

VIRGIN ISLANDS
LABOUR CODE, 2010
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SCHEDULE

No. 4 of 2010

Labour Code, 2010

**Virgin
Islands**

I ASSENT

DAVID PEAREY

Governor

12th July, 2010

VIRGIN ISLANDS

No. 4 of 2010

An Act to provide for the improvement of the administration of labour, taking into account applicable international standards, prescribing minimum conditions of employment, a system for labour administration, settlement of disputes and observance of labour laws generally, and to provide for the repeal of the Labour Ordinance (Cap. 292), the Labour Code Ordinance (Cap. 293) and the Trade Disputes (Arbitration and Inquiry) Act (Cap. 299) and for other connected matters.

[Gazetted 16th July, 2010]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

Short title and
commencement.

1. This Act (referred to in this Act as the “Code”) may be cited as the Labour Code 2010 and shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint.

National policy
underlying the
Code.

2. The following expressions of national policy shall be used in interpreting the Code:

- (a) the increase in production and in purchasing power which will result from the application of paragraphs (b) to (s) will benefit the workers, the employers, the consumers and finally will advance the overall socio-economic level of the Virgin Islands;

- (b) the legitimate employment interests of Virgin Islanders and Belongers shall be paramount and shall override all other competing expression on national policy in this section;
- (c) there shall be the preservation of social balance, national cultural heritage, values and norms of the Virgin Islands;
- (d) standards for a competitive economy and efficient labour market shall be recognised and promoted, with due regard to basic minimum conditions of work, and respect for the fundamental principles of human rights and social justice;
- (e) standards and conditions of work shall be transparent in their implementation;
- (f) there shall be a fair and equitable balance of rights, interests and obligations between employers on the one hand and employees on the other hand;
- (g) collaboration and co-operation among Government, employers and employees and social dialogue shall be promoted in the system of labour administration;
- (h) fundamental international principles and standards at work, adapted to the circumstances of the Virgin Islands, shall be respected and promoted;
- (i) labour enactments shall be practical in terms of regulatory and administrative feasibility;
- (j) there shall be an easily accessible system in place for the expeditious, fair and inexpensive settlement of disputes between employers and employees;
- (k) systems, procedures and institutional framework for the effective implementation, monitoring and enforcement of the provisions of

the Code and the system of labour administration shall be given due attention;

- (l) the interests of employees, employers and the public shall be taken into account and their representative organisations duly consulted in connection with the formulation and periodic revision of the law relating to labour and in connection with the resolution of issues arising in the enforcement of those laws;
- (m) employers and employees shall be free, through the processes of collective bargaining or otherwise, to agree on wages and other conditions of employment, provided the agreements do not infringe the minimum conditions prescribed in the Code;
- (n) employers and employees shall be free to associate with one another, or with their representative associations, in order to improve their economic situation, without interference, restraint or coercion;
- (o) employees shall enjoy decent work in accordance with the standards of the International Labour Organisation and suitable to the circumstances of the Virgin Islands;
- (p) social policy for the provision of retirement benefits of employees shall be promoted, taking into consideration the need for uniformity of standards, the need to stabilise industrial relations practices, and the need for transitional arrangements;
- (q) the employment conditions of employees shall be those which serve to preserve their health, safety and welfare and to prevent industrial accidents;
- (r) there shall be non-discrimination and equal opportunity in employment and occupation; and
- (s) employers shall aim to maximise profits by competing on the basis of managerial efficiency

and use of entrepreneurial skills rather than by seeking to reduce or otherwise derogate from their employees' working conditions.

3. In this Code, unless the context otherwise requires,

Interpretation.

“bargaining agent” means a trade union that acts on behalf of employees for purposes of collective bargaining;

“bargaining unit” means a group of employees on whose behalf collective bargaining may take place;

“basic wage” means that part of an employee’s remuneration for services which is payable in money for his or her normal hours of work;

“Belonger” means a person who belongs to the Virgin Islands as defined in section 2(2) of the Virgin Islands Constitution Order, 2007;

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No. 1678.

“child” means a person under the age of sixteen years;

“collective agreement” means any contract between one or more employers or their representatives and two or more employees or their representatives relating to the terms and conditions of employment or any other matter of mutual interest;

“commercial establishment” includes supermarkets, shops and other similar establishments;

“commission agent” means an agent or employee who is remunerated by commission;

“Commissioner” means the person for the time being appointed to, or acting in, the post of Labour Commissioner pursuant to section 8;

“conditions of employment” refers to the elements of hire and termination of employment, the remuneration, hours, duties and the surrounding terms of employment and to all other factors directly related to the employment arrangement;

“confinement” means labour resulting in the birth of a living child or labour, after not less than twenty-eight weeks of pregnancy, resulting in the birth of a child, whether alive or dead;

“continuous employment”, for the purposes of section 73(1) and Part VII, means an uninterrupted period of employment with an employer, and any predecessor-employer, provided that any break in employment not

exceeding six months shall not be deemed to break continuity of employment, but in any case, the duration of breaks shall not count as employment for the purposes of calculating entitlements to severance pay or retirement benefits as may be provided by Regulations made under section 111;

“*de facto* spouse” means a single person who lives with a single person of the opposite sex as husband or wife for a period not less than two years, although not married to that 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;

“dispute” or “complaint” means any difference between one or more employers or organisations representing employers and one or more employees or organisations representing employees relating in whole or in part to any matter covered by the Code or any law relating to labour or generally arising out of the relationship between the employer and the employee;

“employee” means any person who enters into or works under, or where a contract of employment has been terminated for any reason, a person who entered into or worked under, a contract with an employer, personally to perform any services or labour, whether the contract be oral or written, expressed or implied; and the term includes

