaining agent, to accept conditions of employment which have been offered to the employees and which have been rejected by them; and the term includes such action designed to induce or compel acceptance by the employees, or their bargaining agent, of another employer, of conditions of employment so offered and rejected;

“managerial employee” means an individual who has managerial responsibilities and who works under a contract of employment;

“marital status” means the status or condition of being—

- (a) single;
- (b) married;
- (c) married but living separately and apart from one’s spouse;
- (d) divorced; or
- (e) widowed.

“maternity leave” means absence from work for the purposes of confinement and recovery of health after confinement;

“Minister” means the Minister with responsibility for labour;

“principal” means—

- (a) in relation to a commission agent, a person for whom work is done by that commission agent;

(b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“probationary period” means the period which may be designated as such during the 3 months following the date on which the employment of an employee by an employer commences, or such shorter or longer period of not more than 6 months in total following that date as may be agreed upon between an employer and an employee;

“redundancy” means the loss of employment as defined in section 71;

“redundancy benefit” means the amount of money which an employee whose employment has been terminated on account of redundancy is entitled to receive from his employer under this Ordinance;

“serious misconduct” means misconduct which is such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the employee;

“sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee;

“statutory minimum remuneration” means remuneration including holiday remuneration, and severance pay fixed by an order made under section 23;

“strike” means a partial or total withdrawal of services from an employer by two or more employees, in concert or under a common understanding, or at the request or upon the order of their bargaining agent, either—

(a) as a protest against a condition of work or employer action related to work; or

(b) as a device to induce or compel the employer, or an employers organisation, to accept conditions of employment which they have requested and which request has been refused; and the term may include such action designed to induce or compel the acceptance by another employer, or his or her bargaining agent, of conditions of employment which his or her employees have requested and which request has been refused; and the term further includes picketing related to working conditions and labour relations, generally, whether by the employees or non-employees and whether or not signs are carried or posted and whether or not literature is being distributed;

“summary dismissal” means termination of the contract of employment by the employer without notice or with less than that to which the employee is entitled by a statutory provision or contractual agreement;

superannuation scheme” means an Ordinance, rules, deed or other instrument, providing for the payment of annuities or lump sums to the persons with respect to whom the instrument has effect on their retirement at a specified age or on becoming incapacitated at some earlier age, or to the

personal representative of the widows, relatives or dependants of such persons on their death or otherwise, whether with or without any further or other benefits;

“thrift scheme” means any arrangement for savings, for providing money for holidays or for other purposes, under which an employee is entitled to receive in cash sums equal to or greater than the aggregate of any sums deducted from his remuneration or paid by him for the purposes of the scheme;

“trade dispute” has the meaning given by section 2 of the Trade Unions Ordinance;

“trade union” has the meaning given by section 2 of the Trade Unions Ordinance;

“user enterprise” means an employer who uses the services of employees provided under agreement with an employment agency;

“wages” means the remuneration paid to an employee by his employer as wages for normal hours of work, overtime and additional pay, commission, bonuses or other gratuities;

“week” means, in relation to an employee whose remuneration is calculated weekly, the week ending with the day on which the employee is contractually entitled to be paid.

(2) References in this Ordinance to dismissal by reason of redundancy, and to cognate expressions, shall be construed in accordance with section 71.

(3) For the purposes of this Ordinance any two employers are to be treated as associated if one is a company of which the other directly or indirectly has control, or if both are companies of which a third person directly or indirectly has control; and the expression “associated employer” shall be construed accordingly.

(4) Nothing in this Ordinance precludes higher standards than those set out in the Ordinance being agreed upon through collective bargaining or other forms of negotiation or agreement or arbitration award.

(5) A provision in an agreement shall be void in so far as it excludes or in any way limits the operation of any provision of this Ordinance to the detriment of the employee.

(6) For the purposes of this Ordinance it is immaterial whether the law which apart from this Ordinance governs a person’s employment is the law of the Islands or not.

PART II

PARTICULARS OF TERMS OF EMPLOYMENT

*Written particulars of terms of employment***Contract of employment**

3. (1) Unless otherwise provided by this Ordinance, the provisions of this Part apply to contracts of employment, and each person who provides services to an employer shall be employed under a separate contract of employment.

(2) A contract of employment may be—

- (a) a contract without reference to limit of time;
- (b) a contract for a specified period of time;
- (c) a contract for a specific task; or
- (d) a contract for a probationary period of not more than three months.

(3) A contract without reference to limit of time may be terminated by either party, subject to the provisions of this Ordinance concerning unfair dismissal and notice of termination.

(4) A contract for a specified period of time shall automatically terminate on the date specified for its termination and no notice shall be required for its termination at that time, but termination at any other time shall be subject to the provisions of this Ordinance concerning unfair dismissal.

(5) A contract to perform a specific task shall terminate on the completion of the task and no notice of termination shall be required for its termination.

(6) Where unknown to the parties or by mistake, a contract for a specified period or specific task continues after the period or the task then the terms of the contract are enforceable for the period of the continuation.

(7) Where the purpose or effect of a contract that is purportedly for a specified period of time or for a specific task is the filling of a post connected with the normal and permanent activity of the undertaking, establishment or service, then subject to section 107 it shall be deemed a contract for an unspecified period of time.

(8) A contract of employment may provide for a probationary period—

- (a) which shall be for a period of not more than three months, following the date on which the employment of an employee by an employer commences;
- (b) during which an assessment of the employee shall be undertaken and such assessment shall be given to the employee before the end of the probationary period;
- (c) which may be terminated at any time by either party without notice under section 63.

(9) The probationary period referred to in subsection (8)(a) may be extended, by shorter periods of time, upon agreement of an employer and an employee for a period not to exceed six months in total.

(10) A contract which purports to be one for a probationary period but is not genuinely for that purpose, or which does not comply with subsection (8) shall be deemed to be a contract for an unspecified period of time.

Employer to prepare written contract

4. (1) A person who employs another shall, not later than seven days beginning with the day after the date on which the employment commences, prepare an employment contract in writing correctly describing the terms and conditions of employment that have been agreed upon by the employer and employee.

(2) A person who employs another who lives or resides at the time of the employment in a country other than the Islands, shall send the employment contract referred to in subsection (1) to the address in the country where the person employed lives or resides before his departure for the Islands and shall also send a copy to the Commissioner.

Written particulars of terms of employment

5. (1) Where under section 4 an employment contract has been prepared—

- (a) the employer and employee shall within fourteen days of the preparation sign the employment contract including any amendments agreed upon; and
- (b) the employer shall give the employee a signed copy of the employment contract at the time of signing.

(2) An employer shall in the contract under section 4—

- (a) identify the parties;
- (b) specify the date when the employment began; and
- (c) specify the date on which the employee's period of continuous employment began taking into account employment with a previous employer which counts towards that period.

(3) A contract under this section shall contain the following particulars of the terms of employment as at a specified date not more than one week before the contract is given—

- (a) the scale or rate of remuneration, or the method of calculating remuneration;
- (b) the intervals at which remuneration is paid whether weekly or monthly or by some other period;
- (c) the terms and conditions relating to hours of work including terms and conditions relating to normal working hours;
- (d) the terms and conditions relating to—

- (i) entitlement to holidays, including public holidays, and holiday pay the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated;
 - (ii) incapacity for work because of sickness or injury, including provisions for sick pay and for the provision by the employee of a certificate to justify absence from work, signed by a medical practitioner; and
 - (iii) pensions and pension schemes;
 - (e) the length of notice which the employee is obliged to give and entitled to receive to end his contract of employment;
 - (f) the duties to be performed; and
 - (g) such other terms or conditions of employment as have been agreed upon.
- (4) A contract given to an employee under this section shall include a term—
- (a) specifying or referring to disciplining rules applicable to the employee;
 - (b) specifying —
 - (i) a person to whom the employee can apply if he is dissatisfied with a disciplinary decision relating to him; and
 - (ii) a person to whom the employee can apply for the purpose of seeking redress of a grievance relating to his employment and the manner in which the application should be made; and
 - (c) where there are further steps consequent upon the application, explaining those steps or referring to a document which the employer has made available or reasonably accessible to the employee and which explains them.
- (5) When requested by the Commissioner or an inspector, the employer shall send a copy of every contract issued under this section and a note included under subsection (4) to the Commissioner or an inspector.

Supplementary provisions relating to statements under section 3

- 6.** (1) If there are no particulars to be entered under any of the provisions of section 5, that fact shall be stated.
- (2) If the contract is for a fixed term, it shall state the date when the contract expires.
- (3) If there is a change in the terms of employment to be included or referred to, in a contract, the employer shall, not later than fourteen days beginning with the day after the date on which the change takes place, confirm

the change by a written statement, give a copy of the statement to the employee, and the employer shall preserve the statement.

(4) Where, after an employer has given to an employee a written contract in accordance with section 5—

- (a) the name of the employer is changed, without any change in the identity of the employer; or
- (b) the identity of the employer is changed, in such circumstances that the continuity of the employee's period of employment is not broken,

and in either case the change does not involve a change in the terms other than the names of parties in the contract, the person who, immediately after the change, is the employer shall not be required to give to the employee a contract in accordance with section 5 but the change shall be treated as a change falling within subsection (3).

(5) A written statement under this section which confirms such a change in an employee's terms of employment as is referred to in subsection (4)(b) shall specify the date on which the employee's period of continuous employment began.

(6) Variations of the terms of the contract of employment shall only be binding in law when agreed or accepted by both parties to the contract.

Changes in terms of employment

7. (1) Section 4 shall apply to an employee who ceases to come within the exception provided by sections 103 or section 108.

(2) The fact that section 4 is directed to apply to an employee as if his employment began on his ceasing to come within one of the exceptions referred to in subsection (1) shall not affect the obligation under section 5 (2) (b) to specify the date on which his employment actually began.

Powers of Governor to require further particulars

8. The Governor may, by order, provide that section 5 shall have effect as if such further particulars as may be specified in the Order were included in the particulars to be included in a contract under that section.

Employment of minors

9. (1) Every person of the age of sixteen years or more may enter into an employment contract under this Ordinance.

(2) A person under the age of sixteen years may enter into an employment contract only with the written consent of the parent or guardian of the person, or if none exist with the written consent of the Commissioner who may consult with such persons as he deems fit.

(3) A person who is a party to an employment contract under this Ordinance may receive directly the wages and benefits payable under the

employment contract, and may sue or be sued in respect of the employment contract.

Scope

10. This Part shall not apply to an employee—

- (a) who is employed for a specified period of less than four weeks or for a fixed task to be performed within four weeks or who is a student attending secondary school on work experience performing tasks for a period of six weeks;
- (b) who is a family member of the employer;
- (c) whose contract of employment is regulated by a collective agreement which contains terms affording the particulars specified in section 5 above, provided that the employee is given a copy of the collective agreement or it is posted at the place of employment.

Continuity of employment

11. (1) Continuous employment shall begin as and from the day on which an employee begins to work for an employer and shall end on the effective date of termination, unless a tribunal orders to the contrary.

(2) It shall be presumed, unless the contrary is shown, that the employment of an employee with an employer is continuous whether or not the employee remains in the same job.

(3) An employee's continuous employment shall not be treated as interrupted if the employee is absent from work—

- (a) because of annual leave, maternity leave or sick leave or any other leave in accordance with this Ordinance, or a contract or any other law;
- (b) because of his suspension, with or without pay, in accordance with this Ordinance, any other law or a contract;
- (c) because of the termination of his employment in accordance with this Ordinance or under a contract, so long as reinstatement or re-engagement takes place or is made effective not later than six months beginning with the day after the date of termination;
- (d) because of having been temporarily laid-off by the employer;
- (e) because of an inability to work on account of an occupational disease or accident;
- (f) because of a lockout;
- (g) in accordance with the agreement of his or her employer.

(4) Periods of time elapsing in the circumstance referred to in subsection (3) shall count for the purpose of calculating the continuous period of employment.

(5) Any probationary period and any period of time elapsing between the end of a probationary period and the commencement of another contract of employment, described in section 3 (2), with the same or associated employer shall count for the purpose of calculating the continuous period of employment.

(6) A period during which an employee is absent from work because of his or her participation in a lawful strike shall not interrupt the continuity of employment, but shall not count for the purposes of calculating length of continuous employment.

(7) Periods of short term contracts granted in succession with less than thirty day intervals shall count for the purpose of calculating the continuous period of employment.

(8) Acceptance of redundancy benefit by an employee shall terminate the continuous period of employment.

Disposal of business

12. Where a business or part of it is sold, leased, transferred or otherwise disposed of, the periods of employment with the successive employers shall be deemed to constitute a single period of continuous employment with the successor employer if the employment was not terminated and redundancy benefit was not paid under this Ordinance.

Maternity Leave

13. (1) A woman employee who has been continuously employed for one year shall, on the production of a medical certificate stating the presumed date of her confinement, be entitled to a period of maternity leave of at least fourteen weeks.

(2) Maternity leave period in subsection (1) may be extended by a period elapsing between the presumed date of confinement and the actual date of confinement.

(3) In case of complications arising from the pregnancy she shall be entitled to additional leave of not more than four weeks before confinement.

(4) Absences necessitated by the pregnancy in addition to entitlements under subsections (1), (2) and (3) shall be treated as sick leave or compassionate leave.

(5) An employee is entitled to choose whether she will be absent—

- (a) continuously for the period of maternity leave;
- (b) for a number of shorter periods amounting in total to not more than the maternity leave period;
- (c) for a maternity leave period extended in accordance with subsection (2); or
- (d) whether the child's father will be absent for not more than two weeks of her maternity leave:

Provided that the mother herself takes not less than six weeks after confinement.

(6) An employee shall be entitled to vacation leave in addition to maternity leave.

(7) An employer shall be entitled to refuse to allow an employee to return to work at the end of maternity leave unless she first produces a certificate from a medical practitioner showing that she is fit to return to work.

(8) An additional period of absence caused by a delay in producing such certificate shall be treated as sickness absence.

(9) An employee shall be entitled to maternity leave in respect of each confinement up to a limit of four confinements during her employment, and her employment shall be deemed to be continuous notwithstanding such periods of leave.

(10) An employee shall be treated as unfairly dismissed if she is dismissed wholly or mainly by reason of her absence during, or proposed absence in respect of, maternity leave.

(11) In subsection (7), “fit to return to work” means fit to return to work of the nature and extent defined by the contract of the employee.

Itemised pay statements

Right to itemised pay statement

14. An employee shall be given by his employer at or before the time at which any payment of wages or salary is made to him, a pay statement containing —

- (a) the gross amount of the wages or salary;
- (b) the amounts of any variable and, subject to section 15, any fixed deductions from that gross amount and the purposes for which they are made;
- (c) the net amount of wages or salary payable; and
- (d) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

Enforcement of rights under Part II

References to Labour Tribunal

15. (1) Where an employer does not give an employee a contract as required by section 5 or a statement required by section 6 (3) or by section 14, the employee may require a reference to be made to the Labour Tribunal to determine what particulars ought to be included or referred to in a contract so as to comply with the requirements of the relevant sections.

(2) Where—

- (a) a document purporting to be a contract made under section 5 or a statement under section 6 (3); or
- (b) a pay statement, or a standing statement of fixed deductions, purporting to comply with section 14,

has been given to an employee, and a question is raised as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part, the employer or the employee may require that question to be referred to and determined by the Labour Tribunal.

(3) Where a contract under section 5 or a statement under section 6(3) given by an employer to an employee contains such an indication as is mentioned in section 6 (4)—

- (a) any particulars purporting to be particulars of a change to which that indication relates are entered up or recorded in accordance with that subsection; and
- (b) a question arises as to the particulars which ought to have been so entered up or recorded,

either the employer or the employee may require that question to be referred to the Labour Tribunal.

(4) In this section, a question as to the particulars which ought to have been included in a pay statement, or in a standing statement of fixed deductions, may be a question solely as to the accuracy of an amount stated in any such particulars.

(5) Where, on reference under subsection (1), the Labour Tribunal determines particulars as being those which ought to have been included or referred to in a contract or statement, the employer shall give to the employee a statement in which those particulars are included, or referred to, as specified in the decision of the tribunal.

(6) On determining a reference under subsection (2) (a), the Labour Tribunal may confirm the particulars as included or referred to in the contract or statement given by the employer, may amend those particulars, or may substitute other particulars for them, as it may determine to be appropriate; and the contract or statement shall be given by the employer to the employee in accordance with the decision of the Labour Tribunal.

(7) On determining a reference under subsection (3), the Labour Tribunal may confirm the particulars to which the reference relates, may amend those particulars or may substitute other particulars for them, as the tribunal may determine to be appropriate; and particulars of the change to which the reference relates shall be entered up or recorded in accordance with the decision of the tribunal.

(8) Where, on a reference under this section, the Labour Tribunal finds an employer has failed to give an employee any pay statement in accordance with section 14 or that a fixed pay statement or standing statement of fixed deductions

does not, in relation to a deduction, contain the particulars required to be included in that statement by that section—

- (a) the Labour Tribunal shall make a declaration to that effect; and
- (b) where the Labour Tribunal finds that any unnotified deductions have been made from the pay of an employee during the period of six months immediately preceding the date of the application for the reference (whether or not the deductions were made in breach of the contract of employment), the tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made with interest in accordance with section 21(b).

(9) In subsection (8) “unnotified deduction” means a deduction made without the employer giving the employee, in any pay statement or standing statement of fixed deductions, the particulars of that deduction as required by section 14.

(10) The Labour Tribunal shall not entertain a reference under this section in a case where the employment to which the reference relates has ceased, unless an application requiring the reference to be made was made before the end of the period of six months beginning with the date on which the employment ceased.

(11) If an employer fails to provide a contract or statement under section 4 and in accordance with sections 5, 6, or 14 he commits an offence and is liable to a fine on summary conviction of \$5,000.

(12) Any person who contravenes the provision of this Part, for which no other penalty is provided commits an offence and is liable on summary conviction to fine of \$1,000.

PART III

REMUNERATION OF EMPLOYEES, ETC

Manner and time of payment of wages or salary, authorised deductions, etc

Payment of wages or salary in cash or in other authorised ways

16. (1) In contracts of employment made before or after the coming into operation of this Ordinance, the remuneration of an employee shall be payable only—

- (a) in currency which is legal tender under the Currency Ordinance;
or
- (b) with the consent of the employee by payment —
 - (i) into an account at a bank, being an account standing in the name of the person to whom the payment is due, or an account standing in the name of that person jointly with one or more other persons;

- (ii) by postal order;
- (iii) by money order; or
- (iv) by cheque.