- (a) a person whose services or labour have been interrupted by a suspension of work during a period of leave, temporary lay-off, strike or lockout;
- (b) an apprentice whose services or labour may be designed primarily to train such apprentice;
- (c) a commission agent;
- (d) a dependent contractor; and
- (e) a managerial employee who is not responsible for policy formulation or in effective control of a department or branch of the undertaking;

“employer” includes a person, body corporate, undertaking, association, public authority or body of persons who or which employed or employs a person under an employment contract, and includes the heirs, successors and assigns of an employer;

“employment contract” means any contract, whether expressed or implied and whether written or oral, under which it is agreed that one person (the employee) will perform certain services for another (the employer), and the term shall include any indenture or contract of apprenticeship or engagement as a commission agent;

“essential services” means the Police Service, Prison Service, Water and Sewerage Services, Fire and Rescue Services, Electricity Generation and Distribution Services, Telecommunication Services, Health Care Providers, Transportation Services and Port Services;

“established employee” means a public officer or a person employed by the Government whose salary is paid from or out of funds allocated for the payment of the personal emoluments of persons on the permanent and pensionable establishment as included in the Official Estimates of the Virgin Islands;

“family responsibility” means responsibilities in respect of any dependent family member which are reasonable in the circumstances not persistent in practice and for which no reasonable alternative could be made;

“gratuity” means remuneration, in money, however designated, received by an employer from customers, on behalf of employees for services rendered by an employee;

“gross wage” means the total remuneration for services received in money, in kind and in privileges or allowances, including gratuities and premium pay;

“inspector” means any person appointed as Labour Inspector under section 12;

“lockout” means

- (a) the exclusion by an employer of any or all of his or her employees from any premises on or in which work provided by the employer has been performed, or

- (b) the total or partial discontinuance by the employer of his or her business or the provision of work,

with a view to inducing his or her employees, or any persons in the employment of any other employer or employers, to agree to, or to comply with, any demands or proposals relating to any dispute, or to abandon any demand or modification of any demand;

“Minister” means the Minister to whom responsibility for labour is assigned;

“night work” means work performed between the hours of 10:00 p.m. on one day and 5:00 a.m. on the following day;

“non-established employee” means a person who is employed by the Government and whose wage is paid from or out of funds allocated for the payment of the personal emoluments of persons who are not on the permanent and pensionable establishment as included in the Official Estimates of the Virgin Islands;

“normal hours of work” means those hours of work for which premium pay is not due under section 49;

“parent or guardian” means a parent or guardian of a child or young person and includes any person who is liable for the maintenance of, who has the custody of or who has control over, a child or young person, or who has or would have a direct benefit from the earnings of the child or young person;

“part-time employment” means an employment contract, or a succession of employment contracts, with the same employer or a successor-employer or another employer, in which an employee is required to provide his or her services at intervals, so that the employee is not, in any twelve month period, continuously employed by that employer, and the term includes casual employment;

“periodic employee” means an employee who has worked for at least four months but less than twelve months per year;

“predecessor- employee” in relation to employment of a person, is one who, in consequence of a change occurring in the ownership or in the part of an undertaking in which that person is involved, is no longer the employer of that person;

“premium pay” refers to the form of payment mentioned in section 49;

“prescribed” means prescribed by Regulations under section 186;

“redundancy” means the loss of employment as defined in section 89(3);

“Regulations” means Regulations made under the Code;

“requirements”, “obligations” or “provisions” include the requirements, obligations or provisions of any Regulations or Orders made under the Code;

“severance pay” means remuneration to which an employee whose employment is terminated under the circumstances described in Part VI is entitled;

“ship” means any seagoing ship or boat of any description registered in the Virgin Islands;

“Sister Islands” means the islands of the Virgin Islands other than Tortola;

“strike” means the refusal or failure in concert by two or more employees of an employer to continue, whether completely or partly, to work or to resume their work or to comply with the terms and conditions of employment applicable to them, or the retardation of the progress of work by them or the obstruction of work by them, with a view to inducing the employer or any other employer to agree to, or to comply with, any demands or proposals relating to any dispute or to abandon any demand or modification of any such demand;

“substantially equivalent employment” means employment at work which, although not identical to that which is the basis of comparison, requires similar skills, affords relatively similar prospects of progression and provides remuneration of relatively equal value;

“successor-employer”, in relation to the employment of a person, is one who, in consequence of a change occurring in the ownership of an undertaking or in that part of the undertaking in which the person is involved, has become the new employer of that person;

“Tribunal” means the Arbitration Tribunal established under section 29;

“undertaking” comprises public and private undertakings and any branch of that undertaking and includes

- (a) mines, quarries and other works for the extraction of minerals from the earth;

- (b) workplaces in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in ship-building or in the generation, transformation or transmission of electricity, gas or motive power of any kind;
- (c) building and civil engineering works, including constructional, repair, maintenance, alteration and demolition work;
- (d) enterprises engaged in the transport of passengers or goods by road, rail, sea, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports;
- (e) commercial establishments;
- (f) postal and telecommunication services;
- (g) establishments and administrative services in which the persons employed are mainly engaged in clerical work;
- (h) newspaper and printing establishments;
- (i) hotels, guest houses, villas, restaurants, inns and cafés;
- (j) establishments for the treatment or care of the sick, infirm, destitute or orphans;
- (k) theatres, clubs and places of public entertainment;
- (l) utilities engaged in the provision of water, sewerage or waste disposal services;
- (m) enterprises engaged in farming, cropping, fishing or other forms of agriculture;

“unfair dismissal” refers to a termination of employment which may be an unfair dismissal under Part V;

“Virgin Islander” means a person who belongs to the Virgin Islands as defined in section 2(2) of the Virgin Islands Constitution Order, 2007;

U.K.S.I. 2007
No. 1678.

“wages” means any money or other benefits however designated or calculated, paid or contracted to be paid, delivered or given, at periodic intervals, as recompense, reward or remuneration for services rendered or labour done;

“workplace” means a place at which work is performed, and includes property belonging to or occupied by the Government;

“worst forms of child labour” means

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children and young persons, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child and young persons for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child and young persons for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons; and
- (d) work deemed by the Minister to be hazardous to young persons.

“young person” means a person who has ceased to be a child and who is under the age of eighteen years.

4. (1) To the extent that the Code applies to employers, it shall apply to employers operating or doing business in the Virgin Islands,

Application of
the Code.

including the statutory authorities and Government as the employer of its non-established employees, but it shall not bind the Government as the employer of its other employees, except that Parts VIII and IX shall bind the Government in relation to all its employees.

(2) To the extent that the Code applies to employees, it shall apply to employees of employers operating or doing business in the Virgin Islands, including employees of statutory authorities and non-established employees of the Government, but they shall not apply to

- (a) established employees; and
- (b) members of the Royal Virgin Islands Police Force.

(3) For the avoidance of doubt, nothing in subsections (1) and (2) shall be construed as derogating from section 60(1)(d) and Chapter 7 of the Virgin Islands Constitution Order, 2007.

U.K.S.I. 2007
No. 1678.

Enforcement
against
Government as
an employer.

5. Where the Government as an employer is in contravention of a provision of the Code, any Regulations or Orders, which contravention constitutes an offence, criminal proceedings shall not be commenced against the Crown but instead civil proceedings, including arbitration in accordance with the Code may be commenced against the Crown by the aggrieved employee, and the court or arbitration tribunal may grant the relief claimed or other reliefs the court or arbitration tribunal considers appropriate, including any sum owing to the employee by way of wages, vacation leave pay or other sum owing to the employee arising out of his or her employment.

Establishment of
working
conditions above
minimum
standards in the
Code.

6. Nothing in the Code shall be construed as prohibiting an employer, either unilaterally by individual contract with an employee or with employees, or by collective agreement with employees' representatives, from establishing working conditions more advantageous to employees than those minimum standards which are set forth in the Code.

PART I ADMINISTRATION

Principles of
administration.

7. The following principles shall govern the administration of the Code:

- (a) responsibilities shall be clearly defined, so that administrators of the Code, employers and employees and their representatives, and the general public know the persons responsible for the administration of the Code;

- (b) uniform procedures, to the extent practicable, shall be established and publicised;
- (c) to the extent practicable, all actions taken by administrators of the Code shall be recorded in writing and, except where they are self-evident, reasons for the actions shall be set forth in writing;
- (d) voluntary adjustment or settlement of issues, without formal action by the administrators, is to be encouraged, and any adjustment or settlement, unless clearly contrary to the purposes of the Code, shall be accepted as disposing of the issues;
- (e) subject to the Code and the confidentiality of voluntary settlement proceedings, actions of administrators under the Code shall be publicised to the extent practicable; and
- (f) a person to whom the administration of any provision of the Code is entrusted shall, in the discharge of that duty, act impartially and without undue delay.

8. (1) There shall be a Commissioner who shall, subject to the general direction of the Minister, be in charge of the Labour Department. Labour
Commissioner.

(2) The Commissioner shall be a public officer.

9. The Commissioner shall Duties and
responsibilities
of
Commissioner.

- (a) be available to assist in the resolution of any question arising out of employer-employee relationships whether or not the question arose out of the Code;
- (b) participate in the preparation, co-ordination and administration of national employment policy;
- (c) provide technical advice to the Government in labour matters;

- (d) keep under review the overall situation concerning employment, drawing attention to the terms and conditions of employment and working life of the employed and under-employed and submit proposals for improvement;
- (e) make technical advice available to employers and employees and their respective organisations at their request;
- (f) make his or her services available to employers and their respective organisations with a view to promoting effective co-operation between the Government, employers and employees;
- (g) receive questions, complaints, petitions or notifications of differences regarding employment between employers and employees;
- (h) investigate and resolve disputes or complaints pursuant to Part II;
- (i) collect data and statistics in relation to
 - (i) applications for, and the granting of, work permits;
 - (ii) complaints received and settled;
 - (iii) inspections completed;
 - (iv) violations of the Code;
 - (v) accidents and injuries;
 - (vi) occupational diseases;
 - (vii) strikes and work days lost due to strikes; and
 - (viii) any other key indicators of the labour market;
- (j) provide job registration and placement services;

- (k) be responsible for ensuring compliance with
 - (i) work force planning and development;
 - (ii) occupational safety and health;
 - (iii) labour standards; and
 - (iv) regional and international co-operation in labour matters and the preparation of reports required by the International Labour Organisation;
- (l) prepare and furnish the Minister with the annual report referred to under section 24; and
- (m) do any other thing reasonably necessary for the effective administration of the Code.

10. Subject to section 59 of the Virgin Islands Constitution Order, 2007, the Commissioner may commence proceedings in respect of any offence committed under the provisions of the Code.

Institution of proceedings.
U.K.S.I. 2007
No. 1678.

11. The Commissioner shall have the powers conferred upon an inspector.

Commissioner to have powers of inspector.

12. (1) The Minister may, by Order published in the *Gazette*, designate a public officer who is trained and certified as a labour inspector to assist the Commissioner in the execution of his or her duties.

Designation of labour inspectors.