(2) A contract of employment which provides that the remuneration of the employee shall be payable otherwise than in accordance with subsection (1) shall be illegal, null and void.

(3) The consent of an employee under subsection (1)(b) shall be given by way of a notice in writing to his employer by the employee or by any person authorised by the employee in that behalf.

(4) That consent shall cease to have effect if it is withdrawn by the employee by notice in writing given to the employer.

(5) Such consent may be given, with the agreement of the employer, in respect of part of the wages or salary of the employee.

(6) A notice in writing signifying the consent of an employee under subsection (1)(b) to the payment of his remuneration (or any part of his wages or salary) into an account at a bank shall specify the bank, and the branch of the bank, at which the account is kept and the person or persons in whose name or names the account stands; and a payment of remuneration in accordance with such a request does not fulfil the requirements of this section unless it is made into the account so specified.

(7) A payment of remuneration by cheque does not fulfil the requirements of this section unless the cheque is made payable to, or to the order of, the person to whom the remuneration is due.

(8) A payment of remuneration in any of the ways authorised by this section does not fulfil the requirements of this section if, in calculating the payment, any deduction from the gross amount of the remuneration is made by reason that the payment is so made.

Payment of wages or salary by post

17. (1) The following provisions shall have effect with respect to payment by post—

- (a) the consent of an employee under section 16(1)(b) to the payment of his wages or salary by cheque shall not, unless the notice signifying such consent expressly so provides, be taken to imply consent to cheques in payment of wages or salary being sent to him by post;
- (b) consent to the payment of wages or salary by money or postal order shall not, unless the notice signifying such consent otherwise expressly provides, be taken to imply consent to money or postal orders being sent to him by post.

(2) Any reference in subsection (1) to the payment of wages or salary includes a reference to the payment of any part of any wages or salary.

Deductions authorised to be made from payments of wages or salary

18. (1) Subject to subsections (2) and (3), an employer shall not make any deductions from the statutory minimum remuneration of an employee except—

- (a) a deduction required or authorised to be made by any other Ordinance; or
- (b) a deduction made, with the consent in writing of the employee or any person acting on his behalf, in respect of—
 - (i) money paid by the employer to the employee by way of advance of wages or salary;
 - (ii) the payment by the employer of any expenses incurred by the employee in connection with any medical examination or treatment, drugs, medicines, artificial limbs or other artificial appliance;
 - (iii) any superannuation scheme, thrift scheme or employee share ownership plan; or
 - (iv) payments agreed to be paid by the employee to any third party unconnected with the employer,

where the employer is not under any obligation to make any such payments under any other Ordinance.

(2) Any deductions authorised to be made by subsection (1)(b) shall not exceed, in the aggregate, one-half of the gross amount of the total remuneration payable to an employee in respect of the period in which the deductions are made.

(3) Subsection (1)(b) shall not be taken to authorise the deduction of any poundage, discount, interest or other charge on account of any advance as is mentioned in that paragraph.

Time and place of payment of wages or salary

19. (1) Remuneration shall be paid at regular intervals of not more than one month, and, in the case of wages or salary payable in cash, shall be paid during normal working hours at or near the employee's usual place of work.

(2) Any remuneration to which an employee is entitled by orders made under section 23 or decision of the Labour Tribunal shall become due when the condition described in the order arises or when the decision is given and shall be payable as wages or salary with respect to the manner, time and place of payment, provided that vacation may be paid when actually taken.

(3) If an employer fails to pay remuneration to which an employee is entitled on or before the next payday after termination; then, unless the Labour Tribunal orders to the contrary, the employee shall be entitled to statutory minimum remuneration up to and including the date such remuneration is actually paid and that date, if later than the effective date of termination, shall become the effective date.

Stipulations as to spending of wages or salary prohibited

20. Subject to the provisions of this Ordinance, any provision contained in any contract of employment respecting the place where or the manner in which, or the person with whom, the whole or any part of wages or salary due or payable to an employee under the contract shall be expended, shall be illegal, null and void.

Recovery of wages or salary free of set-off and with interest

21. In any proceedings instituted by an employee against his employer for the recovery of any remuneration due and payable to him—

- (a) the employer shall not be allowed to make any set-off, whether in respect of goods supplied by him to the employee or otherwise;
- (b) the Labour Tribunal may order the employer to pay the amount due and payable to the employee together with interest at the rate of two percent per month calculated from the date on which that amount became due and payable.

Penalties against employers

22. (1) An employer who—

- (a) pays any remuneration otherwise than in accordance with subsection (1) of section 16 or section 19; or
- (b) makes any deduction from any remuneration which is not authorised to be made under section 18,

commits an offence and is liable on summary conviction to a fine of \$5,000, and in the case of a second or subsequent offence, to a fine of \$10,000.

(2) Nothing in this section shall be in derogation of or prejudice any right of an employee to recover such sums, to which he is entitled under this or any Ordinance, by civil proceedings.

*Minimum wages and salary, overtime,
holiday remuneration, severance pay, etc*

Power of Governor to make orders fixing remuneration, etc

23. (1) The Governor, acting on the advice of the Cabinet, may make an order, subject to and in accordance with the provisions of this section —

- (a) fixing the minimum remuneration of any employee;
- (b) requiring holidays to be allowed to any employee;
- (c) entitling any employee who is absent from work because of ill health—
 - (i) to be paid remuneration, at the rate prescribed by the order and during such period as may be prescribed by the order; and

- (ii) to return to work at the end of such period as may be prescribed by the order;
 - (d) requiring an employer to pay to any employee of his who has been employed by the employer for such period of continuous employment as may be prescribed by the order and who has been—
 - (i) dismissed by the employer by reason of redundancy; or
 - (ii) laid-off by the employer to the prescribed extent,
a sum, to be known as redundancy benefit, calculated in the manner prescribed by the order;
 - (e) fixing the maximum number of hours which any employee may be required to work on any day and in any week;
 - (f) fixing the rates for overtime and additional pay; and
 - (g) fixing any other terms and conditions of employment of any employee.
- (2) An order under this section may make different provisions for different classes or descriptions of employees.
- (3) An order under this section fixing holiday remuneration or redundancy benefit may contain provisions as to the times at which, and conditions subject to which, that remuneration or benefit shall accrue and shall become payable.
- (4) An order under this section fixing vacation remuneration may contain provisions for securing that any such remuneration which has accrued due to an employee during his employment by any employer shall, in the event of his ceasing to be employed by that employer before he becomes entitled to be allowed a holiday by him, nevertheless become payable by the employer to the employee.
- (5) Before making an order under this section, the Governor shall make such investigations as he thinks fit and shall publish in the *Gazette* a notice stating—
- (a) that he intends to make the order; and
 - (b) the place where copies of his proposals with respect to the proposed order may be obtained and the period (which shall not be less than twenty-eight days from the date of publication of the notice) within which written representations with respect to the proposals may be sent to the Governor.
- (6) After considering any written representations made with respect to any such proposals within the said period and making such further inquiries as he considers necessary, or if no such representations are made within that period, after the expiration of that period, the Governor may make an order—
- (a) giving effect to the proposals;

- (b) giving effect to them with such modifications as he thinks fit having regard to any such representations,

but if it appears to him that, having regard to the nature of any proposed modifications, an opportunity should be given to persons concerned to consider the modifications, he shall again publish the proposals and give notice under subsection (5), and that subsection and this subsection shall apply accordingly.

(7) An order made under this section shall have effect as regards any terms as to remuneration as from a date specified in the order, which may be a date earlier than the date of the order but not earlier than the date on which the Governor agreed on those terms prior to publishing the original proposals to which effect is given, with or without modifications, by the order; but where any such order fixing employees' remuneration applies to any employee who is paid wages or a salary at intervals not exceeding seven days and the date so specified does not correspond with the beginning of the period for which the wages or salary are paid (hereafter in this section referred to as a period of remuneration), the order shall, as respects that employee, have effect from the beginning of the period of remuneration following the date specified in the order.

(8) Any increase in remuneration payable by virtue of an order under this section in respect of any time before the date of the order shall be paid by the employer within a period specified in the order, being—

- (a) in the case of an employee who is in the employment of the employer on the date of the order, a period beginning with that date; or
- (b) in the case of an employee who is no longer in the employment of the employer on that date, a period beginning with the date on which the employer receives from the employee or a person acting on his behalf a request in writing for the remuneration,

but if, in the case of an employee falling within paragraph (a) who is paid wages or a salary at intervals not exceeding seven days, pay day (the day on which his wages or salary are normally paid to him) for any period of remuneration falls wholly or partly within seven days from the end of that specified period, any such remuneration shall be paid not later than pay day.

(9) An order under this section shall not prejudice any rights conferred on an employee by or under this or any other Ordinance.

Effect and enforcement of orders under section 23

24. (1) If a contract between an employee to whom an order under section 23 applies and his employer provides for the payment of less remuneration than the statutory minimum remuneration, it shall have effect as if the statutory minimum remuneration were substituted for the remuneration provided for in the contract, and if any such contract provides for the payment of any holiday remuneration, overtime, paid leave, or severance pay at times or subject to conditions other than those specified in the order, it shall have effect as if the times or conditions specified in the order were substituted for those provided for in the contract.

(2) If any such contract fixes terms and conditions other than those relating to remuneration which are less favourable, to the employee, than the corresponding terms and conditions specified in an order under section 23 it shall have effect as if the corresponding terms and conditions were substituted for those fixed by the contract.

(3) If an employer fails—

- (a) to pay an employee to whom an order under section 23 applies remuneration not less than the statutory minimum remuneration;
- (b) to pay such an employee arrears of remuneration before the expiration of the period specified in the order;
- (c) to pay such an employee vacation remuneration, or severance pay at the times and subject to the conditions specified in the order; or
- (d) to allow to any such employee vacation and the holidays fixed by the order,

he commits an offence and is liable on summary conviction to a fine of \$25,000.

(4) Where proceedings are brought under subsection (3) in respect of an offence consisting of a failure to pay remuneration not less than the statutory minimum remuneration, or to pay arrears of remuneration, and the employer or any other person charged as a person to whose act or default the offence was due is found guilty of the offence, then, subject to subsection (5)—

- (a) evidence may be given of any previous failure on the part of the employer or such other person to pay any such remuneration or arrears during the two years ending with the date of the offence to any employee employed by him; and
- (b) on proof of the previous failure, the court may order the employer to pay, together with interest at the rate of two per cent per month calculated from the date on which that amount became due and payable, such sum as is found by the court to represent the difference between the amount of any such remuneration or arrears which ought to have been paid during that period to both or any such employees, if the provisions of this Part had been complied with.

(5) Evidence of any failure to pay any such remuneration or arrears may be given under subsection (4) only if notice of intention to adduce such evidence has been served with the summons or warrant.

(6) The powers given by this section for the recovery of sums due from an employer to an employee shall not be in derogation of any right to recover such sums by civil proceedings.

(7) Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any capacity, he as well as the body corporate commits that offence and is liable to be proceeded against and punished accordingly.

(8) Where the affairs of a body corporate are managed by its members, subsection (7) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Permits to infirm and incapacitated persons

25 (1) If, as respects any employee employed or desiring to be employed in such circumstances that an order under section 23 applies or will apply to him, the Commissioner is satisfied, on application being made to him for a permit under this section either by the employee or the employer or a prospective employer, that the employee is affected by infirmity or physical incapacity which renders him incapable of earning the statutory minimum remuneration or makes it inappropriate for other terms and conditions fixed by the order to apply to him, the Commissioner may, if he thinks fit, grant, subject to any conditions he may determine, a permit authorising the employee to take an employment at less than the statutory minimum remuneration or dispensing with a term or condition of the order specified in the permit; and while the permit is in force the remuneration authorised by the permit shall, if the conditions specified in the permit are complied with, be deemed to be the statutory minimum remuneration or, as the case may be, the terms and conditions fixed by the order shall be deemed to be observed.

(2) Where an employer employs any employee in reliance on any document purporting to be a permit granted under subsection (1) authorising the employment of that employee at less than statutory minimum remuneration, or dispensing with a term or condition of the order specified in the permit, then, if the employer has notified the Commissioner that relying on that document, he is employing or proposing to employ that employee at a specified remuneration or without compliance with any such term or condition, the document shall, notwithstanding that it is not or is no longer a valid permit relating to that employee, be deemed, subject to the terms of the permit and as respects only any period after the notification, to be such a permit until notice to the contrary is received by the employer from the Commissioner.

Computation of remuneration

26. (1) Subject to the provisions of this Part, any reference in this Part to remuneration shall be construed as a reference to the amount obtained or to be obtained by the employee from his employer after allowing for the employee's necessary expenditure, if any, in connection with his employment, and clear of all deductions in respect of any matter whatsoever except any deduction authorised to be made under section 18.

(2) Notwithstanding subsection (1), orders under section 23 may contain provisions authorising specified benefits or advantages, being benefits or advantages provided, in pursuance of the terms and conditions of the employment of employees, by the employer or by some other person under arrangements with the employer and not being benefits or advantages the provision of which is illegal by virtue of this or any other Ordinance, to be reckoned as payment of wages or salary by the employer in lieu of payment in

cash, and defining the value at which any such benefits or advantages are to be reckoned.

(3) If any payment is made by an employee in respect of any benefit or advantage provided as mentioned in subsection (2), then —

- (a) if the benefit or advantage is authorised by virtue of that subsection to be reckoned as mentioned in that subsection, the amount of the payment shall be deducted from the defined value for the purposes of the reckoning;
- (b) if the benefit or advantage is authorised by virtue of that subsection to be reckoned as mentioned in that subsection, any excess of the amount of the payment over the defined value shall be treated for the purposes of subsection (1) as if it had been a deduction not being an excepted deduction referred to in subsection (1);
- (c) if the benefit or advantage is specified in an order under section 23 as one which has been taken into account in fixing the statutory minimum remuneration, the whole of the payment shall be treated for the purposes of subsection (1) as if it had been a deduction, not being an excepted deduction referred to in that subsection.

(4) Nothing in this section shall be construed as authorising the making of any deduction, or the giving of remuneration in any manner, which is illegal by virtue of this or any other Ordinance.

Apportionment of remuneration

27. Where for any period an employee receives remuneration for work for part of which he is entitled to statutory minimum remuneration at one or more time rates and for the remainder of which no statutory minimum remuneration is fixed, the amount of the remuneration which is to be attributed to the work for which he is entitled to statutory minimum remuneration shall, if not apparent from the terms of the contract between the employer and the employee, be deemed for the purposes of this Part to be the amount which bears to the total amount of the remuneration the same proportion as the time spent on the part of the work for which he is entitled to statutory minimum remuneration bears to the time spent on the whole of the work.

Employers not to receive premiums

28. (1) Where an employee to whom an order under section 23 applies is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium.

(2) An employer who acts in contravention of this section, commits an offence and shall be liable on summary conviction, in respect of each offence, to a fine of \$10,000; and the court may, in addition to imposing a fine, order the employer to repay the employee or other person by whom the payment was made the sum improperly received by way of premium.

Records and notices

29. (1) Every employer shall keep such records as are necessary to show whether or not the provisions of this Ordinance or any Ordinance relating to employment are being complied with as respect his employees and the records shall be retained by the employer for three years.

(2) An employer or his agent if applicable shall make the records and documents referred to in subsection (1) available to the Commissioner or an inspector acting for the purposes of the Ordinances referred to in subsection (1).

(3) An employer who fails to comply with subsection (1) commits an offence and shall be liable on summary conviction to a fine of \$5,000, and in the case of a second or subsequent offence, a fine of \$10,000.

(4) An employer who fails to comply with subsection (2) commits an offence and shall be liable on summary conviction to a fine of \$25,000 or to a term of imprisonment of six months, or to both such fine and imprisonment.

Evidence and enforcement

Criminal liability of agent and superior employer, and special defence open to employer

30. (1) Where the immediate employer of any employee is himself in the employment of some other person, that other person shall for the purposes of this Part be deemed to be the employer of that employee jointly with the immediate employer.

(2) Where an employer is charged with an offence under this Part, he shall be entitled, on giving to the prosecution not less than 5 days' notice in writing of his intention, to have any other person to whose act or default he alleges that the offence in question was due, brought before the court at the time appointed for the hearing of the charge; and if, after the commission of the offence has been proved, the employer proves that the offence was due to the act or the default of that other person, that other person may be convicted of the offence, and, if the employer further proves that he has used all due diligence to secure that the provisions of this Part and any relevant regulations or orders made under this Ordinance are complied with, he shall be acquitted of the offence.

(3) Where a defendant seeks to avail himself of the provisions of subsection (2)—

(a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witnesses called by him in support of his pleas, and to call rebutting evidence;

(b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.

(4) Where it appears to an inspector that an offence has been committed in respect of which proceedings might be taken under this Ordinance against an

employer, and the inspector is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the employer could establish a defence under subsection (2) above, proceedings may, with the consent of the Attorney General, be taken against that other person without first causing proceedings to be taken against the employer; and in that event the defendant may be charged with and, on proof that the offence was due to his act or default, be convicted of, the offence with which the employer might have been charged.

Appointment of Commissioner and inspectors

31. (1) The Governor acting in accordance with the recommendations of the Public Service Commission may appoint a Commissioner of Labour and the duties and powers of the Commissioner under this Ordinance are those set out herein and such other duties or powers as the Governor may in writing specify.

(2) The Governor may appoint public officers to act as assistants or deputies to the Commissioner, and any reference to the Commissioner in this Ordinance shall be construed as a reference to such assistant or deputy unless the context otherwise requires.

(3) The Governor may appoint public officers to act as inspectors for the purposes of this Ordinance and shall furnish the Commissioner and any officer appointed under this section with a certificate of his appointment; and, when acting for the purposes of this Ordinance, the Commissioner or such officer may, be required by any person affected, to produce the certificate to him.

(4) The Commissioner or an inspector acting for the purposes of this Ordinance shall have power for the performance of his duties—

- (a) to require the production of records of wages or salaries kept by an employer, and records of payments made to homeworkers by persons giving out work, and any other such records or documents as are required by law to be kept by employers, and to inspect and examine those records or documents and copy any material part thereof;
- (b) to require any person giving out work and any worker including any homemaker to give any information which it is in his power to give with respect to the names and addresses of the persons to whom the work is given out or from whom work is received, as the case may be, and with respect to the payments to be made for work;
- (c) at all reasonable times to enter any premises at which any employer to whom an order under section 23 applies, carries on his business, (including any place used, in connection with that business, for giving out work, to homeworkers and any premises which the inspector has reasonable cause to believe to be used by, or by arrangement with, the employer to provide living accommodation for workers);

- (d) to require, inspect and copy any material part of any list of workers including homeworkers kept by an employer or person giving out work to homeworkers; and
- (e) subject to subsection (5), to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under this Ordinance, any person whom he has reasonable cause to believe to be or to have been an employee to whom an order under section 23 applies or applied, the employer of any such person or a servant or agent of the employer employed in the employer's business, and to require every such person to be so examined and to sign a declaration of the truth of the matters in respect of which he is so examined.

(5) No person shall be required under subsection (4)(e) to give any information tending to incriminate himself or, in the case of a person who is married, his or her wife or husband.

(6) The Commissioner or an inspector acting for the purposes of this Part if it appears to him that a sum is due from an employer to an employee on account of the payment to him of remuneration less than the statutory minimum remuneration, may instruct the employer to comply with the relevant Order, and if necessary refer the matter to the Labour Tribunal.

(7) The power given by subsection (6) for the recovery of sums due from an employer to an employee shall not be in derogation of any right of the employee to recover such sums by civil proceedings.

(8) Subject to subsection (9), any person who obstructs the Commissioner or an inspector acting for the purposes of this Ordinance in the exercise of any power conferred by them, or fails to comply with any requirement of the Commissioner or inspector made in the exercise of any such power, commits an offence and shall be liable on summary conviction to a fine of \$25,000 or to a term of imprisonment of six months, or to both such fine and imprisonment.

(9) It shall be a defence for a person charged under subsection (8) with failing to comply with a requirement to prove that it was not reasonably practicable to comply therewith.

Penalties for false entries in records, producing false records or giving false information

32. If any person knowingly makes, causes to be made or knowingly allows to be made, any entry in a record required by this Ordinance to be kept by employers, which he knows to be false in a material particular, or for purposes connected with this Ordinance, knowingly produces or furnishes or causes or knowingly allows to be produced or furnished, any record, list or information which he knows to be false in a material particular, commits an offence and is liable on summary conviction to a fine of \$25,000 or to a term of imprisonment of six months, or to both such fine and imprisonment.

Power to obtain information

33. (1) The Commissioner or an inspector may, for the purposes of, or in connection with the enforcement of this Ordinance by notice in writing require an employer to whom the order applies to furnish such information as may be specified or described in the notice.

(2) A notice under this section may specify the way in which, and the time within which, it is to be complied with, and may be varied or revoked by a subsequent notice so given.

(3) If a person refuses or wilfully neglects to furnish any information he has been required to furnish by a notice under subsection (1), he commits an offence and shall be liable on summary conviction to a fine of \$10,000.

(4) If a person, in purporting to comply with a requirement of a notice under subsection (1) knowingly or recklessly make any false statement he commits an offence and shall be liable on summary conviction to a fine of \$10,000.

(5) If a person wilfully removes or destroys any record or source of information with intent to avoid or obstruct the exercise of the powers conferred by this Part, he commits an offence and shall be liable on summary conviction to a fine of \$25,000 or to imprisonment for a term of six months or to both; and in the case of a second or subsequent offence, to a fine of \$50,000 or to imprisonment for a term of two years or to both such fine and imprisonment.

(6) Section 30 shall not apply in relation to an offence under this section.

PART IV**PROTECTION AGAINST UNLAWFUL DISCRIMINATION****Objectives**

34. The objectives of this Part are—

- (a) to give effect to the provisions of the Turks and Caicos Islands Constitution; the ILO Convention No. 111 on Discrimination (Employment and Occupation) (1958) and the ILO Convention No. 100 on Equal Remuneration (1951); and to certain provisions in the UN Convention on the Elimination of All Forms of Discrimination Against Women (1979);
- (b) to eliminate, as far as possible, discrimination in employment and occupation against persons on the grounds of race, sex, religion, colour, ethnic-origin, national extraction, social origin, political opinion, disability, family responsibilities, pregnancy or marital status;
- (c) to promote recognition and acceptance of the principle of equal opportunity and treatment on the above grounds in employment, occupation and other related activities including education,

vocational training, employment services, provision of goods and services, partnerships and professional trade organisation.

Definition of discrimination

35. (1) For the purposes of this Ordinance, a person discriminates against another person if the first-mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) are—

- (a) race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, political opinion, disability, family responsibilities, pregnancy, marital status or age except for purposes of retirement and restrictions on work and employment of minors; and
- (b) any characteristic which appertains generally or is generally imputed to persons of a particular race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, political opinion, disability, family responsibility, pregnant state, marital status, or age except for purposes of retirement and restrictions on work and employment of minors.

(3) Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on the grounds referred to in subsection (2), is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate.

Matters relating to employment

36. (1) In this section, “employment” and “occupation” include access to vocational training, access to employment, promotion and to particular occupations, and terms and conditions of employment.

(2) It is unlawful for any person who is an employer or any person acting or purporting to act on behalf of a person who is an employer, in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment, to discriminate against that other person on the grounds listed in section 35(2) —

- (a) in the advertisement of the job;
- (b) in the arrangements made for the purpose of determining who should be offered that employment;
- (c) in determining who should be offered employment;
- (d) in the terms or conditions on which employment is offered; or
- (e) the creation, classification or abolition of jobs.

(3) It is unlawful for an employer to discriminate against an employee on the grounds listed in section 35(2) —

- (a) in terms or conditions, of employment afforded to that employee by the employer;
- (b) in conditions of work or occupational safety and health measures;
- (c) in the provision of facilities related to or connected with employment;
- (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
- (e) by retrenching or dismissing the employee; or
- (f) by subjecting the employee to any other disadvantage.

Occupational qualification exists.

37. (1) Nothing in section 36 shall apply to any distinction, exclusion, or preference based on the grounds listed in section 35(2) where a genuine occupational qualification exists.

(2) For the purposes of this Ordinance a genuine occupational qualification for a job exists where—

- (a) the essential nature of the job calls for a particular race, sex, religion, national extraction, indigenous population, ethnic origin, social origin, disability, pregnancy, family responsibilities, marital status or age for reasons of physiology (excluding physical strength or stamina) or, in dramatic performances or other entertainment for reasons of authenticity, so that the essential nature of the job would be materially different if carried out by a person of the opposite sex or different race, ethnic origin or religion, etc.; or
- (b) in a religious institution, the essential nature of the job calls for a particular religious affiliation or belief and the essential nature of said job would be materially different or unable to be carried out if performed by a person of a different religious affiliation or belief; or
- (c) the job needs to be held by a man or a woman to preserve decency or privacy because—
 - (i) it is likely to involve physical contact with persons of the same sex as the employees in circumstances where those persons might reasonably object to its being carried out by persons of the opposite sex; and
 - (ii) the holder of the job is likely to do work in circumstances where persons of the same sex might reasonably object to the presence of a person of the opposite sex because they are in a state of undress or are using sanitary facilities; or

- (d) the nature or location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer and—
 - (i) the only such premises which are available for persons holding that kind of job are occupied or normally occupied, by persons of the same sex and are not equipped with separate sleeping accommodation and sanitary facilities for persons of the opposite sex; and
 - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for persons of the opposite sex or to work out a practicable solution of usage of such facilities for members of both sexes; or
- (e) the job requires a married couple; or
- (f) the nature of the establishment, or the part of it where the work is carried out, requires the job to be held by a person of a particular sex because—
 - (i) it is, or is part of, a hospital, prison, or other establishment for persons requiring special care, supervision or attention; and
 - (ii) those persons are all of the same sex (disregarding any person of the opposite sex whose presence is exceptional); and
 - (iii) it is reasonable, having regard to the essential character of the establishment, or that part of the establishment, that the job should not be held by a person of the opposite sex; or
- (g) the holder of the job provides individuals with personal services promoting their health, welfare or education, and those services can most effectively be provided by a person of a particular sex; or
- (h) on the grounds of disability when it is shown that—
 - (i) the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned and the performance of the job would not be able to be carried out as a result of the disability; or
 - (ii) special facilities or modifications, whether physical, administrative, or otherwise, are required to be made at the work place to accommodate the disabled person which the employer cannot reasonably be expected to perform.

Special measures

38. (1) Special measures taken by employers of a temporary nature to promote equality of opportunity in employment based on the grounds set out in section 35(2) shall not be deemed to be unlawful discrimination within the meaning of section 36 of this Ordinance.

(2) Any distinction, exclusion or preference for a Belonger in accordance with section 106 (4) or in accordance with the Immigration Ordinance as regards maintenance of or access to employment, shall not be deemed to be discrimination and contrary to this Part or unfair under any other section.

Sexual harassment

39. Any act of sexual harassment against an employee committed by an employer, managerial employee or co-worker shall constitute unlawful discrimination based on sex within the meaning of section 36 of this Ordinance—

“sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

Promotion of equal remuneration

40. (1) Employers and those acting on behalf of employers shall be obligated to pay equal remuneration to men and women performing work of equal value for the employer.

(2) For the purposes of this section—

- (a) “equal remuneration” means rates of remuneration that have been established without differentiation based on the grounds of sex (gender); and
- (b) “work of equal value” means work equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work.

(3) The burden of proof to establish that equal remuneration has been paid shall rest on the employer.

Discrimination by firms

41. (1) Where employment in a particular profession is largely provided through partnership firms, it is unlawful for such firms of professionals consisting of three or more partners or three or more persons proposing to form themselves into such a partnership firm, to discriminate against any person on the grounds set out in section 35(2)—

- (a) in the arrangements they make for the purpose of determining who should be offered a position as partner in the firm; or
- (b) by expelling persons from the firm or subjecting persons in the firm to detrimental treatment.

(2) Subsections (1)(a) and (1)(b) of this section do not apply if the treatment afforded to the partner or potential partner is based on a genuine occupational qualification.

Discrimination by organisations

42. It is unlawful for an organisation of employers, trade unions and other organisations of employees or any other organisations, whose members carry on a particular profession or trade for the purpose of which the organisation exists, to discriminate against any person on the grounds set out in section 35(2)—

- (a) by refusing or failing to accept that person's application for membership;
- (b) in the terms on which it is prepared to admit that person to membership;
- (c) in the case of a person who is a member of the organisation—
 - (i) by denying, limiting or deliberately omitting to afford access to any benefits, facilities or services provided by the organisation;
 - (ii) by depriving that person of membership or varying the terms of membership;
 - (iii) by limiting or depriving that person of access or acquisition to leadership positions within the organisation; or
 - (iv) by subjecting that person to any other detriment.

Unlawful conduct

43. (1) It is unlawful for an authority or body that is to confer, renew, extend, revoke or withdraw an authorisation or qualification that is needed for or facilitates the practice of a profession, the carrying on of a trade or the engaging in of an occupation, to discriminate against a person on the grounds set out under section 35(2) —

- (a) by refusing or failing to confer, renew or extend the authorisation or qualification;
- (b) in the terms or conditions on which it is prepared to confer the authorisation or qualification or to renew or extend it; or
- (c) by revoking or withdrawing the authorisation or qualification or varying the terms or conditions upon which it is held.

(2) In this section, “authorisation or qualification” includes recognition, registration, enrolment approval and certification.

Association of employers

44. (1) It is unlawful for any association which comprises employers and has as its principal objective, or one of its principal objectives, affording their employees access to training facilities, and for any other person recognized as providing facilities for training for employment occupation to discriminate on the grounds set out in section 35(2) against a person who is seeking or undergoing technical or vocational training which would help to fit that person for any kind of employment or occupation—

- (a) in the arrangements made for the purpose of determining who should be offered training;
- (b) in the terms and conditions on which that person is afforded access to training courses or other facilities and services including vocational counselling and guidance;
- (c) by refusing or deliberately omitting to afford such access to that person; or
- (d) by terminating that person's training.

(2) It shall not be unlawful under subsection (1) to give preference to Belongers above non-Belongers.

Discrimination by employment agencies

45. (1) It is unlawful for an employment agency to discriminate against a person on the grounds set out in section 35(2) —

- (a) by refusing to provide that person with any of its services;
- (b) in the terms on which it offers to provide that person with any of its services;
- (c) in the manner in which it provides that person with any of its services or
- (d) in any other manner in which it facilitates the hire or employment of that person.

(2) This section does not apply if the discrimination concerns employment which the employer could lawfully refuse to offer that person.

(3) An employment agency shall not be liable under this section if it proves—

- (a) that it acted in reliance on a statement made to it by an employer to the effect that, by reason of the operation of subsection (2), its action would not be unlawful; and
- (b) that it was reasonable for it to rely on the statement.

(4) Any person who knowingly or recklessly makes a statement referred to in subsection (3)(a) which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine of \$5,000 or to a term of imprisonment of two months.

Discrimination in other areas

46. It is unlawful for a person who, whether for payment or not, provides goods and services, or makes facilities available, to discriminate against a person on the grounds set out in section 35(2) —

- (a) by refusing to provide that person with those goods or services or to make those facilities available; or

- (b) in the manner in which or in the terms and conditions on which those goods or services are provided or made available to that person.

Requirement

47. Where a requirement or condition which is not apparently in contravention of any provision in this Ordinance, has the effect of giving preference to a person on the grounds set out in subsection (2) of section 35 in a situation where such preference would be unlawful under this Ordinance, the imposition of that condition or requirement shall be unlawful unless the person imposing it establishes good reason for its imposition and shows that its imposition is not a subterfuge to avoid complying with this Ordinance.

Publishing and advertising

48. (1) It shall be unlawful for any person to publish or display or to cause or allow to be published or displayed any advertisement or notice which indicates or could reasonably be understood as indicating, an intention to commit a breach of any provision of this Ordinance.

(2) The publisher of an advertisement made unlawful by subsection (1) shall not be subject to any liability under that subsection if the publisher proves—

- (i) that the advertisement was published in reliance on a statement made by the person who caused it to be published to the effect that the publication would not be unlawful; and
- (ii) that it was reasonable for the publisher to rely on that statement.

(3) A person who knowingly or recklessly makes a statement referred to in subsection (2) which is false or misleading in a material respect commits an offence and is liable on summary conviction to a fine of \$5,000 or to a term of imprisonment of two months.

Discrimination

49. Where by virtue of any provision of this Part, it would be unlawful, in particular circumstances, for a person to discriminate against another person on the grounds set out in section 35(2), it is unlawful for that person to request or require that other person to provide information (whether by way of completing a form or otherwise) that would not, in the same or substantially similar circumstances be required or requested of the person of the opposite sex, or of a different race, religion, colour, political opinion, ethnic origin, indigenous population, social origin, pregnant state or marital status or with different family responsibilities.

General Exceptions

50. (1) Nothing in this Part affects—

- (a) a provision of a deed, will or other document, whether made before or after the coming into operation of this Ordinance, that

confers charitable benefits or enables charitable benefits to be conferred on persons on the basis of the grounds set out in section 35 (2) of this Ordinance; or

(b) an act that is done in order to give effect to such a provision.

(2) In this section “charitable benefits” means benefits for purposes that are exclusively charitable according to any enactments in force in the Islands.

Religious bodies

51. Nothing in this Ordinance affects—

- (a) the ordination of priests, ministers of religion or members of that body;
- (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
- (c) the selection or appointment of persons to perform duties or functions for the purposes of, or in connection with, or otherwise to participate in any religious observance or practice; or
- (d) any other act or practice of a body established for religious purposes, being an act or practice that conforms to the doctrines, tenets or beliefs of that religion or is necessary to avoid injury to the religious susceptibilities of adherents to that religion.

Offenses related to discrimination

52. (1) It is unlawful to induce or attempt to induce, a person to do any act which contravenes this Part by—

- (a) providing or offering to provide the person with any benefit; or
- (b) subjecting or threatening to subject the person to any detriment.

(2) An offer or threat is not prevented from falling within subsection (1) because it is not made directly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 or to a term of imprisonment for two months.

Victimization

53. (1) A person who commits an act of victimization against another person commits an offence and is liable on summary conviction to a fine of \$5,000.

(2) For the purposes of subsection (1) a person shall be taken to commit an act of victimization against another person if the first-mentioned person subjects or threatens to subject the other person to any detriment—

- (a) on the ground that the other person—

- (i) has made, or proposes to make, a complaint under this Ordinance;
 - (ii) has brought, or proposes to bring proceedings under this Ordinance against any person;
 - (iii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Ordinance;
 - (iv) has attended or proposes to attend an inquiry under this Ordinance or to provide evidence or testimony as a witness; or
 - (v) has made a good faith allegation that a person has committed an act of discrimination in contravention of this Ordinance;
- (b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do an act or thing referred to in paragraph (a)(i) to (v).

Burden of proof

54. Except where otherwise provided in this Ordinance, the person alleging a violation of this Part shall bear the burden of presenting a *prima facie* case of discrimination or of an offence related to discrimination under this Ordinance. Upon a *prima facie* showing of discrimination, the burden of persuasion shall shift to the respondent to disprove the allegations.

Proof of exceptions

55. Where by any provision of this Ordinance, conduct is excepted from conduct that is unlawful under this Ordinance or that is a contravention of this Ordinance, the onus of proving the exception lies upon the party claiming the exception.

Penalties

56. Any person who contravenes the provisions of this Part, unless otherwise set out under this Part, commits an offence and is liable on summary conviction to a fine of \$5,000 or to a term of imprisonment for two months.

Remedies

57. Without prejudice to any other remedy that may be available in any competent court, any person who is aggrieved by any act or omission of an employer in contravention of the provisions of this Part, shall be entitled to claim or apply for either or both of the following remedies—

- (a) damages from the employer, or any other person or body covered under the provisions of this Ordinance, for any loss caused directly or indirectly as a result of the contravention;

- (b) an order directing the employer or other relevant person or body covered under this Ordinance to redress the contravention including an order to employ, re-employ or reinstate any person, notwithstanding that the vacancy in question has already been filled and notwithstanding that the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged;
- (c) an order making any decision found to have been based on unlawful discrimination voidable; or
- (d) any other order the tribunal may deem fair and just to remedy the cause and effect of the discrimination.

PART V

TERMINATION OF EMPLOYMENT

Rights of employer and employee to a minimum period of notice

58. (1) The employment of an employee for an unspecified period of time shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the enterprise pursuant to sections 60, 61 and 62 of this Part and unless the notice requirements in section 63 are complied with.