(2) An inspector shall be furnished with a certificate of appointment in the form prescribed and, when visiting any premises or questioning a person in connection with the exercise of his or her powers, shall produce the certificate.

13. An inspector shall, under the general directions of the Commissioner,

Duties and responsibilities of inspectors.

- (a) ensure that the laws in force concerning conditions of employment and the protection of employees in their occupation are being duly applied;
- (b) give technical information and advice whenever necessary, to employers and employees as to the

most effective means of complying with existing laws;

- (c) submit to the Commissioner written inspection reports within seven days after each inspection and indicate in those inspection reports difficulties or abuses not specifically covered by the existing laws;
- (d) compile such statistical data in the course of his or her duties as he or she may be instructed by the Commissioner to establish; and
- (e) assist, as required, in the resolution of disputes or complaints.

Powers of inspectors.

- 14.** (1) An inspector may
- (a) enter freely and without previous notice at any hour of the day or night during the working hours of the business, any workplace liable to inspection;
 - (b) enter by day any premises which he or she may have reasonable cause to believe to be liable to inspection;
 - (c) interview alone or in the presence of witnesses, the employer or any person in or at a workplace on any matter concerning the application of the requirements of the law relating to labour;
 - (d) carry out any examination, test or enquiry which he or she may consider necessary in order to ensure that the requirements of the law are being observed;
 - (e) require the production of any books, registers or documents, the keeping of which is required by any law relating to conditions of employment, in order to see that they are in conformity with the provisions of the Code, and copy such documents or make extracts from them;
 - (f) enforce the posting of notices as required by law;

- (g) take or remove from any workplace for purposes of analysis, samples of materials or substances used or handled, subject to the employer or the employer's representative being notified at the time of such taking or removal of any such samples of materials or substances;
- (h) require from any employer, information as to the number of employees and the wages, hours and conditions of employment of the employees or returns consisting of that information;
- (i) issue a written warning to an employer requiring him or her to remedy any contravention identified during an inspection, within a stated time which is reasonable in the circumstances; and
- (j) be accompanied by a police officer or any other employee of the Crown where the Commissioner has reasonable grounds to believe that the presence of the police officer or Crown employee is necessary for the discharge of the inspector's duties.

(2) A person aggrieved by the decision of an inspector in the exercise of a power under this section may seek redress from the Commissioner.

(3) Where the aggrieved person is dissatisfied with the decision of the Commissioner, he or she may apply to the Tribunal for an appropriate remedy.

15. (1) Where an inspector has reasonable cause to believe that at any workplace, the building, the layout of machinery and equipment or working method constitutes a threat to the safety or health of any employee, he or she shall serve written notice upon the owner or person in charge of the workplace requiring the owner or the person in charge to carry out within a specified time, alterations to the workplace, the building, layout or working of machinery and equipment or working method as may be necessary to secure compliance with the law relating to the safety and health of the employees.

Action of inspector in case of threat to safety or health.

(2) Where upon a subsequent inspection the inspector identifies a continuing breach, he or she shall give the employer a final written notice to comply within a specified time reasonable in the circumstances.

(3) An employer who fails to comply with the final notice commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Inspection of premises where domestic servants are employed.

16. (1) Notwithstanding section 14(1)(a) and (b), an inspector shall not visit or inspect any private premises where domestic servants or others are employed or believed to be employed except between the hours of 8:00 a.m. and 6:00 p.m., and in the presence of the employer.

(2) Where the Commissioner has reason to believe that an inspection beyond 6.00 pm. is necessary to address a contravention of the Code, the Commissioner shall cause an inspection to be conducted beyond 6.00 pm.

Notification of presence.

17. On the occasion of any inspection or visit, an inspector shall notify the employer or his or her representative of his or her presence, unless he or she considers that such notification may be prejudicial to the performance of his or her duties.

Limitations and restrictions on inspectors.

18. (1) An inspector shall

- (a) not have a direct or indirect interest in any enterprise under his or her inspection or supervision;
- (b) not reveal at any time manufacturing or commercial secrets or working processes which may come to his or her knowledge in the course of his or her duties; and
- (c) treat as confidential, the source of any complaint bringing to his or her notice a defect or breach of the law and shall give no intimation to the employer or his or her representative that a visit of inspection was made in consequence of the receipt of such complaint.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Records and returns.

19. (1) An employer shall, at an address in the Virgin Islands, keep in such form as the Commissioner may approve,

- (a) an accurate record in respect of each employee showing
 - (i) the employee's name, address, occupation and hiring dates either by the employer or by a predecessor-employer;
 - (ii) the immigration status of the employee and, where applicable, the date of expiry of the employee's work permit;
 - (iii) the number of hours worked each day in each pay period;
 - (iv) the basic and other wages paid to the employee for each pay period;
 - (v) the leave taken by the employee by type, duration and date; and
 - (vi) the protective gear issued to the employee, and
- (b) a register of all employees under the age of eighteen years,

and, where applicable, shall keep at that address a copy of each written statement furnished to an employee under section 45.

(2) Where an employee's services have been terminated for any reason, an employer shall preserve the employee's records and the written statements referred to in subsection (1) for a period not less than six years after the date of termination.

(3) Upon request by an inspector, the employer shall make the employee's record available to the inspector for inspection and copying by the inspector, in the presence of the employer or his or her representative.

(4) An employer who contravenes subsection (1) or (2) with intent to deny an employee his or her statutory benefits with respect to his or her employment commits an offence and is liable on summary conviction to a fine not exceeding three thousand dollars.