(2) The provisions of subsection (1) of this section shall apply to the employment of an employee for a specified period of time during the contract period prior to the date of the specified expiry of the contract.

(3) The employment relationship may be terminated by an employee for any reason in accordance with the notice requirements set out in section 63.

Probationary period and invalid reasons

59. (1) A new employee may be required to serve a probationary period of not more than three months which may be extended for shorter periods of time agreed to between the employer and the employee not to exceed six months total. The employer or employee may terminate the employment of an employee at any time during the probationary period for any reason and without notice.

(2) The following reasons do not constitute valid reasons for dismissal or for imposition of disciplinary action—

- (a) an employee's race, sex, religion, colour, ethnic origin, national extraction, indigenous population, social origin, political opinion, disability, family responsibilities, or marital status;
- (b) an employee's age, subject to any enactment in force in the Islands or any provisions of any collective bargaining agreement with respect to retirement;

- (c) a female employee's pregnancy or a reason connected with her pregnancy;
- (d) an employee's exercise of any of the rights specified in this Ordinance or any Ordinance relating to employment;
- (e) an employee's temporary absence from work because of sickness or injury unless it occurs frequently and exceeds allocated leave entitlement;
- (f) an employee's being diagnosed with the HIV virus unless the employee is engaged in health care work;
- (g) an employee's absence from work due to civic obligations in accordance with any enactment in force in the Islands;
- (h) an employee's exercise or proposed exercise of the right to remove himself or herself from a work situation which he or she reasonably believes presents an imminent or serious danger to life or health;
- (i) an employee's participation, or proposed participation in industrial action which takes place including strikes in conformity with the provisions of this Ordinance or any Ordinance mentioned in paragraph (d);
- (j) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of this Ordinance or any Ordinance mentioned in paragraph (d).

(3) A dismissal is unfair if it is based on any of the grounds contained in subsection (2) of this section or constitutes constructive dismissal under section 61.

Summary dismissal

60. (1) An employer is entitled to dismiss summarily without notice or payment of any redundancy or severance payment or terminal benefits to an employee who is guilty of serious misconduct, based on the operational requirements of the enterprise, of such a nature that it would be unreasonable to require the employer to continue the employment relationship.

(2) The serious misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment relationship and has a detrimental effect on the business.

Employee's termination

61 (1) An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term, where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship.

(2) Physical or verbal abuse, wilful neglect or refusal to allow the employee to develop capacities for more complex tasks in the establishment

shall constitute such conduct on the part of the employer referred to in subsection (1).

(3) Where the contract of employment is terminated by the employee pursuant to subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer for the purposes of this Ordinance.

Warnings

62. (1) Where an employee commits an offence in breach of his condition of employment or any misconduct such that the employer cannot reasonably be expected to continue to employ him if it is repeated, the employer may give the employee a written warning.

(2) If an employee after being warned pursuant to subsection (1) is guilty of the same or similar offence or misconduct in the following six months, the employer may terminate the employee's employment.

(3) An employer shall be deemed to have waived his right to terminate the employment of an employee for misconduct if he has failed to do so within a reasonable period of time after having knowledge of the misconduct.

(4) Where an employee is not performing his duties in a satisfactory manner, the employer may give him a written warning.

(5) If an employee after being warned pursuant to subsection (4) and in compliance with subsection (6) does not, during the following three month period demonstrate that he is able to perform and has not performed duties in a satisfactory manner, the employer may terminate the employee's employment.

(6) The employment of an employee should not be terminated for unsatisfactory performance unless the employer has given the employee a written warning pursuant to subsection (4) and appropriate instructions to correct the unsatisfactory performance and the employee continues to perform his duties unsatisfactorily for a period of three months.

(7) It is declared that this section does not affect any right of either party to treat the contract as terminable without notice by reason of such conduct by the other party as would make it unreasonable to expect him to continue the employment relationship.

Rights of employee period of notice

63. (1) Where a valid reason for termination exists in accordance with this Ordinance, a contract for an unspecified period of time, shall be terminated by the employer upon giving the following minimum periods of notice in writing—

- (a) one working day where the employee has been employed by the employer for less than one month;
- (b) two weeks where the employee has been employed by the employer for one month or more, but less than one year;
- (c) one month where the employee has been employed by the employer for one year or more, but less than five years;

(d) two months where the employee has been employed by the employer for five years or more.

(2) The periods of notice under subsection (1) shall not apply where the giving of longer periods of notice are common, given the nature and functions of the work performed by the employee.

(3) The periods of notice under subsection (1) shall not apply where periods of notice are regulated by a collective agreement.

(4) The periods of notice under subsection (1) shall not apply where an employer is entitled to summarily dismiss an employee under this Part.

(5) A notice of termination under subsection (1) shall not be given by an employer during an employee's period of absence on any leave (paid annual leave, sick leave, maternity leave), granted under any Ordinance in force in the Islands.

(6) An employee employed for one year or more shall give an employer two weeks notice to terminate the employment contract, unless due to the nature and the functions of the work to be performed, a longer notice is commonly given.

(7) Nothing in this section shall prevent—

(a) the parties to a contract from agreeing to a longer period of notice of termination than is provided for in this section;

(b) an employer waiving the right to receive notice.

Payment in lieu of notice

64. (1) In lieu of providing notice of termination, the employer may, at his discretion, pay the employee a sum equal to the wages and other remuneration and confer on the employee all other benefits that would have been due to the employee up to the expiry of any required period of notice.

(2) Where an employee terminates a contract of employment without notice in circumstances in which notice is required, and the employer has not waived the right to notice, the employee shall be entitled only to be paid such wages and other remuneration and to receive such other benefits which accrued at the date of termination.

(3) If an employer or an employee, fails to give the notice required by section 63, the provisions of the Schedule shall have effect as respects the liability of the employer, and the rights conferred by the Schedule shall be taken into account in assessing the employer's liability for breach of contract.

Intimidation

65. (1) An employer shall not intimidate or dismiss an employee, or adversely affect his employment (whether by the imposition of new terms and conditions of employment, or otherwise), or alter the position of an employee to his prejudice, by reason of the circumstances that the employee—

(a) is an officer, delegate or member of a trade union;

- (b) is entitled to the benefit of an agreement or award under this Ordinance;
- (c) has appeared as a witness or has given any evidence in a proceeding under this Ordinance; or
- (d) has absented himself from work without leave after he has made an application for leave for the purpose of carrying out urgent and necessary duties as an officer or delegate of a trade union in connection with a trade dispute with the said employer and such leave has unreasonably been refused or withheld.

(2) An employer shall not intimidate an employee, or threaten to dismiss him or to affect adversely his employment (whether by the imposition of new terms and conditions of employment, or otherwise) or to alter the position of the employee to his prejudice—

- (a) by reason of the circumstances that the employee is, or proposes to become, an officer, delegate or member of a trade union or of an association that has applied to be registered as a trade union or that the employee proposes to appear as a witness or to give evidence in a proceeding under this Ordinance; or
- (b) with intent to dissuade or prevent the employee from becoming such an officer, delegate or member or from so appearing or giving evidence.

(3) An employer who contravenes any of the provisions of subsection (1) or (2) commits an offence and is liable, on summary conviction to a fine of \$5,000 or to a term of imprisonment of one year or to both such fine and imprisonment; and the court making the order for conviction may also order that the employee be reimbursed any wages lost by him and direct, if the case, in the opinion of the court so requires, that the employee be reinstated in his former position or be employed in a similar position.

(4) Notwithstanding any rule of law to the contrary, the question whether an offence has been committed under this section shall be decided by the court on a balance of probabilities.

(5) In this section the expression “to intimidate” means to cause in the mind of a person a reasonable apprehension of injury to him or to any member of his family or to any of his dependants, or of violence or damage to any person or property, and the expression “injury” includes injury to a person in respect of his business, occupation, employment or other source of income, and includes any actionable wrong.

Written statement of reasons for dismissal

66. (1) Subject to subsection (2), an employee shall be entitled—

- (a) if he is given by his employer notice of termination of his contract of employment;
- (b) if his contract of employment is terminated by his employer without notice; or

(c) if, where he is employed under a contract for a fixed term, that term expires without being renewed under the same contract, to be provided by his employer, on request in writing, with a written statement giving particulars of the reasons for his dismissal; and the statement shall be provided within fourteen days of the receipt of the request.

(2) An employee shall not be entitled to a written statement under subsection (1) unless on the effective date of termination he has been, or will have been continuously employed for a period of one month ending with that date and he is not serving a probationary period.

(3) A written statement provided under this section shall be admissible in evidence in any proceedings.

(4) A complaint may be presented to the Labour Tribunal by an employee against his employer on the ground that the employer unreasonably refused to provide a written statement under subsection (1) or that the particulars of reasons given in purported compliance with that subsection are inadequate or untrue, and if the Labour Tribunal finds the complaint well-founded—

(a) it may make a declaration as to what it finds the employer's reasons were for dismissing the employee; and

(b) it may, in addition to any other award regarding the dismissal, make an award that the employer pay to the employee a sum equal to the amount of two weeks' basic wage.

(5) The Labour Tribunal shall not entertain a complaint under this section relating to the reasons for a dismissal unless it is presented at such time that the Labour Tribunal would, in accordance with section 83(2) or (4) entertain a complaint of unfair dismissal in respect of that dismissal presented at the same time.

PART VI

UNFAIR DISMISSAL

Right of employee not to be unfairly dismissed

67. (1) In every employment to which this section applies every employee shall have the right not to be unfairly dismissed by his employer.

(2) This section applies to every employment where the employee was continuously employed for not less than one month, except in so far as its application is excluded by or under the provisions of section 59(1) or section 107.

Meaning of “dismissal”

68. (1) In this Part, “dismissal” and “dismiss” shall be construed in accordance with the following provisions of this section.

(2) Subject to subsection (3), an employee shall be treated as dismissed by the employer if, but only if—

- (a) the contract under which he is employed by the employer is terminated by the employer, whether it is so terminated by notice or without notice;
- (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract; or
- (c) the employee terminates that contract, with or without notice, in circumstances such that he is entitled to terminate it without notice by reason of the employer's conduct.

(3) Where an employer gives notice to an employee to terminate his contract of employment and, at a time within the period of that notice, the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire, the employee shall for the purposes of this Part be taken to be dismissed by his employer, and the reasons for the dismissal shall be taken to be the reasons for which the employer's notice is given.

(4) Where the contract of employment is terminated by the employer and the notice required by section 63 to be given by an employer would, if duly given on the material date expire on a date later than the effective date of termination, then for the purposes of section 66(2), section 79 and section 91(2), the later date shall be treated as the effective date of termination in relation to the dismissal.

(5) Where the contract of employment is terminated by the employee and—

- (a) the material date does not fall during a period of notice given by the employer to terminate that contract; and
- (b) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 63 to expire on a date later than the effective date of termination,

then, for the purposes of section 66(2), section 79 and section 90(2), the later date shall be treated as the effective date of termination in relation to the dismissal.

(6) In this Part “the effective date of termination” means—

- (a) in relation to an employee whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which that notice expires;
- (b) in relation to an employee whose contract of employment is terminated without notice, means the date on which the termination takes effect; and
- (c) in relation to an employee who is employed under a contract for a fixed term, where that term expires without being renewed under the same contract, means the date on which that term expires.

(7) “Material date” means—

- (a) in subsection (4), the date when notice of termination was given by the employer or (where no notice was given) the date when the contract of employment was terminated by the employer; and
- (b) in subsection (5), the date when notice of termination was given by the employee or (where no notice was given) the date when the contract of employment was terminated by the employee.

General provisions relating to fairness of dismissal

69. (1) In determining for the purposes of this Part whether the dismissal of an employee was fair or unfair, it shall be for the employer to show—

- (a) what was the reason (or, if there was more than one, the principal reason) for the dismissal; and
- (b) that it was a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

(2) In paragraph (b) of subsection (1) the reference to a reason falling within this subsection is a reference to a reason which —

- (a) related to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do;
- (b) related to conduct of the employee;
- (c) was that the employee was redundant; or
- (d) was that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employers) of a duty or restriction imposed by or under any Ordinance.

(3) Where the employer has fulfilled the requirements of subsection (1), then, subject to sections 13 and 70 to 77 the determination of the question, whether the dismissal was fair or unfair, having regard to the reasons shown by the employer, shall depend on whether in the circumstances (including the size and administrative resources of the employer’s undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and that question shall be determined in accordance with equity and the substantial merits of the case.

(4) In this section, in relation to an employee—

- (a) “capability” means capability assessed by reference to skill, aptitude, health or any other physical or mental quality;
- (b) “qualifications” means any certificate, degree, diploma or other academic, technical or professional qualification relevant to the position which the employee held.

Dismissal relating to trade union membership

70. (1) For the purposes of this Part, the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

- (a) was, or proposed to become a member of an independent trade union;
- (b) had taken, or proposed to take part at any appropriate time in the activities of an independent trade union; or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused to become or remain a member of a trade union.

(2) In subsection (1), “appropriate time” in relation to an employee taking part in the activities of a trade union, means time which either—

- (a) is outside his working hours; or
- (b) is a time within his working hours at which in accordance with arrangements agreed with or consent given by his employer, it is permissible for him to take part in those activities,

and in this subsection “working hours”, in relation to an employee, means any time when, in accordance with his contract of employment, he is required to be at work.

(3) In this Part references to a trade union includes references to a branch or section of a trade union.

Dismissal on grounds of redundancy

71. (1) For the purposes of this Ordinance an employment that is terminated shall be taken to be terminated by reason of redundancy where the termination is or is part of a reduction in the work force that is a direct result of any one or more of the following circumstances—

- (a) the employer has modernized, automated, or mechanized all or part of the business;
- (b) the employer has discontinued to carry on all or part of the business;
- (c) the employer has sold or otherwise disposed of part of the business;
- (d) the employer has reorganized the business to improve efficiency;
- (e) it has become impossible or impracticable for the employer to carry on the business at its usual rate or level or at all due to—
 - (i) a shortage of materials;
 - (ii) a mechanical breakdown;
 - (iii) a force majeure; or

- (iv) an act of God; or
 - (f) a reduced operation in the employer's business has been made necessary by economic conditions, including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.
- (2) Prior to terminating the employment of any employee pursuant to this section, the employer shall—
- (a) inform the recognized trade union, or if none exists, the employees' representative, with relevant information as early as possible on, *inter alia*,
 - (i) the existence of the situation described under subsection (1);
 - (ii) the reasons for the termination contemplated;
 - (iii) the number and categories of the persons likely to be affected; and
 - (iv) the period over which such termination is likely to be carried out;
 - (b) consult as early as possible with the recognized trade union, or if none exists, the employee's representative, on
 - (i) the possible measures that could be taken to avert or minimize the adverse effects of such a situation on employment; and
 - (ii) the possible measures that could be taken to mitigate the adverse effects of any termination on the employee concerned.

Singled out for dismissal

72. Where the reason or principal reason for the dismissal of an employee was that he was redundant, but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer, and either—

- (a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was one of those specified in section 70(1); or
- (b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,

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

Preference to laid off employee

73. (1) Where an employer has terminated the employment of an employee or has laid off an employee pursuant to section 71, and subsequently intends, within a period of six months following the date of termination, to hire a person to perform duties that are the same or substantially the same as those that were formerly performed by the employee, the employer shall give first preference to the laid off employee and second preference to the employee who had been terminated.

(2) Where an employer to whom subsection (1) applies, intends to hire a person, the employer shall make every reasonable effort to notify the employee who is entitled to the preference under subsection (1).

Insolvency and winding-up

74. (1) When the employer's personal or legal position formed the basis of the contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless it is otherwise terminated in accordance with sections 58, 59, 60, or 61 of this Ordinance.

(2) The winding-up (or insolvency) of an employer's business shall cause the contract of employment of any employee to terminate one month from the date of winding-up or the appointment of a receiver, unless it is otherwise terminated pursuant to sections 58, 59, 60, or 61 of this Ordinance within that period.

(3) Subsections (1) and (2) shall not apply where, notwithstanding the winding-up (or insolvency) the business continues to operate or has been transformed.

(4) On the winding-up or appointment of a receiver of an employer's business the claim of an employee, or those legally entitled to claim on his behalf, to wages and other payments to which he is entitled under this Ordinance or any contract shall have priority over all other creditors, including the Government and the National Insurance Board for the following amounts—

- (a) wages, overtime pay, gratuities, commissions, and other forms of remuneration relating to work performed during the twenty-six weeks preceding the date of the opening of winding-up or appointment of the receiver;
- (b) annual leave pay due as a result of work performed during the two years preceding the date of the opening of winding-up or appointment of the receiver;
- (c) amounts due in respect of other types of paid absence accrued during the twelve months preceding the date of the opening of winding-up or appointment of the receiver;
- (d) redundancy benefit, compensation for unfair dismissal and other payments due to employees upon termination of their employment.

Redundancy benefits

75. (1) For the purposes of this section termination includes termination by reason of redundancy pursuant to section 71, and by reason of winding-up, insolvency or death of the employer pursuant to section 74.

(2) The payment of a redundancy benefit shall not affect the employee's entitlement, if any, to payment in lieu of notice under section 64 or to a compensatory or special award under section 84 of this Ordinance.

(3) An employee's contract of employment shall not be considered terminated if he—

- (a) is employed by a partnership and his employment ceases on the dissolution of the partnership, and he either enters into employment with one or more of the partners immediately after such dissolution or unreasonably refuses to accept an offer of employment by any such person on no less favorable terms than he was employed immediately prior to the dissolution;
- (b) is employed by an employer who dies, and the employee either enters into the employment of the personal representative, widower, or any heir of the deceased employer immediately after such death, or he or she unreasonably refuses to accept an offer of employment by any such person on no less favourable terms than he or she was employed immediately prior to the death.

(4) A complaint that a severance allowance or vacation has not been paid on or before the next payday or within two weeks from the date of termination may be presented to the tribunal, and if the complaint is found to be proven to the satisfaction of the tribunal, it shall order payment of the amount due as well as any award which it considers just in the circumstances.

Dismissal of replacement

76. Where an employer—

- (a) on engaging an employee informs the employee in writing that his employment will be terminated on the return to work of another employee who is, or will be, absent wholly or partly because of pregnancy or confinement; and
- (b) dismisses the first-mentioned employee in order to make it possible to give work to the other employee,

then, for the purposes of section 69(1)(b), but without prejudice to the application of subsection (3) of that section, the dismissal shall be regarded as having been for a substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held.