(5) Notwithstanding subsection (1), if there is not a present record of an employee's latest hiring date by virtue of the fact that the requirement of subsection (1) was not in effect on that date, the question of

the employee's hiring date shall be one to be disposed of by the procedures set forth in section 26.

(6) The Commissioner may, within such period as he or she may specify by notice in the *Gazette* and any local newspaper circulating in the Territory, require employers to submit returns containing such particulars and information contained in the employers' records kept under subsection (1) as he or she may specify in the notice.

(7) The Commissioner may from time to time compile, analyse and tabulate statistics collected by way of returns submitted under this section and, subject to the directions of the Minister, cause the statistics or abstracts to be published in a form determined by the Commissioner, without disclosing the identity of the employer, employee or agricultural or industrial undertaking.

Obligations of employers.

20. An employer whose premises are visited by an inspector shall

- (a) permit the inspector access to any place or undertaking to be inspected;
- (b) furnish the inspector with any information as will enable him or her to carry out the duties of his or her office; and
- (c) grant to the employees and their representatives, every facility for communicating freely with the inspector.

Offences and penalties in relation to Commissioner and inspectors.

21. A person who

- (a) wilfully, hinders or obstructs the Commissioner or an inspector in the exercise of the powers and duties conferred on him or her by the Code,
- (b) fails or refuses, without good reason, to permit his or her employees free access to and communication with an inspector while on a visit for inspection,
- (c) refuses or wilfully neglects to furnish the Commissioner or an inspector, any information or return or particular that may be required of the employer under the Code, or

- (d) knowingly furnishes, or causes, or allows to be furnished to the Commissioner or an inspector, any information or return which is false in any material particular,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

22. Where an act or default is committed by an agent which constitutes an offence under the Code, the employer is liable, unless he or she proves that the offence was committed without his or her consent or connivance.

Liability of employer for agent, etc..

23. (1) A person who commits an act of victimisation against another person commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Victimisation.

(2) For the purposes of subsection (1), a person shall be taken to commit an act of victimisation 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 the Code;
 - (ii) has brought, or proposes to bring, proceedings under the Code 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 the Code;
 - (iv) has attended or proposes to attend an inquiry under the Code or to provide evidence or testimony as a witness;
 - (v) has made a good faith allegation that a person has committed an act of discrimination in contravention of the Code; or

- (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).

Annual reports.

24. The Commissioner shall, on or before 30th April in each year, prepare and furnish the Minister with a report, in such form as the Minister may approve, on the operations of the Labour Department during the preceding calendar year, including

- (a) unaudited revenue and expenditure statements,
- (b) the number of
 - (i) jobs created and jobs lost;
 - (ii) work permits granted;
 - (iii) workplace accidents;
 - (iv) work days lost due to industrial action;
 - (v) strikes;
 - (vi) inspections undertaken;
 - (vii) infringements of the Code;
 - (viii) complaints received from employees and employers; and
 - (ix) disputes settled by the Minister, the Commissioner and the Tribunal,during that year,
- (c) general level of salary increases,
- (d) a status report on occupational safety and health, and
- (e) other information as the Minister may specify in writing,

and the report shall be laid before the House of Assembly by the Minister not later than three months after receiving the report.

25. Proceedings shall not lie against, and compensation shall not be payable by, the Commissioner, an inspector or any other officer employed in carrying out the Code in respect of any act done in good faith under the Code.

Limitation of liability.

PART II SETTLEMENT OF DISPUTES

26. (1) Any dispute or complaint arising out of any matter covered by the Code or any law relating to labour or generally out of the relationship between the employer and the employee may be referred by either party concerned or his or her representative to the Commissioner for settlement.

Procedure for the settlement of disputes.

(2) Upon receipt of the reference, the Commissioner shall investigate the matter and make every effort to dispose of the issue raised in the reference by voluntary settlement in accordance with industrial relations practice, and in pursuance thereof he or she may

- (a) request the parties to meet with him or her jointly or separately;
- (b) request the parties to state the facts as they know them and their respective positions on the issue;
- (c) request the parties to present witnesses and he or she may examine any person in relation to the issues, either alone or in the presence of others, at his or her discretion; and
- (d) utilise the process of conciliation or mediation or any other device designed to facilitate voluntary settlement.

(3) Where the Commissioner fails to achieve a settlement within thirty days from the date of reference under subsection (2) or such longer period as the parties may agree, he or she shall transmit the matter, with a full written report on the matter, to the Minister.

27. On receipt of a report transmitted by the Commissioner under section 26(3), the Minister may

Action by Minister.

- (a) himself or herself attempt to achieve a voluntary settlement of the issue, taking the necessary steps he or she deems appropriate;
- (b) refer the matter to a Board of Inquiry or the Tribunal within twenty-one days in accordance with the provisions of section 28; or
- (c) permit the parties to submit their dispute to mediation.

Referral to
Tribunal or
Board of Inquiry.

28. (1) Where, after the expiration of a period of twenty-one days from the date of transmission of the matter in accordance with section 26(3) or such longer period as the parties may agree, the Minister fails to achieve a settlement using the processes set out in section 27(a), he or she shall

- (a) refer the matter to the Tribunal for settlement where
 - (i) the dispute is one involving essential services; or
 - (ii) in the opinion of the Minister, the dispute is likely to endanger the health or safety of employees or the public; or
 - (iii) the dispute is one involving the application of a provision of an enactment, collective agreement or contract of employment;
- (b) in the case of a dispute other than a dispute mentioned in paragraph (a), refer the matter for recommendation to a Board of Inquiry, if the parties agree in advance to accept the recommendation of the Board; or
- (c) in the case of a dispute other than a dispute mentioned in paragraphs (a) and (b), give notice in writing to the parties concerned that he or she intends to refer the dispute to the Tribunal for settlement.