Dismissal in connection with a lockout, strike or other industrial action

77. (1) The provisions of this section shall have effect in relation to an employee who claims that he has been unfairly dismissed by his employer where at the date of dismissal —

- (a) the employer was conducting or instituting a lockout; or
- (b) the employee was taking part in a strike or other industrial action.

(2) In such a case a tribunal shall not determine whether the dismissal was fair or unfair unless it is shown —

- (a) that one or more relevant employees of the same employer have not been dismissed; or
- (b) that any such employee has, before the expiry of the period of three months beginning with that employee's date of dismissal, been offered re-engagement and that the complainant has not been offered re-engagement.

(3) Where it is shown that the condition referred to in subsection (2) (b) is fulfilled, the provisions of sections 69 to 75 and 85 shall have effect as if in those sections for any reference to the reason or principal reason for which the employee was dismissed there were substituted a reference to the reason or principal reason for which he has not been offered re-engagement.

(4) In this section —

- (a) "date of dismissal" means—
 - (i) where the employee's contract of employment was terminated by notice, the date on which the employer's notice was given; and
 - (ii) in any other case the effective date of termination;
- (b) "relevant employees" means—
 - (i) in relation to a lockout, employees who were directly interested in the trade dispute in contemplation or furtherance of which the lockout occurred; and
 - (ii) in relation to a strike or other industrial action, those employees at the establishment of the employer (being the establishment of the employer at or from which the complainant works) who were taking part in the action at the complainant's date of dismissal; and
- (c) any reference to an offer of re-engagement is a reference to an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

Pressure on employer to dismiss unfairly

78. In determining, for the purposes of this Part any question as to the reason, or principal reason, for which an employee was dismissed or any question whether the reason or principal reason for which an employee was dismissed was a reason fulfilling the requirements of section 69(1)(b) or whether the employer acted reasonably in treating it as a sufficient reason for dismissing him—

- (a) no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee; and
- (b) any such question shall be determined as if no such pressure had been exercised.

Certificate of employment

79. (1) On the termination of a contract of employment an employer, if so requested by the employee, shall provide the employee with a certificate of employment indicating—

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

(2) The certificate required by subsection (1) shall not contain any evaluation of the employee's work unless this is requested by the employee.

Disciplinary action other than dismissal

80. (1) An employer shall be entitled to take disciplinary action other than dismissal when it is reasonable to do so under the circumstances.

(2) For purposes of this section "disciplinary action" includes, in order of severity—

- (a) a written warning;
- (b) suspension.

(3) No employer may impose a fine or other monetary penalty on an employee, except in cases where a requirement of restitution would be appropriate and where agreed upon between the employer and employee.

(4) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard for the nature of the violation, the terms of the employment contract, the employee's duties, the penalty imposed by the employer, the pattern and practice of the employer in similar situations, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

(5) A complaint that disciplinary action is unreasonable may be made to the Labour Tribunal for determination.

(6) Where the Labour Tribunal finds that disciplinary action is unreasonable it may void the action complained of, substitute another action or make an award for compensation as the Labour Tribunal considers just under the circumstances and the employer shall adjust his records in accordance with the decision of the Labour Tribunal.

Complaint to tribunal

81. (1) Within six months of the date of dismissal, an employee shall have the right to complain to the Labour Tribunal that he has been unfairly dismissed, whether notice has been given or not.

(2) The right of an employee to make a complaint under this section shall be without prejudice to any right the employee may enjoy under a collective agreement.

Employer to prove reason for dismissal

82. (1) In any claim or complaint arising out of the dismissal of an employee it shall be for the employer to prove the reason for the dismissal, and if the employer fails to do so there shall be a conclusive presumption that the dismissal was unfair.

(2) In the circumstances mentioned in section 61(3) it shall be for the employee to prove the reason which made the continuation of the employment relationship unreasonable.

Supplementary provisions relating to complaints

83. (1) A complaint may be presented to the Labour Tribunal against an employer by any person, or by the Minister on behalf of any person (in this Part referred to as the complainant) that he was unfairly dismissed by the employer.

(2) Subject to subsections (3) and (4), the Labour Tribunal shall not consider a complaint under this section unless it is presented to the tribunal before the end of the period of six months beginning with the effective date of termination or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of six months.

(3) Subsection (2) shall apply in relation to a complaint to which section 77(3) applies as if—

- (a) for the references to six months there were substituted references to nine months; and
- (b) for the reference to the effective date of termination there were substituted a reference to the complainant's date of dismissal (within the meaning of section 77(4)).

(4) The tribunal may, consider a complaint under this section, if, where the dismissal is with notice, the complaint is presented after the notice is given notwithstanding that it is presented before the effective date of termination; and in relation to such a complaint the provisions of this Ordinance, so far as they relate to unfair dismissal, shall have effect—

- (a) as if references to a complaint by a person that he was unfairly dismissed by his employer included references to a complaint by a person that his employer has given him notice in such circumstances that he will be unfairly dismissed when the notice expires;
- (b) as if references to reinstatement included references to the withdrawal of the notice by the employer;
- (c) as if references to the effective date of termination included references to the date which would be the effective date of termination on the expiry of the notice; and
- (d) as if references to an employee ceasing to be employed included references to an employee having been given notice of dismissal.

Remedies for unfair dismissal

Reinstatement or re-engagement

84 (1) If the employee's complaint of unfair dismissal is found to be proven to the satisfaction of the Labour Tribunal hearing the matter it shall award the employee one or more of the following remedies—

- (a) an order for reinstatement whereby the employee is to be treated in all respects as if he had never been dismissed;
- (b) an order for re-engagement whereby the employee is to be engaged in work comparable to that in which he was engaged prior to his dismissal, or other reasonably suitable work, from such date and on such terms of employment as may be specified in the order or agreed by the parties;
- (c) an award of compensation as specified in subsection (4); or
- (d) such other remedies as the Labour Tribunal may order.

(2) The Labour Tribunal hearing the matter shall, in deciding which remedy to award, first consider the possibility of making an award of reinstatement or re-engagement, taking into account in particular the wishes of the employee and employer and the circumstances in which the dismissal took place, including the extent, if any, to which the employee caused or contributed to the dismissal.

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

(4) An award of compensation shall be such amount as the said Labour Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the employee in consequence of the dismissal in so far as that loss is attributable to action taken by the employer, and the extent, if any, to which the employee caused or contributed to the dismissal. The amount

awarded shall not be less than two weeks pay for each year of service for workers with less than two years service, and one month pay for each year of service for workers with more than two years of service of seniority. An additional amount to such loss should be awarded where the dismissal was based on any of the reasons under section 59(2).

Remedies for unfair dismissal

85. (1) Where on a complaint under section 83 the tribunal finds that the grounds of the complaint are well-founded, it shall explain to the complainant what orders for reinstatement or re-engagement may be made under section 86 and in what circumstances they may be made, and shall ask the complainant whether he wishes the tribunal to make such an order, and if the complainant does express such a wish the tribunal may make an order under section 86.

(2) If on a complaint under section 83, the tribunal hearing the complaint finds that the grounds of the complaint are well-founded and no order is made under section 86, the tribunal may make an award of compensation for unfair dismissal, calculated in accordance with sections 90 to 92, to be paid by the employer to the employee.

Order for reinstatement or re-engagement

86. (1) An order under this section may be an order for reinstatement (in accordance with subsections (2) and (3)) or an order for re-engagement (in accordance with subsection (4)), as the tribunal may decide, and in the latter case may be on such terms as the tribunal may decide.

(2) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order the tribunal shall specify—

- (a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of reinstatement;
- (b) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
- (c) the date by which the order must be complied with.

(3) Without prejudice to the generality of subsection (2), if the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

(4) An order for re-engagement is an order that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment, and on making such an order the tribunal may specify the terms on which re-engagement is to take place including —

- (a) the identity of the employer;
- (b) the nature of the employment;
- (c) the remuneration for the employment;
- (d) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal, including arrears of pay, for the period between the date of termination of employment and the date of re-engagement;
- (e) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
- (f) the date by which the order must be complied with.

(5) In exercising its discretion under this section the Labour Tribunal shall first consider whether to make an order for reinstatement and in so doing shall take into account the following considerations—

- (a) whether the complainant wishes to be reinstated;
- (b) whether it is practicable for the employer to comply with an order for reinstatement;
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement.

(6) If the Labour Tribunal decides not to make an order for reinstatement, it shall then consider whether to make an order for re-engagement and if so on what terms; and in so doing the Labour Tribunal shall take into account the following considerations—

- (a) any wish expressed by the complainant as to the nature of the order to be made;
- (b) whether it is practicable for the employer or, as the case may be, a successor or associated employer to comply with an order for re-engagement;
- (c) where the complainant caused or contributed to some extent to the dismissal, whether it would be just to order his re-engagement and if so on what terms,

and except in a case where the Labour Tribunal takes into account contributory fault under paragraph (c) it shall, if it orders re-engagement, do so on terms which are, so far as is reasonably practicable, as favourable as an order for reinstatement.

Supplementary provisions relating to section 86

87. (1) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the Labour Tribunal shall not take that into account in determining, for the purposes of section 86(5)(b) or 86(6)(b), whether it is practicable to comply with an order for reinstatement or re-engagement unless the employer shows—

- (a) that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement; or
- (b) that he engaged the replacement after the lapse of a reasonable period without having heard from the dismissed employee that he wished to be reinstated or re-engaged, and that when the employer engaged the replacement it was no longer reasonable for him to arrange for the dismissed employee's work to be done except by a permanent replacement.

(2) In calculating for the purposes of subsection (2) (a) or section 86 (4) (d) any amount payable by the employer, the tribunal may take into account, so as to reduce the employer's liability, any sums received by the complainant in respect of the period between the date of termination of employment and the date of reinstatement or re-engagement by way of—

- (a) wages in lieu of notice or ex-gratia payments paid by the employer;
- (b) remuneration paid in respect of employment with another employer,

and such other benefits as the tribunal thinks appropriate in the circumstances.

Amount of compensation

Enforcement of orders for reinstatement or re-engagement and compensation

88. (1) If an order under section 86 is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to section 92 the tribunal shall make an award of compensation, to be paid by the employer to the employee, of such amount as the tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

(2) Subject to subsection (1), if an order under section 86 is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order—

- (a) the tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with sections 90 to 92 to be paid by the employer to the employee; and
- (b) except in a case which the employer satisfies the tribunal that it is not practicable to comply with the order, the tribunal may make an additional award of compensation to be paid by the employer to the employee of an amount not less than thirteen nor more than twenty-six weeks' pay.

(3) Where in any case an employer has engaged a permanent replacement for a dismissed employee, the tribunal shall not take that into account in

determining, for the purposes of paragraph (b) of subsection (2) whether it was practicable to comply with the order for reinstatement or re-engagement unless the employer shows that it was not practicable for him to arrange for the dismissed employee's work to be done without engaging a permanent replacement.

(4) Where in any case the Labour Tribunal makes an award of compensation for unfair dismissal, calculated in accordance with sections 90 to 92 and the tribunal finds the complainant has unreasonably prevented an order under section 86 from being complied with, it may, without prejudice to the generality of subsection (4) of section 91, take that conduct into account as a failure on the part of the complainant to mitigate his loss.

Compensation for unfair dismissal

89. Where a tribunal makes an award of compensation for unfair dismissal under subsection (2) of section 85 or paragraph (a) of subsection (2) of section 88, the award shall consist of—

- (a) a basic award calculated in accordance with section 90; and
- (b) a compensatory award calculated in accordance with section 91.

Calculation of basic award

90. (1) Subject to subsections (4), (5) and (6), the amount of the basic award shall be calculated in accordance with subsections (2) and (3).

(2) The amount of the basic award shall be calculated by reference to the period, ending with the effective date of termination, during which the employee has been continuously employed by starting at the end of that period and reckoning backwards the number of years of employment falling within that period, and allowing—

- (a) one and a half week's basic wage for each such year of employment in which the employee was not below the age of forty-one;
- (b) one week's basic wage for each such year of employment not falling within paragraph (a) in which the employee was not below the age of twenty-one; and
- (c) half week's basic wage for each such year of employment not falling within paragraph (a) or (b).

(3) Where, in reckoning the number of years of employment in accordance with subsection (2), twenty years of employment have been reckoned, no account shall be taken of any years of employment earlier than those twenty years.

(4) Where the Labour Tribunal finds that the complainant has unreasonably refused an offer by the employer which if accepted would have the effect of reinstating the complainant in his employment in all respects as if he had not been dismissed, the Labour Tribunal may reduce or further reduce the

amount of the basic award to such extent as it considers just and equitable having regard to that finding.

(5) Where the Labour Tribunal considers that the conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given) was such that it would be just and equitable to reduce or further reduce the amount of basic award to any extent, the Labour Tribunal may reduce or further reduce that amount accordingly.

(6) The amount of the basic award may be reduced or further reduced by the amount of any payment made by the employer to the complainant on the ground that the dismissal was by reason of redundancy.

Calculation of compensatory award

91. (1) Subject to section 92, the amount of the compensatory award shall be such amount as the Labour Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action by the employer.

(2) The said loss shall be taken to include —

- (a) any expenses reasonably incurred by the complainant in consequence of the dismissal; and
- (b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

(3) Such loss, in respect of any loss of any entitlement or potential entitlement to, or expectation of, a payment on account of dismissal by reason of redundancy shall include only the loss referable to the amount, if any, by which the amount of that payment would have exceeded the amount of a basic award (apart from any reduction under section 90(4) to (6)) in respect to the same dismissal.

(4) In ascertaining the said loss the tribunal may apply the same rule concerning the duty of a person to mitigate his loss as applies to damages recoverable under the common law.

(5) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and that question shall be determined as if no such pressure had been exercised.

(6) Where the Labour Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it may reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

(7) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy exceeds the

amount of the basic award which would be payable but for section 90 (6) that excess shall go to reduce the amount of the compensatory award.

Limit on compensation

92. (1) The amount of compensation awarded to a person under subsection (1) of section 88 or of a compensatory award to a person calculated in accordance with section 91 shall not exceed \$35,000.00.

(2) It is declared for the avoidance of doubt that the limit imposed by this section applies to the amount which the tribunal would, apart from this section, otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and any reduction in the amount of award required by any Ordinance or rule of law.

PART VII

RESOLUTION OF DISPUTES RELATING TO EMPLOYMENT

Establishment of a Labour Tribunal

93. (1) For the purposes of this Ordinance there is hereby established a Labour Tribunal.

(2) The Labour Tribunal shall have jurisdiction to hear and determine any labour dispute or complaint or other matter referred to it under this or any other Ordinance and shall have such other functions as may be conferred upon it by any other provision of law.

(3) The Labour Tribunal in exercise of the powers conferred on it by this or any Ordinance, shall not be subject to the direction or control of any other person or authority.

(4) The Labour Tribunal shall have an official seal which shall be judicially noticed.

(5) Orders, decisions and awards of the Labour Tribunal shall be enforceable in the Supreme Court as though they were orders or judgements of that court.

Composition of tribunal

94. (1) The Labour Tribunal shall consist of a President, and at least two other members appointed by the Governor as follows—

- (a) the President shall be appointed after consultation with such trade unions, employers' organizations and other persons or groups as appear to the Governor to be representative of the views of employees and employers in the Islands;

- (b) one member shall be appointed after consultation with such trade unions and other persons or groups as appear to the Governor to be representative of the views of employees; and
 - (c) one member shall be appointed after consultation with such employers' organizations and other persons or groups as appears to the Governor to be representative of views of employers.
- (2) One of the members appointed under subsection (1) shall be appointed Vice President and in the absence of the President may assume the powers conferred on the President by this Part.
- (3) A member of the Labour Tribunal shall be appointed to hold office for a period not exceeding five years; but may be removed by the Governor if there is reasonable evidence that the member is guilty of misconduct, malfeasance or incompetence.
- (4) A member of the Labour Tribunal shall be eligible for reappointment.
- (5) A member of the Labour Tribunal, a full tribunal or a tribunal shall not sit on any complaint, dispute or matter in which he directly or indirectly has a pecuniary interest.
- (6) The Governor, acting with the approval of the Cabinet, shall set—
- (a) the payments for the members of the Labour Tribunal; and
 - (b) the travel expenses to be paid to members.
- (7) The Labour Tribunal shall be deemed to be fully constituted if three members are sitting at any hearing notwithstanding any temporary vacancy, absence or incapacitation, in its membership.

Duties and powers of the President of the tribunal

95. (1) The President shall be the senior member of the Labour Tribunal and shall be responsible for the administration of the affairs and business of the Labour Tribunal.

(2) In any case where it appears to the President to be in the public interest, the President may issue directions for—

- (a) the full Labour Tribunal, to sit, comprised of three members together with one or more assessors nominated by or on behalf of the employers concerned and an equal number of assessors nominated by or on behalf of the employees concerned, all of whom shall be appointed by the Minister in his discretion on such terms and conditions as he thinks fit; or
- (b) the Labour Tribunal, consisting of one member, to sit together with one or more assessors nominated by or on behalf of the employers concerned and an equal number of assessors nominated by or on behalf of the employees concerned, all of whom shall be appointed by the Minister in his discretion on such terms and conditions as he thinks fit.

(3) The assessors appointed under subsection (2) shall assist the member or members of the Labour Tribunal or full Labour Tribunal but they do not have a vote.

(4) If an assessor is not nominated by either party or both parties to a dispute, the tribunal or full tribunal may deal with the labour dispute, as if it were constituted in accordance with subsection (2) and no act, proceeding, decision or award of a Labour Tribunal or full Labour Tribunal shall be called into question or invalidated by reason of the absence of an assessor.

(5) If a member of the Labour Tribunal begins to hear a matter and thereafter is for any reason unable to perform the functions of his office, then the functions may be performed by such other person as the Governor may appoint under section 94 subsection (1) except that the hearing of evidence shall be restarted.

Dispute to be first reported to Commissioner or inspector

96. Where an employee believes that there is a dispute concerning the infringement of any rights conferred on him by this Ordinance, a collective agreement, contract of employment or by any Ordinance dealing with occupational health, safety and the working environment he shall first refer the dispute to the Commissioner or an inspector who shall consider the dispute and shall endeavour to conciliate the parties and to effect a settlement by all means at his disposal.

Power of Tribunal

97. (1) For the purpose of dealing with any matter referred to it, the Labour Tribunal shall have the power to, by writing under the hand of the President—

- (a) require any person to furnish, in writing or otherwise, such particulars in relation to the matter as the Labour Tribunal may specify; and
- (b) require a person to attend before the Labour Tribunal, whether sitting as one member or as three members and give evidence, on oath or otherwise, or produce documents.

(2) Subject to this Ordinance, the Labour Tribunal, shall not be bound by any rule of evidence in civil or criminal proceedings.

(3) Any person who—

- (a) fails without reasonable excuse to furnish particulars in accordance with a requirement under subsection (1);
- (b) fails without reasonable excuse to attend before the Labour Tribunal in compliance with such a requirement; or
- (c) when in attendance before the Labour Tribunal, refuses to take an oath or make an affirmation, or to produce a document, or give evidence, in compliance with such a requirement,

commits an offence and is liable on summary conviction to a fine of \$25,000; however, a person shall not be punished for refusing to answer any question or to

produce any document which he could not be required to answer or produce in proceedings before a court of law in the Islands, or for failing or refusing to answer any question or produce any document which is not relevant to the matters in issue.

(4) The powers conferred on the Labour Tribunal by this section may, be exercised either on its own volition or on the application of an aggrieved party.

(5) An aggrieved party shall have the right to attend before the Labour Tribunal and to be represented.

Questions of law

98. (1) The Labour Tribunal may, if it thinks fit, refer any question of law for decision to the Supreme Court.

(2) An appeal shall lie to the Court of Appeal on a question of law arising from any decision of, or in proceedings before, the Labour Tribunal under this Ordinance.

(3) The Labour Tribunal may from time to time frame rules generally for itself for the effective execution of the provisions of this Ordinance, for regulating proceedings before a full tribunal or tribunal and for prescribing the fees payable in respect of those proceedings.

(4) Decisions of the Labour Tribunal under this Ordinance shall be final and except on a question of law shall not be enquired into by any court.

National Security

99. (1) If, on a complaint under section 83, it is shown that the action complained of was taken for the purpose of safeguarding national security, the Labour Tribunal hearing the matter shall dismiss the complaint; and a certificate purporting to be signed by or on behalf of the Governor certifying that the action specified in the certificate was taken for the purpose of safeguarding national security shall, for the purposes of this subsection, be conclusive evidence of the fact.

(2) The Labour Tribunal established under this Ordinance may sit in private for the purpose of hearing evidence which, in its opinion, relates to matters of such a nature that it would be against the interest of national security to allow the evidence to be given in public or for the purpose of hearing evidence from any person which, in the opinion of the Labour Tribunal, is likely to consist of—

- (a) information which that person could not disclose without contravening a prohibition imposed by or under any enactment; or
- (b) any information which has been communicated to a person in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person.

Other powers

100. (1) If on hearing a complaint or reference the Labour Tribunal established under this Ordinance finds that the complaint is wholly or partly well founded, it may—

- (a) grant a decision determining the rights of the employer or the employee in relation to the matter;
- (b) direct a party to amend or confirm an agreement;
- (c) make an award of compensation;
- (d) make an award of such sum to be paid to the employer, employee or trade union as the Labour Tribunal thinks fit.

(2) Any agreement, decision or award made by the Labour Tribunal established under this Ordinance shall be binding on the parties to whom the agreement, decision or award relates and, may be enforced in the Supreme Court, or recovered as a civil debt, by the person or party directly concerned in or affected by the non-fulfilment of the duty, compensation or award, or by the Minister.

(3) In relation to proceedings on complaints under section 83—

- (a) where the employee has expressed a wish to be reinstated or re-engaged which has been communicated to the employer at least seven days before the hearing of the complaint; or
- (b) where the proceedings arise out of an employer's failure to permit an employee to return to work after an absence due to pregnancy or confinement,

the Labour Tribunal may require the employer to pay the costs or expenses of any postponement or adjournment of the hearing caused by the employer's failure, without special reasons, to adduce reasonable evidence as to the availability of the job from which the complainant was dismissed, or, as the case may be, which she held before her absence, or of comparable or suitable employment.

General provisions as to conciliation

101. (1) Anything communicated to the Commissioner or an inspector in connection with the performance of his functions as conciliator in any claim, dispute, complaint or reference shall not be admissible in evidence in any proceedings before the tribunal or Court, except with the consent of the person who communicated it to the Commissioner or inspector.

(2) Where a complaint has been presented to the Commissioner or an inspector by a person (in this section referred to as the complainant), it shall be the duty of the Commissioner or inspector—

- (a) if he is requested to do so by the complainant and by the employer against whom it was presented; or
- (b) if, in the absence of any such request, he considers that he could act under this section with a reasonable prospect of success,

to endeavour to promote a settlement, of the complaint without its being determined by the Labour Tribunal.

(3) For the purposes of promoting such a settlement, in a case where the complainant has ceased to be employed by the employer against whom the complaint is made—

- (a) the Commissioner or inspector shall in particular seek to promote the reinstatement or re-engagement of the complainant by the employer, or by a successor of the employer or by an associated employer, on terms appearing to the Commissioner to be equitable; but
- (b) where the complainant does not wish to be reinstated or re-engaged, or where reinstatement or re-engagement is not practicable, and the parties desire the Commissioner or inspector to act under this section, he shall seek to promote agreement between them as to a sum by way of compensation to be paid by the employer to the complainant.

PART VIII

MISCELLANEOUS

Restrictions on contracting out

102. (1) Except as provided by the following provisions of this section any provision in any agreement (whether a contract of employment or not) shall be void in so far as it purports either expressly or by necessary implication—

- (a) to exclude, limit or avoid the operation of any provision of this Ordinance; or
 - (b) to preclude any person from presenting a complaint to, the Labour Tribunal or Supreme Court or bringing any proceedings under, this Ordinance.
- (2) Subsection (1) shall not apply—
- (a) to any agreement to refrain from presenting a complaint under section 83 reached where, in compliance with subsection (2) of section 101 the Commissioner or an inspector has taken action in accordance with that subsection; or
 - (b) to any provision in an agreement relating to dismissal from employment such as is mentioned in section 107.

Employment outside the Islands

103. (1) This Ordinance shall not apply in relation to employment during any period when the employee is engaged in work wholly or mainly outside the Islands unless the employee ordinarily works in the Islands and the work outside the Islands is for the same employer.

(2) For the purposes of subsection (1), a person employed to work on board a ship registered in the Islands shall, unless—

- (a) the employment is wholly outside the Islands; or
- (b) he is not ordinarily resident in the Islands,

be regarded as a person who under his contract ordinarily works in the Islands.

Employment agencies

104. (1) In the case of an employee provided to a user enterprise by a private employment agency—

- (a) the agency shall bear responsibility for—
 - (i) the employee's protection in the field of occupational safety and health;
 - (ii) preservation of the employee's right to collective bargaining; and
 - (iii) the employee's access to training; and
- (b) the user enterprise shall bear responsibility for matters connected with the employee's remuneration.

(2) Without prejudice to subsection (1), employment agencies shall ensure that workers they provide to user enterprises are afforded all the rights they are entitled to under this Ordinance, or any Ordinance relating to employment and for these purposes shall have such access to the user enterprise's premises as trade union representatives under this Ordinance and the Trade Unions Ordinance.

Regulations

105. The Governor may by regulations make such provision in relation to regulating employment agencies as he considers necessary or expedient.

Work Permit

106. (1) An employer wishing to employ a person on a work permit under Part B of Schedule 4 to the Immigration Regulations shall notify the Commissioner of Labour of his intention to recruit such a person at least fourteen days before making an application for the work permit pursuant to those Regulations.

(2) It shall be the employer's responsibility to find or provide suitable housing (proper conditions of health and comfort) for his employees who are required to obtain work permits under the Immigration Ordinance.

(3) Real estate law and custom in the Islands shall be fully respected in terminating the lease or occupancy of such housing on termination of the employee's contract of employment.

(4) No employer shall lay-off or make redundant an employee who is a Belonger and within three months prior or six months after, obtain, extend or renew, or apply to obtain, extend or renew, a work permit for a non-Belonger to

work in a similar position, or carry out similar duties for the employer, as did the Belonger.

(5) Any employer who contravenes the provisions of subsection (4) commits an offence and is liable on summary conviction to a fine of \$10,000 or to a term of imprisonment of six months or to both such fine and imprisonment.

Contracts for a fixed term

107. (1) Section 67 does not apply to dismissal from employment where an employee has worked under a single contract or several contracts of employment amounting to a period of two years or more and where the dismissal occurred because of the expiry of the period without the contract or contracts being renewed, if before the expiration of the period the employee agreed in writing (whether in the contract or contracts or in a separate agreement) to exclude any claim in respect of rights under that section in relation to the contract of employment.

(2) This section shall apply only to employees requiring a work permit or who would require a work permit save for the fact that they are employees of the Government of the Islands.

Miscellaneous classes of employment

108. (1) The provisions of this Ordinance shall not apply to employment where the employer is the wife or husband of the employee.

(2) Sections 4, 6 and 14 shall not apply to employment under a contract of service which normally involves employment for less than twelve hours weekly.

(3) If the employee's relations with his employer cease to be governed by a contract which normally involves work for twelve hours or more weekly and become governed by a contract which normally involves employment for eight hours or more, but less than twelve hours weekly, the employee shall nevertheless for a period of twenty-six weeks, computed in accordance with subsection (4), be treated for the purposes of subsection (2) as if his contract normally involved employment for twelve hours or more weekly.

(4) In computing the said period of twenty-six weeks no account shall be taken of any week during which the employee is in fact employed for twelve hours or more.

Posting of copy of Ordinance and Regulations

109. (1) Subject to subsection (2) of this section, there shall be kept posted at the principal entrances of a work place at which employees enter—

- (a) a copy of this Ordinance and Regulations made thereunder;
- (b) a copy of any Trade Union Ordinance and Regulations made thereunder;
- (c) a copy of the National Insurance Ordinance and Regulations made thereunder;

- (d) a copy of any Ordinance dealing with employment, working environment and occupational health and safety enacted from time to time in the Islands; and
- (e) a notice of the address of the Commissioner and the inspector for that workplace.

(2) The Commissioner may direct that all or any of the documents mentioned in subsection (1) of this section shall be available for inspection or posted in such parts of the workplace, either in addition to or in substitution for the principal entrances, as he may direct. Where the number of employees employed at a workplace is three or less, the Commissioner may waive or vary the requirements of subsection (1)(a) to (c), and, where they are waived, the employer shall display a notice stating that a copy of these Ordinances, Orders and Regulations may be inspected at the office of the Commissioner.

(3) All such documents shall be posted in such positions as to be conveniently read by the persons employed in the workplace and if a form has been prescribed for any document, it shall be posted in that form.

(4) Except for the purposes of substituting an updated copy, if any person pulls down, injures or defaces any copy of an Ordinance, Orders, Regulations or other document posted in pursuance of this Ordinance he commits an offence and is liable on summary conviction to a fine of \$500 or to a term of imprisonment of two months.

Abolition of doctrine of common employment

110. (1) Compensation payable to a person who is injured as the result of an accident at work shall be not less than a *per centum* of the employee's latest basic wage calculated on 20% of such wage to compensate 100% incapacity.

(2) The degree of incapacity and duration of the payments shall be calculated using the formula contained in Benefit Regulations made under the National Insurance Ordinance.

(3) It shall not be a defence to an employer, who is sued in respect of any injuries caused by the negligence of one of his employees, that the employee was, at the time the injury was caused, in common employment with the person injured.

(4) A provision contained in any agreement (whether a contract of employment or not and whether made before or after the commencement of this Ordinance) shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to one of his employees by the negligence of a person in common employment with that employee.

Penalties

111. A person who contravenes any provision of this Ordinance for which no other penalty is provided commits an offence and is liable on summary conviction to a fine of \$5,000 and if the offence of which he is convicted is continued after the conviction he commits a further offence and shall be liable in

respect thereof to a fine of \$100 for every day or part of a day during which the offence is so continued.

Savings

112. Any subsidiary legislation made under the repealed Employment Ordinance¹ and in force immediately prior to the commencement of this Ordinance shall, so far as it is not inconsistent with the provisions of this Ordinance continue in force as if made under this Ordinance.

¹ Ordinance 17 of 1988, Cap 136, 1998 Revised Edition.

SCHEDULE

(Section 64(3))

RIGHTS OF EMPLOYEE IN PERIOD OF NOTICE

Preliminary

1. In this Schedule the “period of notice” means the period of notice required by subsection (1) of section 63 or, as the case may be, subsection (6) of that section.

Employment for which there are normal working hours

2. (1) If an employee has normal working hours under the contract of employment in force during the period of notice, and if during any part of those normal working hours—

- (a) the employee is ready and willing to work but no work is provided for him by his employer;
- (b) the employee is incapable of work because of sickness or injury; or
- (c) the employee is absent from work in accordance with the terms of his employment relating to holidays,

then the employer shall be liable to pay the employee for the part of normal hours covered by paragraphs (a), (b) and (c) a sum not less than the amount of remuneration for that part of normal working hours calculated at the average hourly rate of remuneration produced by dividing a weeks’ pay by the number of normal working hours.

(2) Any payments made to the employee by his employer in respect of the relevant part of the period of notice whether by way of sick pay, holiday pay or otherwise, shall go towards meeting the employer’s liability under this paragraph.

(3) Where notice was given by the employee, the employer’s liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

Employment for which there are no normal working hours

3. (1) If an employee does not have normal working hours under the contract of employment in force during the period of notice the employer shall be liable to pay the employee for each week of the period of notice a sum not less than a week’s pay.

(2) Subject to subparagraph (3), the employer’s obligation under this paragraph shall be conditional on the employee being ready and willing to do work of a reasonable nature and amount to earn a week’s pay.

(3) Sub-paragraph (2) shall not apply—

- (a) in respect of any period during which the employee is incapable of work because of sickness or injury; or
- (b) in respect of any period during which the employee is absent from work in accordance with the terms of his employment relating to holidays,

and any payment made to an employee by his employer in respect of such a period, whether by way of sick pay, holiday pay or otherwise, shall be taken into account for the purposes of this paragraph as if it were remuneration paid by the employer in respect of that period.

(4) Where the notice was given by the employee, the employer's liability under this paragraph shall not arise unless and until the employee leaves the service of the employer in pursuance of the notice.

Absence on leave granted at request of employee

4. The employer shall not be liable under the foregoing provisions of this Schedule to make any payment in respect of a period during which the employee is absent from work with the leave of the employer granted at the request of the employee.

Notice given before a strike

5. (1) No payment shall be due under this Schedule in consequence of a notice to terminate a contract given by an employee if, after the notice is given and on or before the termination of the contract, the employee takes part in a strike of employees of the employer.

(2) In sub-paragraph (1) "strike" means cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not accept terms or conditions of or affecting employment.

Termination of employment during period of notice

6. (1) If, during the period of notice, the employer breaks the contract of employment, payments received under this Schedule in respect of the part of the period after the breach shall go towards mitigating the damages recoverable by the employee for loss of earnings in the part of the period of notice.

(2) If, during the period of notice, the employee breaks the contract, except under conditions described by section 60(3), and the employer rightfully treats the breach as terminating the contract, no remuneration shall be due to the employee under this Schedule in respect of the part of the period of notice falling after the termination of the contract.

(Substituted by Ord. 21 of 2004)

EMPLOYMENT ORDER
ARRANGEMENT OF PARAGRAPHS

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PRELIMINARY

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5. Periods of rest
6. Maximum hours of work
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PART III

VACATION WITH PAY, SICK LEAVE WITH PAY
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PART IV

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16. Certain provisions not to apply to specified employment

EMPLOYMENT ORDER – SECTION 23^{*}
(*Legal Notices 40/1993, 33/2000 and 33/2006*)

PART I
PRELIMINARY

Commencement

[1 January 1994]

Short title

1. This Order may be cited as the Employment Order.

Interpretation

2. (1) In this Order—

“basic wage” means the remuneration paid to an employee by his employer as wages for normal hours of work but does not include overtime pay, tips, bonuses or other gratuities;

“hours of work” means the period during which an employee’s services are at the disposal of his employer, whether or not work is available for him throughout the period, but does not include travel time or rest, meal or break periods;

“normal hours of work” means the number of hours a week which an employee is normally required to work for his employer;

“overtime” means the hours worked in excess of normal hours of work.

(2) In this Order, unless the context otherwise requires, any expression not otherwise defined shall have the meaning given to that expression, if used therein, in the Employment Ordinance.

(3) For the purposes of this Order, where a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of any business for the purposes of which an employee is employed, and after such change of ownership such employee continues to be so employed without interruption, the employment shall be deemed to be continuous notwithstanding the change.

^{*} Made under section 18 of the *repealed* Employment Ordinance 1988, Cap 136, 1998 Revised Edition and continued pursuant to section 112 of the Ordinance, as if made under section 23 of the Ordinance.

PART II

WAGES AND HOURS OF WORK

Minimum wages

3. (1) Subject to subparagraph (2), the national minimum basic wage that shall be payable to any employee shall be \$5.00 an hour. (*Amended by L.Ns. 33/2000 and 33/2006*)

(2) Subparagraph (1) shall not apply—

- (a) to employees employed in the domestic service of their employer in their private household;
- (b) to employees who are remunerated by the piece or by the task, and who are not subject to continuous supervision by the employer.

Normal hours of work

4. The normal hours of work of an employee shall not exceed forty-four hours a week.

Periods of rest

5. An employer shall give, and an employee shall take, a period of rest of twenty-four consecutive hours in each period of seven consecutive working days.

Maximum hours of work

6. (1) Subject to subparagraph (2) and except for managers, supervisors and other employees holding senior positions in the employer's service, an employee may not work, and shall not be required by his employer to work, in excess of twelve hours in any period of twenty-four hours or to work in excess of seventy-two hours in any week ("the maximum hours").

(2) An employee, if he so agrees with his employer, may work in excess of the maximum hours on the occurrence of any of the following events—

- (a) accident, whether actual or threatened;
- (b) force majeure;
- (c) urgent work to premises or equipment so far as may be necessary to avoid serious interference with the workings of the employer's business;
- (d) abnormal or exceptional pressures of work where the employer cannot be expected to resort to other measures; and
- (e) to prevent the loss of perishable goods.