(2) Where the Minister has given notice under subsection (1)(c), he or she shall refer the dispute to the Tribunal for settlement unless,

within fourteen days from the date on which he or she gave the notice, he or she receives written notice from either the complainants' representative, or in the absence of the complainant's representative, from a majority of the complainants involved in the dispute, that the majority of the complainants object to the reference of the dispute to arbitration and agrees to withdraw the complaint.

(3) A strike shall not take place in an essential service.

(4) A strike shall not take place in an undertaking that is not an essential service unless

(a) the Commissioner has failed to achieve a settlement within the period specified under section 26(3);

(b) fifty percent plus one of the employees voted in favour of a resolution for that action; and

(c) at least three working days written notice is given to the Minister, the employer and any other interested party, of an intention to embark on that action.

(5) A lockout shall not take place in an essential service.

(6) A lock out shall not take place in an undertaking that is not an essential service unless

(a) the Commissioner has failed to achieve a settlement within the period specified under section 26(3); and

(b) at least three working days written notice is given to the Minister, the employees and any other interested party, of an intention to embark on that action.

(7) A strike or lockout shall cease on reference of the matter by the Minister to the Tribunal.

(8) A person who contravenes subsection (3), (4), (5), (6) or (7) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Establishment of
Arbitration
Tribunal and
Appointment of
Members.

29. (1) For the purposes of section 27 or 28(1)(a), there is established an Arbitration Tribunal to settle any dispute or complaint transmitted to it by the Minister under section 28.

(2) The Tribunal shall comprise a Chairperson and two other members.

(3) The Chairperson shall be an attorney-at-law of at least ten years' standing, and shall be appointed by the Minister in consultation with Cabinet for a period of two years.

(4) The two other members shall be appointed by the Minister upon recommendation of the parties to the dispute.

(5) A person appointed to the Tribunal shall not be removed while he is in charge of a case or before the expiry date of his or her term, except for misbehaviour or incapacity, whether arising from infirmity of body or mind, to perform his or her duties.

(6) In exercise of its functions, the Tribunal shall not be subject to the direction or control of any other person or authority.

(7) The Minister shall provide administrative support for the Tribunal.

(8) The Minister responsible for finance, in consultation with Cabinet, shall determine allowances to be paid to the members of the Tribunal.

Findings of
Tribunal binding.

30. (1) The findings of the Tribunal shall be binding upon the parties to the dispute and may only be appealed to the High Court on a point of law.

(2) The Tribunal shall in the exercise of its powers

(a) make an order or award as it considers fair and just having regard to the interests of the persons concerned and the community as a whole; and

(b) act in accordance with equity, good conscience and the substantial merits of the case before it having regard to the principles and practices of good industrial relations.

(3) The Tribunal shall not make an order as to costs except

for exceptional reasons which the Tribunal considers appropriate.

(4) An order or award of the Tribunal shall have the same force as an order or award of the High Court.

31. (1) For the purpose of inquiring into, reporting on and making recommendations for the settlement of any dispute or complaint which is transmitted to him under section 26(3), the Minister, in accordance with the provisions of section 27(b) or section 28(1)(b), may appoint a Board of Inquiry (in the Code referred to as a "Board").

Appointment of Board of Inquiry.

(2) A Board shall consist of such number of members, who shall be appointed by the Minister, as he may determine.

(3) Where the number of members is more than one, an equal number shall be appointed to represent employers and employees respectively on their nomination or on the nomination of their respective organisations, where such organisations exist.

(4) The Minister shall appoint a person who does not represent the interests of employers or employees to be chairperson of a Board.

(5) A Board shall enquire into any matter referred to it and shall, within thirty days or a longer period as the Minister may approve in writing, submit its report and recommendations to the Minister, who shall release the report and recommendations to the parties to the dispute within fourteen days of his or her receipt of the report.

32. (1) A Tribunal or a Board may summon a person to attend before such Tribunal or Board, as the case may be, and to give evidence or to produce any document or other record in the possession or under the control of such person.

Powers of Tribunal and Board to summon witnesses and administer oaths.

(2) A summons under this section may be served either personally or by registered post.

(3) A Tribunal or a Board may administer oaths or take the affirmation of any witness appearing before them.

(4) A person who knowingly makes a false statement under oath or affirmation commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

Summons of Tribunal and Board to be obeyed.

33. Any party appearing or any person summoned pursuant to section 32(1) to attend and give evidence or to produce any document or other record before a Tribunal or a Board shall be

- (a) bound to obey the summons served upon him or her; and
- (b) entitled to the same right or privilege as he or she would have before a court.

Failure to obey summons of Tribunal or Board.

34. A person who fails without reasonable cause to obey a summons served upon him or her pursuant to section 32(1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Tribunal and Board to regulate own proceedings.

35. A Board or the Tribunal, as the case may be, shall regulate its own proceedings and publish general guidelines concerning the procedures to be observed.

Arbitration Ordinance not to apply. Cap. 6

36. The Arbitration Ordinance shall not apply to any proceedings of the Tribunal under the Code or to any award made by it.

PART III ADVISORY COMMITTEES

Tripartite consultation.

37. The Minister shall consult with employers and employees or their respective representatives, if any, from time to time in such manner as he or she may think fit, on any matter affecting the relationship between employers and employees and conditions of employment in general.

Advisory Committees.

38. (1) The Minister may appoint an Advisory Committee to investigate or review

- (a) the conditions of employment in general or of a particular trade or occupation;
- (b) the extent of unemployment;
- (c) the cost of living and the basic minimum wage;
- (d) the general conditions of the economy of the Virgin Islands;

- (e) the minimum basic wage rate which should be payable in respect of any trade or occupation or employment in general;
- (f) the application of International Labour Organisation Conventions extended to the Virgin islands and requests by the Government of the United Kingdom for International Labour Organisation Conventions to be extended to the Virgin Islands;
- (g) employment policies and laws; or
- (h) general questions relating to migration for employment,

and to make recommendations to the Minister on those matters.

(2) Subject to subsection (3), a Committee shall consist of an equal number of employers and employees and representatives of such other interest groups as the Minister deems appropriate.

(3) The Minister shall appoint a person who does not represent the interests of employers or employees to be chairperson of a Committee.

(4) The members representing employers and employees shall be appointed after consultation with representatives of the employers and employees concerned.

(5) A Committee may hold public meetings before which it may, by public notice, invite employers and employees and their representatives to appear and make recommendations.

(6) A Committee shall seek to determine by consensus all questions arising at its meetings.

- 39.** (1) A Committee shall
- (a) issue interim reports with recommendations by the Minister; and
 - (b) issue a final report with recommendations within one month of completing its investigation.

Reports of
Committee.

(2) The reports referred to in subsection (1) shall be addressed and delivered to the Minister, along with minority or dissenting reports, if any.

Orders.

40. (1) Having regard to the recommendations of the Committee, the Minister shall, upon approval of the Cabinet, make an Order prescribing the conditions of employment, or the minimum basic wage rate payable for employment, in any industry, trade, occupation or employment.

(2) For the purposes of the Code, the reference to minimum basic wage shall be construed to mean minimum basic wage in monetary terms.

Variation of Orders.

41. The Minister may, upon approval of the Cabinet, vary the provisions of an Order made under this Part, but only with like advice and in the manner set out in this Part.

PART IV BASIC CONDITIONS OF EMPLOYMENT

Public policy.

42. The following expressions of public policy underlie and shall be used in the interpretation of this Part:

- (a) an employee should know what his or her job consists of, what his or her employment conditions are, and, if his or her employment is terminated, the reason for the termination;
- (b) an employee is entitled to reasonable breaks in employment, whether because of physical disability or for rest and rehabilitation;
- (c) in the interests of spreading employment opportunities and of preventing industrial accidents, there shall be a reasonable limitation upon working hours of employees;
- (d) to the extent that circumstances dictate that the normal hours of work be reasonably extended, premium pay ought to be received.

Conformity with the Code generally.

43. An employer shall not provide employment, nor is an employee obliged to accept employment, under terms and conditions which do not conform generally with the minimum provisions of the Code.

44. (1) An employer and employee may enter into an individual employment contract, either written or oral, which specifies conditions of employment, but any provision which

Forms of
employment
contracts.

- (a) establishes conditions which fall below the minimum employment standards established by the Code; or
- (b) requires that the employee refrain from associating with other employees or with a trade union for collective bargaining purposes,

is void.

(2) Subject to any applicable work permit, where an employment contract for a fixed term is renewed on one or more occasions so that the total period involved is twelve months or more, such contract shall, for the purposes of the Code, be deemed to be for an indefinite period.

(3) When it appears to the Tribunal appointed in accordance with section 29 that a fixed term employment contract is renewed in such a way as to evade the provisions of the Code, the Tribunal shall subject to any applicable work permit, determine such contract to be for an indefinite period.

(4) It shall be lawful for an employer, or group of employers, to enter into a written collective agreement with two or more employees or their representatives, and the collective agreement shall

- (a) be signed by the parties to the agreement; and
- (b) be for a period of not less than three years and not more than five years.

(5) A copy of a collective agreement reached under subsection (4) shall be lodged in the prescribed manner with the Commissioner within seven days of being signed by the parties, for registration, as a collective agreement, and the collective agreement shall, upon being so registered, be binding on the parties.

(6) A collective agreement lodged for registration under this section which, in the opinion of the Commissioner, is in conflict with the requirements of section 43 shall be returned to the parties for amendment, and shall not be registered by the Commissioner until he or she is satisfied that the provisions of that section have been met.

Statement of
working
conditions.

45. (1) Where an employee is engaged by an employer for a term of employment exceeding four months, the employer shall furnish the employee with a written statement within ten days of engagement containing at least

- (a) the name and address of the employer and employee and the general responsibilities and related duties for which the employee is hired;
- (b) the regular hours of work and rest periods;
- (c) the starting pay and methods of computing the same;
- (d) the interval between payment of wages;
- (e) the term of employment, if other than indefinite;
- (f) the period of probation, if any; and
- (g) the employee's leave and vacation entitlement.

(2) With respect to persons currently employed for periods exceeding four months on the date of the coming into force of the Code, each employer shall, if he or she has not already done so, within twenty days after that date, furnish each person with a written statement which shall set forth

- (a) the name and address of the employer and employee and the general responsibilities and related duties of the employee;
- (b) the regular hours of work and rest periods;
- (c) the employee's pay and methods of computing the same;
- (d) the interval between payment of wages;
- (e) the term of employment, if other than indefinite;
- (f) the period of probation, if any; and
- (g) the employee's leave and vacation entitlement.

(3) Where, subsequent to the giving of a statement under

subsection (1) or (2), the employer desires to change the responsibilities and related duties of an employee as set forth in such statement, he or she shall at the time he or she effectuates any such change, furnish such employee with a new written statement.

(4) Notwithstanding subsection (3), where there is no organisation representing an employee who is employed for an indefinite period, the employer shall in consultation with the employee review the employee's wages and other terms and conditions of employment at least once every two years.