Overtime pay and additional pay

7. (1) Where an employer requires his employee to work overtime and the employee agrees to do so, the employer shall pay the employee for the period worked overtime wages at the following rates—

- (a) where the employee works overtime on a public holiday (including Xmas, Good Friday and Easter Sunday), a rate equivalent to double the basic wage;
 - (b) where the employee works overtime at other times, a rate equivalent to one and a half times the basic wage.
- (2) Where an employee's normal hours of work include working on a public holiday, the employer shall pay the employee for the hours worked on a public holiday wages at a rate equivalent to double the basic wage.

PART III

VACATION WITH PAY, SICK LEAVE WITH PAY AND COMPASSIONATE LEAVE WITH PAY

Vacation with pay

8. (1) Subject to this paragraph, every employee shall be entitled to and shall be granted by his employer a vacation with pay at the rate of two weeks for each completed year of employment.
- (2) An employer shall pay his employee his basic wages for the duration of his vacation with pay.
- (3) The dates of the taking of the vacation with pay shall be fixed by the agreement of the employer and employee.
- (4) An employee who fails to take his vacation with pay within six months after it becomes due shall lose his entitlement to such vacation.
- (5) Where an employer and an employee so agree, earned vacation with pay may be broken and taken in more than one period.
- (6) An employer may advance to the employee vacation with pay which has not yet been earned.
- (7) An employer shall not require an employee to forego the taking of earned vacation with pay.
- (8) A vacation with pay to which any employee is entitled shall be extended by one day for each public holiday that occurs during the vacation.
- (9) Where the employment of any employee ends before the completion of a year of employment, the employer shall forthwith pay to the employee any vacation pay then owing to such employee in respect of any completed year of employment, and *pro-rata* for any incomplete year of employment.
- (10) An employee shall not be entitled to vacation with pay unless he has been in the continuous employment of his employer for a period of not less than twelve weeks.

Sick leave with pay

9. (1) Subject to this paragraph, an employee shall be entitled to and shall be granted by his employer sick leave with pay on workdays, during which he is ill or otherwise physically incapacitated for work.

(2) Sick leave with pay shall be taken only in connection with actual illness or other physical incapacitation for work.

(3) An employee who is ill or otherwise incapacitated for work shall as soon as practicable inform his employer of his condition, and, where the duration of his illness or incapacity extends beyond two days, shall furnish his employer with a doctor's certificate.

(4) An employee on sick leave shall be entitled to receive his basic wage for the first twelve days of sick leave taken during any period of twelve consecutive months:

Provided that the employer shall be entitled to deduct from such basic wages any National Insurance benefits that the employee may have received for his illness or other physical incapacitation for work for those days.

(5) An employee shall not be entitled to sick leave with pay unless he has been in the continuous employment of his employer for a period of not less than four weeks.

Compassionate leave with pay

10. (1) An employee shall be entitled to and shall be granted by his employer compassionate leave with pay of three days duration in the event of the death of his child, spouse, parent, foster parent, brother, sister, parent-in-law, grandparent or co-habiting common law partner.

(2) Subject to subparagraph (3), an employee on compassionate leave shall be entitled to receive from his employer his basic wage.

(3) An employee shall not be entitled to compassionate leave with pay unless he has been in the continuous employment of his employer for a period of not less than four weeks.

PART IV**SEVERANCE PAY****Severance pay**

11. Where an employee who has been continuously employed for two years by the same or associated employer—

- (a) is dismissed by his employer by reason of redundancy; or
- (b) is laid off or kept on short-time to the extent specified in paragraph 13 and complies with the requirements of that paragraph,

then, subject to the following provisions of this Order, the employer shall be liable to pay to him severance pay.

Rate of severance pay

12. Severance pay shall be paid at the rate of two weeks basic wage (based on the latest basic wage) for each year of service, and *pro-rata* for each incomplete year.

Lay-off and Short-time

13. (1) Where an employee is employed under a contract on such terms and conditions that his remuneration thereunder depends on his being provided by the employer with work of the kind which he is employed to do he shall, for the purposes of this Part, be taken to be laid off for any week in respect of which, by reason that the employer does not provide such work for him, he is not entitled to any remuneration under the contract.

(2) Where by reason of a diminution in the work provided for an employee by his employer (being work of a kind which under his contract the employee is employed to do) the employee's remuneration for any week is less than half a week's pay, he shall for the purposes of this Part be taken to be kept on short time for that week.

Right to severance pay by reason of lay-off or short-time

14. An employee shall not be entitled to severance pay by reason of being laid off or kept on short-time unless he gives notice in writing to his employer indicating (in whatsoever terms) his intention to claim severance pay in respect of lay-off or short-time (in this Order referred to as a "notice of intention to claim") and, before the service of the notice, he has been laid-off or kept on short-time for eight or more consecutive weeks of which the last before the service of the notice ended on the date of service thereof or ended not more than four weeks before that date.

Offer of renewal or re-engagement

15. If an employer makes an employee an offer, whether in writing or not, before the ending of his employment under the previous contract to renew his contract of employment, or to re-engage him under a new contract of employment, so that the renewal or re-engagement would take effect either immediately on the ending of his employment under the previous contract or after an interval of not more than four weeks thereafter, and either—

- (a) the provisions of the contract as renewed, or of the new contract, as to capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the previous contract; or
- (b) the first-mentioned provisions would differ, wholly or in part, from those corresponding provisions, but the offer constitutes an offer of suitable employment in relation to the employee,

and in either case the employee unreasonably refuses that offer, he shall not be entitled to severance payment by reason of his dismissal.

PART V

MISCELLANEOUS AND SUPPLEMENTAL

Certain provisions not to apply to specified employment

16. (1) In this paragraph—

“season” means a season of not more than eight months.

“specified employment” means seasonal employment in an hotel where an employee, under his contract of employment, is required to live on the premises of the hotel for the duration of the season;

(2) The provisions of paragraphs 4, 7, and 8 shall not apply to a specified employment if, in relation to such employment, there is in force an agreement between the employer and the employee the provisions of which, in the opinion of the Minister (evidenced by a certificate issued by him), adequately safeguards the interests of the employee.

EMPLOYMENT (LABOUR TRIBUNAL PROCEDURE) RULES

ARRANGEMENT OF RULES

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EMPLOYMENT (LABOUR TRIBUNAL PROCEDURE) RULES – SECTION 98

(Legal Notice 18/2005)

Commencement

[1 April 2005]

Short title

1. These rules may be cited as the Employment (Labour Tribunal Procedure) Rules.

Interpretation

2. In these Rules—

“applicant” means a person by whom, or on behalf of whom, a trade dispute has been reported under section 93(2) of the Ordinance;

“Chairman” means the person presiding at a hearing;

“hearing” means a sitting of a tribunal duly constituted for the purpose of receiving evidence, hearing addresses and witnesses or doing anything lawfully requisite to enable the Labour Tribunal to reach a decision on any question;

“party” means the applicant or the respondent;

“President” means the member appointed, under section 94 (1) of the Ordinance, as President of the Labour Tribunal;

“Register” means the Register kept by the Secretary pursuant to rule 11 (3);

“respondent” means a person against whom relief is sought by or on behalf of an applicant;

“Secretary” means the Secretary to the Labour Tribunal;

“sexual harassment” has the meaning assigned to it under section 39 of the Ordinance;

“tribunal” means the Labour Tribunal whether sitting as a one member tribunal or a full tribunal as provided under section 95 of the Ordinance.

Originating application

3. (1) Where the Minister has referred a dispute to the Labour Tribunal pursuant to section 83 of the Ordinance, the applicant shall, within fourteen days of receiving notice of the referral, present to the Secretary an originating application in Form A in the Schedule, which shall be signed by the applicant.

- (2) The originating application shall contain—

- (a) the name and address of the applicant;
- (b) the name and address of the respondent;
- (c) the relief sought; and
- (d) the grounds; with particulars thereof, on which the relief is sought.

(3) Where the President is of the opinion that any of the matters under paragraph (2) are not sufficiently particularized in the originating application, he may give notice in Form B in the Schedule to that effect to the applicant, stating the reasons for his opinion and requiring the applicant within fourteen days of receipt of the notice, to furnish in writing to the Secretary sufficient particulars in support of the originating application.

(4) If the requirement under paragraph (3) is not complied with, the tribunal may strike out the whole or part of the originating application; but, the tribunal shall not so strike out unless it has sent notice to the applicant giving him an opportunity to show cause why the tribunal should not do so.

Notice to other party/respondent

4. Upon receiving an originating application, the Secretary shall send to the respondent—

- (a) a copy of the application;
- (b) a copy of any additional particulars required to be furnished by the applicant; and
- (c) a notice in Form C in the Schedule which includes information, as appropriate to the case, about the means and time for entering an appearance and defence, the consequences of failure to do so, and the right to receive a copy of the decision.

Notice of appearance by respondent

5. (1) A respondent shall, within seven days of receiving the copy of the originating application, enter an appearance to the proceedings by presenting to the Secretary a written notice of appearance in Form D in the Schedule—

- (a) setting out his full name and address; and
- (b) stating whether or not he intends to resist the application.

(2) Upon receipt of a notice of appearance the Secretary shall send a copy of it to the applicant.

(3) A respondent who has not entered an appearance shall not be entitled to take any part in the proceedings except—

- (a) to apply under rule 14 for an extension of the time appointed by this rule for entering an appearance;
- (b) to make an application under rule 7(1)(a); or
- (c) to be called as a witness.

Filing of defence

6. A respondent who intends to resist the application, shall within fourteen days of entering an appearance to the proceeding, present to the Secretary in writing a defence in Form E in the Schedule setting out sufficient particulars to show on what grounds he intends to resist the application.

Further and better particulars

7. (1) The Labour Tribunal may, on the application of a party made either by notice in Form F in the Schedule to the Secretary or at the hearing of the originating application, or of its own motion—

- (a) require a party to furnish in writing to the person specified by the tribunal further particulars of the grounds on which that party relies and of any facts and contentions relevant thereto; or
- (b) require one party to grant to another such discovery or inspection (including the taking of copies) of documents as might be granted by the Supreme Court,

and may appoint the time at or within which and the place at which any act required in pursuance of this rule is to be done.

(2) The Labour Tribunal may, on the application of a party made either by notice in Form G in the Schedule to the Secretary or at the hearing of the originating application, or of its own motion—

- (a) require the attendance of any person, including a party, as a witness; and
- (b) if it does so require the attendance of a person, require him to produce any documents relating to the matter to be determined,

and may appoint the time and place at which the person is to attend and, where appropriate, the time at or within which and the place at which any such document is to be produced.

(3) The Labour Tribunal may, on the application of a party made by notice in Form H in the Schedule to the Secretary or of its own motion, require a party in writing to furnish to the tribunal a written answer to any questions if it considers—

- (a) that the answer of the party to that question may help to clarify any issue likely to arise for determination in the proceedings; and
- (b) that it would be likely to assist the progress of the proceedings for that answer to be available to the tribunal before the hearing.

(4) Upon the imposition of a requirement under paragraph (3), the Secretary shall send a copy of the requirement and a copy of the answer to each other party.

(5) The Labour Tribunal shall take account of a written answer furnished pursuant to paragraph (3) in the same way as it takes account of representations in writing presented by a party pursuant to rule 10(4).

(6) Where a requirement has been imposed under paragraph (1), (2) or (3)—

- (a) on a party in his absence; or
- (b) on a person other than a party,

that party or person may make an application to the tribunal to vary or set aside the requirement by notice in Form 1 in the Schedule to the Secretary given before the time at which or, as the case may be, the expiration of the time within which the requirement is to be complied with; and the Secretary shall give notice of the application to each other party other than the party making the application.

(7) If a requirement under paragraph (1) or (3) is not complied with, the Labour Tribunal before or at the hearing, may strike out the whole or part of the notice of appearance, and, where appropriate, direct that a respondent shall be debarred from defending altogether; but the Labour Tribunal shall not so strike out or direct unless it has sent notice to the party who has not complied with the requirement giving him an opportunity to show cause why the Labour Tribunal should not do so.

Notice to parties of date fixed for hearing

8. (1) The Chairman shall fix the date, time and place of the hearing of the originating application and the Secretary shall send to each party a notice of hearing in Form J in the Schedule together with information and guidance as to attendance at the hearing, witnesses and the bringing of documents, representation by another person and the making of written representations.

(2) The Secretary shall send the notice of hearing to every party not less than fourteen days before the date fixed for the hearing except where the Secretary has agreed a shorter time with the parties.

Tribunal may determine issue before hearing

9. (1) The tribunal may at any time before the hearing of an originating application, on the application of a party made by notice to the Secretary or of its own motion, determine any issue relating to the entitlement of any party to bring or contest the proceedings to which the originating application relates.

(2) The tribunal shall not determine such an issue unless the Secretary has sent notice to each of the parties giving them an opportunity to submit representations in writing and to advance oral argument before the tribunal.

Hearing

10. (1) Any hearing of an originating application shall be heard by a tribunal composed in accordance with section 95 of the Ordinance.

(2) Any hearing of or in connection with an originating application shall take place in public except where the Minister has directed the tribunal to sit in private on grounds of national security.

(3) Notwithstanding paragraph (2), the tribunal may sit in private for the purpose of—

- (a) hearing evidence which in the opinion of the tribunal relates to matters of such a nature that it would be against the interest of national security to allow the evidence to be given in public; or
- (b) hearing evidence from any person which in the opinion of the tribunal is likely to consist of—
 - (i) information which he could not disclose without contravening a prohibition imposed by or under any written law; or
 - (ii) any information which has been communicated to him in confidence, or which he has otherwise obtained in consequence of the confidence reposed in him by another person.

(4) If a party wishes to submit representations in writing for consideration by the tribunal at the hearing of the originating application he shall present his representations to the Secretary not less than seven days before the hearing and shall at the same time send a copy to each other party.

Decision of Labour Tribunal

11. (1) The decision of the Labour Tribunal, which may be given orally at the end of a hearing or reserved, shall be recorded in a document signed by the Chairman.

(2) The Labour Tribunal shall give reasons for its decision in a document signed by the Chairman and where the Labour Tribunal makes an award of compensation, the document shall also contain a statement of the amount of compensation awarded, followed either by a table showing how the amount or sum has been calculated or by a description of the manner in which it has been calculated.

(3) The Secretary shall keep a Register at the office of the Labour Tribunal and the Register shall be open to the inspection of any person without charge at all reasonable hours.

(4) The Secretary shall enter the documents referred to in paragraphs (1) and (2) in the Register and shall send a copy of the entry to each of the parties and to the Minister.

(5) The document referred to in paragraph (2) shall be omitted from the Register in any case in which—

- (a) the Governor has directed the tribunal, to sit in private on grounds of national security; or
- (b) evidence has been heard in private and the tribunal so directs.

(6) In any case appearing to involve allegations of sexual harassment, the document referred to in paragraph (2) shall be entered on the Register with such deletions or amendments as have been made in accordance with rule 12(5).

(7) Clerical mistakes in the documents referred to in paragraph (1) and (2), or errors arising in those documents from an accidental slip or omission may at any time be corrected by the Chairman by certificate under his hand.

(8) If a document is corrected by certificate under paragraph (7), the Secretary shall alter any entry in the Register which is affected to conform with the certificate and send a copy of any entry so altered to each of the parties and to the Minister.

(9) Where a document omitted from the Register pursuant to paragraph (5) is corrected by certificate under paragraph (7), the Secretary shall send a copy of the corrected document to each of the parties and to the Minister.

(10) Where this rule requires a document to be signed by the Chairman but by reason of death or incapacity the Chairman is unable to sign it, the document shall be signed by another member or the other members of the Labour Tribunal, who shall certify that the Chairman is unable to sign.

General powers of Labour Tribunal

12. (1) The Labour Tribunal may—

- (a) if the applicant at any time gives notice of the withdrawal of his originating application in Form K in the Schedule, dismiss the proceedings;
- (b) if both or all the parties agree in writing upon the terms of a decision to be made by the Labour Tribunal, decide accordingly;
- (c) consider representations in writing which have been submitted by a party to the Secretary (pursuant to rule 10(4)) less than seven days before the hearing;
- (d) subject to paragraph (2), at any stage of the proceedings, order to be struck out or amended any notice of appearance or defence, on the grounds that it is scandalous, frivolous or vexatious;
- (e) subject to paragraph (2), at any stage of the proceedings, order to be struck out any originating application, notice of appearance or defence, on the manner in which the proceedings have been conducted by or on behalf of the applicant or, as the case may be, the respondent has been scandalous, frivolous or vexatious; and
- (f) subject to paragraph (2), on the application of the respondent, or of its own motion, order an originating application to be struck out for want of prosecution.

(2) Before making an order under subparagraph (d), (e) or (f) of paragraph (1) the Labour Tribunal shall send notice to the party against whom it is proposed that the order should be made, giving him an opportunity to show cause why the order should not be made; but this paragraph shall not be taken to require the Labour Tribunal to send such notice to that party if the party has been given an opportunity to show cause orally why the order should not be made.

(3) Where a notice required by paragraph (2) is sent in relation to an order to strike out an originating application for want of prosecution, service of the notice shall be treated as having been effected if it has been sent by post or delivered in accordance with rule 18(3) and the Labour Tribunal may strike out the originating application (notwithstanding that there has been no direction for substituted service in accordance with rule 18(6)) if the party does not avail himself of the opportunity given by the notice.

(4) The Labour Tribunal may, before determining an application under rule 7 or rule 16, require the party making the application to give notice of it to every other party; and such notice shall give particulars of the application and indicate the address to which and the time within which any objection to the application shall be made, being an address and time specified for the purpose of the application by the Labour Tribunal.

(5) In any case appearing to involve allegations of the commission of a sexual harassment, the Secretary shall omit or delete from the Register any decision, document or record likely to lead members of the public to identify any person affected by or making such an allegation.

(6) The Chairman may postpone the day or time fixed for any hearing, or adjourn any hearing and vary any such postponement or adjournment.

Restricted reporting order

13. (1) In any case which involves allegations of sexual harassment the tribunal may at any time before promulgation of its decision in respect of an originating application, either on the application of a party made by notice to the Secretary or its own motion, make a restricted reporting order.

(2) The tribunal shall not make a restricted reporting order unless it has given each party an opportunity to advance oral argument at a hearing, if they so wish.

(3) Where a tribunal makes a restricted reporting order—

- (a) it shall specify in the order the person who may not be identified;
- (b) the order shall remain in force until the promulgation of decision of the tribunal on the originating application to which it related unless earlier revoked; and
- (c) the Secretary shall ensure that a notice of that fact is displayed on the notice board of the tribunal with any list of the proceedings taking place before the tribunal, and on the door of the room in which the proceedings affected by the order are taking place.

(4) The tribunal may revoke a restricted reporting order at any time, if it thinks fit.

(5) For the purposes of this rule “promulgation” occurs on the date recorded as being the date on which the document recording the determination of the originating application was sent to the parties.

Extension of time

14. (1) The Chairman may on the application of a party or of his own motion extend the time for doing any act appointed by or under these Rules (including this rule) and may do so whether or not the time so appointed has expired.

(2) An application under paragraph (1) shall be made by presenting to the Secretary a notice of application in Form L in the Schedule which shall state the title of the proceedings and shall set out the grounds of the application.

(3) The Secretary shall give notice to each of the parties of any extension of time granted under this rule.

Tribunal may give direction

15. (1) The tribunal may at any time, on the application of a party or of its own motion, give directions on any matter arising in connection with the proceedings.

(2) An application under paragraph (1) shall be made by presenting to the Secretary a notice of application, which shall state the title of the proceedings and set out the grounds of the application.

Joinder of Parties

16. (1) The tribunal may at any time, on the application of any person made by notice to the Secretary in Form M against whom any relief is sought to be joined as a party, and give such consequential directions as it considers necessary.

(2) The Labour Tribunal may likewise, on such application or of its own motion, order that any respondent named in the originating application or subsequently added, who appears to the Tribunal not to have been, or to have ceased to be, directly interested in the subject of the originating application, be dismissed from the proceedings.

(3) Where a number of persons have the same interest in an originating application, one or more of them may be cited as the person or persons against whom relief is sought, or may be authorised by the Labour Tribunal, before or at the hearing, to defend on behalf of all the persons so interested.

Tribunal may consider applications together

17. (1) Where, in relation to two or more originating applications pending before the Labour Tribunal, it appears to the tribunal, on the application of a party made by notice to the Secretary in Form N in the Schedule or of its own motion, that—

- (a) a common question of law or fact arises in some or all the originating applications;
- (b) the relief claimed in some or all of those originating applications is in respect of or arises out of the same set of facts; or
- (c) for any other reason it is desirable to make an order under this rule,

the Tribunal may order that some (as specified in the order) or all of the originating applications shall be considered together, and may give such consequential directions as may be necessary.

(2) The Labour Tribunal shall only make an order under this rule if—

- (a) each of the parties concerned has been given an opportunity at a hearing to show cause why such an order should not be made; or
- (b) it has sent notice to all the parties concerned giving them an opportunity to show such cause.

(3) The Labour Tribunal may, on the application of a party made by notice to the Secretary in Form O in the Schedule or of its own motion, vary or set aside an order made by the Tribunal.

Notices generally

18. (1) Any notice given under these Rules shall be in writing.

(2) All notices and documents required by these Rules must be sent to the office of the Labour Tribunal or such other office as may be notified by the Secretary to the parties.

(3) All notices and documents required or authorised by these Rules to be sent or given to any person hereinafter mentioned may be sent by post (subject to paragraph (5)) or delivered to or at—

- (a) in the case of a notice or document directed to a party—
 - (i) the address specified in his originating application or notice of appearance to which notices and documents are to be sent, or in a notice under paragraph (4), or

- (ii) if no such address has been specified, or if a notice sent to such an address has been returned, to any other known address or place of business in the Islands or, if the party is a corporate body, the body's registered or principal office in the Islands, or in any case, such address or place outside the Islands as the Chairman may allow; or
- (b) in the case of a notice or document directed to any person (other than a party to the proceedings), his address or place of business in the Islands or, if the person is a corporate body, the body's registered or principal office in the Islands,

and a notice or document sent or given to the authorised representative of a party shall be deemed to have been sent or given to that party.

(4) A party may at any time by notice to the Secretary in Form P in the Schedule and to the other party or parties change the address to which notices and documents are to be sent to him.

(5) The registered postal service shall be used instead of the ordinary post—

- (a) when a second set of notices or documents is sent to enter an appearance under rule 5(1); and
- (b) for service of an order made under rule 7(2).

(6) The Chairman may direct that there shall be substituted service in such manner as he may deem fit in any case he considers appropriate.

SCHEDULE

The forms contained in this Schedule may be adapted as far as the circumstances of each case may require.

FORM A

(Rule 3(1))

ORIGINATING APPLICATION

TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK

In the matter of the Employment Ordinance

..... Applicant

v

..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

1. I hereby apply to the Labour Tribunal pursuant to section 93(2) of the Employment Ordinance for a decision on a dispute between myself and the Respondent(s) mentioned herein.

2. Mr./Mrs./Miss
(Surname in block capitals first)

Date of Birth:

Address:

.....

Telephone No:

3. If a representative has agreed to act for you in this case, give his/her name and address below. Please note that further communications will be sent to your representative and not to you.

Name and address of Representative:

.....

.....

Telephone No:

4. (a) Name of Respondent(s) in block capitals (i.e. the employer, person or body against whom a decision is sought)

.....

.....

Address(es)

.....

.....

Telephone No:

- (b) Respondent's relationship to you for the purpose of the application (e.g. employer, trade union, employment agency, etc.)

.....

.....

5. Place of employment to which this application relates, or place where the act complained about took place

.....

6. My occupation or position held/applied for, or other relationship to the respondent named above is (e.g. user of a service supplied in relation to employment)

.....

7. (a) Date employment began

(b) Date employment ended

8. (a) Basic wages/salary

(b) Normal basic wages weekly hours of work

9. Other remuneration or benefits
10. Please explain the grounds for your application below. It will be helpful to the Labour Tribunal if you can give some details of the reason for your dismissal. You will be further able to amplify them at the hearing.
.....
.....
.....
11. If you wish to state what in your opinion was the reason for your dismissal, please do so here.
.....
12. If the Labour Tribunal decides that you were wrongly dismissed, please state which of the following you would prefer: reinstatement --to carry on working in your old job as before; re-engagement -- to start another job, or a new contract with your old employer; or compensation -- to get an award of money

Dated this day of 20

Signed:
Applicant

For Official Use

Date received at OLT	

FORM B

(Rule 3(3) & (4))

**NOTICE FOR FURTHER AND BETTER PARTICULARS
TO THE ORIGINATING APPLICATION**

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant

v

..... Respondent

The Office the Labour Tribunal

.....
(address)

To:
(name)

.....
(address)

1. By virtue of the powers conferred upon him/her rules 3(3) and (4) of the Employment (Tribunal Procedure) Rules, the President of the Labour Tribunal makes the following directions—
.....
2. Sufficient particulars in support of the Originating Application required under paragraph 1 of this notice should be furnished in writing to the Secretary to this office within fourteen days of the date of this Notice.
3. Your attention is drawn to the fact that rule 3(4) provides that if a direction made under rule 3(3) is not complied with, the Labour Tribunal may strike out the whole or part of the Originating Application: provide that the Labour Tribunal shall not strike out or give such a direction unless it has sent notice to the applicant giving him such an opportunity to show cause why such should not be done.

Dated the day of 20.....

.....
..... (Signature)

President of the Labour Tribunal

**Delete inappropriate items.*

FORM C

(Rule 4(c))

NOTICE OF ORIGINATING APPLICATION

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant

v

..... Respondent

Office of the Labour Tribunal

.....
(address)

To: The Respondent(s)

.....
(name)

.....
(address)

I enclose a copy of an Originating Application for a decision of the Tribunal in which you are named as Respondent. Under the rules of procedure you are required to enter an appearance within 7 days of receiving the copy of the Originating Application. You can do this by completing and sending to me the enclosed form of notice of appearance. This form and any other communications addressed to me may be sent by post or delivered to me at the above address.

The proceedings on this Application will be regulated by the rules of procedure contained in the Employment (Labour Tribunal Procedure) Rules. The case number and year of the Application is indicated above and should be quoted in any communications with regard to these proceedings.

If you name a representative, further communications regarding the case will be sent to him and not to you, and you should arrange to be kept informed to the progress of the case and of the parties (other than a Respondent who has not entered an appearance) may appear and be heard in person or be represented by anyone they choose.

If you do not send me the completed form you will not be entitled to take any part in the proceedings (except to apply for an extension of time to enter an appearance) or to receive any further notice of the proceedings and a decision which may be enforceable in the Supreme Court may be given against you in your absence. Whether or not you enter an appearance you will be sent a copy of the Labour Tribunal's decision.

Dated the day of 20.....

.....
(Signature)

Secretary of the Labour Tribunal

**Delete inappropriate items.*

FORM D

(Rule 5(1))

NOTICE OF APPEARANCE

TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK

In the matter of the Employment Ordinance

..... Applicant

v

..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

1. I *do/do not intend to resist the claim made by the applicant(s)
2. *My/Our name is *Mr./Mrs./Miss/ title *(if company or organization)*

.....

My address is:

Telephone No:

3. If you have arranged to have a representative to act for you, give his/her name and address below. Please note, any further communications will be sent to him/her and not to you.

Name of Representative:

Address:

Telephone No:

* *Delete inappropriate items*

Dated the day of 20.....

.....
(Signature)

The Respondent(s)

For Official Use

Date of receipt	Initials

FORM E

(Rule 6)

DEFENCE

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant

v

..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

1. I hereby submit a defence to the Labour Tribunal pursuant to Rule 6 of the Employment (Labour Tribunal Procedure) Rules, in relation to this matter.
2. *My/Our name is *Mr./Mrs./Miss/ title (*if company or organization*)

.....

Address:

Telephone No:

3. If you have arranged to have a representative to act for you, give his name and address below:

Name of Representative:

Address:

Telephone No:

(a) Was the applicant dismissed? *Yes/No

(b) If yes, what was the reason for the dismissal?.....

.....

- (c) Are the dates given by the applicant as his period of employment correct?
*Yes/No
- (d) If no, give dates of commencement and termination
.....
- (e) Are details of remuneration stated by the applicant correct? *Yes/No
- (f) If not, or if the applicant has not stated such details, give the correct
remuneration here:

.....

Basic wages/salary other pay or remuneration

4. Give below sufficient particulars to show the grounds on which you intend to
resist the application. Further details can be added to the Labour Tribunal's
hearing:

.....
.....

Dated the day of 20.....

For Official Use

Date of receipt	Initials

* Delete inappropriate items

FORM F

(Rule 7(1))

NOTICE FOR FURTHER AND BETTER PARTICULARS

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant

v

..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

*I/We, the *Applicant/Respondent in this matter, hereby apply to the tribunal, pursuant to rule 7(1) of the Employment (Labour Tribunal Procedure) Rules, for an order directing the *Applicant/Respondent—

- (a). To furnish me/us with further and better particulars of the grounds relied upon. The particulars requested are as follows:

.....
.....

- (b) to provide me/us with a list of documents which are or have been in his possession or power relating to the matters in question in these proceedings;

- (c) To produce for inspection at
(address)

the following documents: (*specify*)

.....

and that the *Applicant/Respondent be at liberty to inspect and peruse the documents so produced and to take copies and extracts therefrom at expenses.

(specify)

* Delete inappropriate items

Dated the day of 20.....

.....
(Signature)

The *Applicant/Respondent

For Official Use

Date of receipt	Initials

* *Delete inappropriate items*

FORM G

(Rule 7(2))

**NOTICE FOR ATTENDANCE AS A WITNESS AND
PRODUCTION OF DOCUMENTS**

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant

v

..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

*I/We, the *Applicant/Respondent in this matter hereby apply to the Labour Tribunal,
pursuant to rule 7(2) of the Employment (Labour Tribunal Procedure) Rules, for a
direction that of
(name) (address)

attend to give evidence in the above matter at
(address)

on the day of at o'clock
am./pm. and at any adjourn hearing of the proceedings and to produce the following
documents:

.....
(specify)

* Delete inappropriate items

Dated the day of 20.....

.....
(Signature)

The *Applicant/Respondent

For Official Use

Date of receipt	Initials

* *Delete inappropriate items*

FORM H

(Rule 7(3))

NOTICE FOR INTERROGATORIES

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant

v

..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

**I/We, the *Applicant/Respondent in this matter hereby apply to the Labour Tribunal, pursuant to rule 7(3) of the Employment (Labour Tribunal Procedure) Rules, for an order directing the *Applicant/Respondent to furnish *me/us with written answers to the following questions: (Here set out the interrogatories in the form of concise questions, each interrogatory to be set out in a separate paragraph and numbered consecutively.)*

Dated the day of 20.....

.....
(Signature)

The *Applicant/Respondent

.....
* Delete inappropriate items

FORM I

(Rule 7(6))

**NOTICE TO VARY OR SET ASIDE
DIRECTION UNDER RULE 7(1), (2) OR (3)**

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant
v
..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

*I/We, the *Applicant/Respondent in this matter hereby apply to the Labour Tribunal,
pursuant to rule 7(6) of the Employment (Labour Tribunal Procedure) Rules, to
*vary/set aside the direction of the Labour Tribunal dated
requiring
(name the party or person)

to.....
(specify direction)

Dated the day of 20.....

.....
(Signature)

The * Applicant/Respondent

For Official Use

Date of receipt	Initials

* Delete inappropriate items

FORM J

(Rule 8(1))

NOTICE OF HEARING

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

.....

Applicant

v

.....

Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

NOTICE IS HEREBY GIVEN that the application of
(name)

of
(address), has been listed for hearing by

by the Labour Tribunal at on the
(place of hearing)

day of 20..... at o'clock am/pm.

1. Attendance should be at the above time and place. The parties (other than a Respondent who has not entered an appearance) are entitled to appear at the hearing and to state their case in person or be represented by anyone they wish. A party can choose not to appear and can rely on written representations (which if additional to any already submitted must be sent to the Labour Tribunal and copied to the other parties not less than 7 days before the hearing). However, experience shows that it is normally in his own interests for each party and his witnesses (if any) to attend in person even if they have made statements or representation in writing.
2. It is very important that each party should bring to the hearing any documents that may be relevant (e.g. a letter of appointment, contract of employment, pay slip, evidence of unemployment and other national insurance benefits, wages book, details of benefits and contributions under any pension or superannuation scheme etc.).

3. If the complaint is one of wrongful dismissal the Labour Tribunal may wish to consider whether to make an order for reinstatement or re-engagement. In these cases the Respondent should be prepared to give evidence at the hearing as to the availability of the job from which the Applicant was dismissed or of comparable or suitable employment and generally as to the practicability of reinstatement or re-engagement of the Applicant by the Respondent.
4. If for any reason a party (other than a Respondent who has not entered an appearance) does not propose to appear at the hearing, either personally or by a representative, he should inform me immediately, in writing, giving the reason and the case number and year. He should also state whether he wishes the hearing to proceed in his absence, relying on any written representations he may have made.
5. The hearing of this case will take place at the time stated above or as soon thereafter as the Labour Tribunal may dismiss or dispose of the application in his absence.

Dated the day of 20.....

.....
(signature)

Chairman of the Labour Tribunal

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Date of receipt	Initials

FORM K

(Rule 12(1))

NOTICE OF WITHDRAWAL

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant
v
..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

I of the
(name) (address)

*Applicant/Respondent in this matter, wish to withdraw the *application/defence I
have made to the Labour Tribunal.

Dated the day of 20.....

.....
(Signature)

The *Applicant/Respondent

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Date of receipt	Initials

* Delete inappropriate items

FORM L

(Rule 14(2))

NOTICE OF WITHDRAWAL

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

.....

Applicant

v

.....

Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....

(address)

I of the
(name) (address)

*Applicant/Respondent in this matter, hereby apply to the Chairman of the Labour Tribunal, in accordance with rule 14 of the Employment (Labour Tribunal Procedure) Rules, for an extension of the time for..... on the grounds that—

.....

(specify requirement and the relevant Rule) and (state the reason why further time is required)

Dated the day of 20.....

.....
(Signature)

*Applicant/Respondent

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* Delete inappropriate items

FORM M

(Rule 16(1))

NOTICE OF JOINDER OF PARTIES

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant

v

..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

I of the
(name) (address)

*Applicant/Respondent in this matter, hereby apply to the Labour Tribunal, in accordance with rule 16 of the Employment (Labour Tribunal Procedure) Rules, for a direction that

.....
(state name and address of the person whom it is sought to be joined as a party to the matter)

be joined as a party and for such consequential directions as it considers necessary.

Dated the day of 20.....

.....
(Signature)

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* Delete inappropriate items

FORM N

(Rule 17(1))

NOTICE OF JOINDER OF PARTIES

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant
v
..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

*I/We..... of the
(name) (address)

*Applicant/Respondent in this matter, hereby apply to the Labour Tribunal, in accordance with rule 17 of the Employment (Labour Tribunal Procedure) Rules, for an order that
(state the case number and year of the originating application)

to be considered together and for such consequential directions as it considers necessary.

Dated the day of 20.....

.....
(Signature)

* Applicant/Respondent

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* Delete inappropriate item

FORM O

(Rule 17(3))

**NOTICE TO VARY OR SET ASIDE
ORDER UNDER RULE 17**

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant

V

..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

*I/We..... of the
(name) (address)

*Applicant/Respondent in this matter, hereby apply to the Tribunal, pursuant to rule 17(3) of the Employment (Labour Tribunal Procedure) Rules, to *vary/set aside an order of the Tribunal dated that
(state the substance of the order)

to be considered together and for such consequential directions as it considers necessary.

Dated the day of 20.....

.....
(Signature)

*Applicant/Respondent

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Date of receipt	Initials

* *Delete inappropriate item*

FORM P

(Rule 18(4))

NOTICE OF CHANGE OF ADDRESS

**TURKS AND CAICOS ISLANDS
LABOUR TRIBUNAL
PROVIDENCIALES/GRAND TURK**

In the matter of the Employment Ordinance

..... Applicant
v
..... Respondent

To: The Secretary of the Labour Tribunal
Office of the Labour Tribunal

.....
(address)

*I/We..... of the
(name) (address)

*Applicant/Respondent in this matter, hereby give notice in accordance with to Rule
18(4) of the Employment (Labour Tribunal Procedure) Rules, of a change of address
that
(state address)

to which all notices and documents in this matter are to be sent or delivered to me.

Dated the day of 20.....

.....
(Signature)

*Applicant/Respondent

For Official Use

Date of receipt	Initials

(Inserted by L.N. 18/2005)

* Delete inappropriate item