46. (1) The probationary period of any employee shall not exceed four months, except in the case of an employee of the rank of a supervisor or above, where the probationary period shall not exceed six months.

Probationary period.

(2) During the probationary period the employee shall be given reasonable training and general orientation in the duties and responsibilities of the position for which he or she was hired and the employee shall be informed on a monthly basis of his or her progress.

(3) Notwithstanding subsection (1),

(a) where the contract of employment does not exceed four months, probationary period need not be included in the contract of employment, but where the contract does not specify a probationary period, subsection (1) shall apply; and

(b) the employer may, after consultation with the employee or his or her representative extend the probationary period for a further period not exceeding the duration of the original probationary period, where it is in the interest of the employee to do so.

(4) An employer shall, within fourteen days of the expiry of the probationary period, inform the employee in writing of whether the employee has satisfactorily completed the probationary period, failing which the employee is deemed to have satisfactorily completed the probationary period.

(5) An employer who has informed an employee that the employee has satisfactorily completed the probationary period shall not place the employee on any further period of probation for the same job.

Rest periods and normal hours of work.

47. (1) Except where otherwise provided by a collective agreement, every employer shall permit each of his or her employees to enjoy in every period of seven consecutive days a period of rest comprising at least twenty-four consecutive hours.

(2) The normal hours of work, exclusive of the meal interval, shall be eight hours and the standard work week shall be forty hours.

(3) The Minister may, after considering the recommendations of an Advisory Committee appointed under Part III, vary the standards prescribed in this section by issuing an Order to that effect.

Meal intervals.

48. (1) An employer shall not require or permit an employee

(a) to work for more than five hours continuously without a meal interval of not less than one hour or, where subsection (2) is applied, of not less than the agreed time;

(b) to perform any work during his or her meal interval.

(2) An employer may agree with his or her employee to reduce the employee's meal interval to not less than thirty minutes.

(3) For the purposes of this section, a period shorter than that specified under subsections (1)(a) or (2) shall not be considered as a meal interval.

Premium pay.

49. (1) Subject to subsections (3) and (4), for any hours of work accrued by an employee for his or her employer at the employer's request on a rest day, or in excess of eight hours on any work day or in excess of forty hours in any week, the employer shall pay the employee at the rate of at least one and one half times his or her basic rate of pay.

(2) The Minister may, after considering the recommendations of an Advisory Committee appointed under Part III, and after approval of the Cabinet, vary the standards prescribed in this section by issuing an Order to that effect.

(3) In arranging for overtime work, the employer shall take into account the special circumstances of young persons under eighteen years of age, pregnant women, nursing mothers and disabled persons, and for the purposes of this subsection "disabled person" has the meaning assigned to it by section 113.

(4) The provisions of subsection (1) shall not apply to salaried employees whose terms and conditions of employment are fixed at a level which adequately compensates them, including employees holding positions of supervision or management.

(5) An employer shall not classify an employee as holding a position of supervision or management under subsection (4) if his or her duties and compensation are not commensurate with such status and the Tribunal appointed under the Code or a court may inquire into the matter and make a determination giving due regard to this section and to the right of an employer to manage his or her business.

50. (1) Except as provided in subsection (2), an employer shall not employ any person in excess of twelve hours in any period of twenty-four hours subject to a maximum of sixty hours in any period of one hundred and sixty-eight hours.

Limitation on overtime.

(2) The Minister may, in his or her discretion, approve in writing a temporary increase in the hours of work authorised by the Code in any establishment in the following circumstances:

- (a) in the case of an actual or apparent accident, or urgent work to the plant or equipment, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment;
- (b) in the event of abnormal pressure of work due to special circumstances in so far as the employer could not be expected to resort to other measures; or
- (c) in order to prevent the loss of perishable goods,

but in no case shall the night rest period or, for employees working at night, the day rest period be less than eight hours.

(3) In the case where, because of urgency of the circumstances, the employer could not reasonably be expected to apply in advance for approval, that employer shall not be deemed to have contravened subsection (2).

Payment where employee stopped or prevented from working full day or shift.

51. Where an employee is required to report for work and does so but is prevented from working by an act of God or force *majeure*, or is stopped from working by his or her employer or anyone lawfully acting for him or her, payment to that employee shall be made on the following basis:

- (a) where the employee works for more than six hours a day, the employee shall be paid for the day; or
- (b) where the employee works for less than six hours, he or she shall be paid for the time so worked at his or her basic hourly rate of pay.

Pay for period of stand-by or being on call.

52. (1) Where an employee is required by his or her employer to remain on stand-by at the work place, he or she shall be regarded as being on duty for that period and be paid wages accordingly.

(2) Where an employee is required by his or her employer to remain on call for any period, the employee, shall be paid an allowance to be agreed upon by the employer and employee.

Payment in respect of public holidays.

53. Where an employee does not work for his or her employer on a public holiday, he or she shall not suffer loss of pay, that is to say, he or she shall be paid the basic wage he or she would have received for the work performed on that day, had it not been a public holiday, provided that

- (a) he or she worked on his or her scheduled work-day immediately before and his or her scheduled work day immediately after the said public holiday; and
- (b) the public holiday was not one of his or her scheduled work-days.

Payment for work on public holidays.

54. (1) Where an employer causes an employee to work on a public holiday, the employer shall pay to the employee, in addition to the basic wage the employee is entitled to by virtue of section 53, a basic hourly rate of at least one and one-half times his or her basic wage for each hour worked on that day.

(2) In the case of employees remunerated on a piece- work basis or by the task, the expression “basic rate of pay” shall, for the purposes of this section, be deemed to be equal to the employee’s earnings over the period of thirteen weeks immediately preceding the date payment is made, divided by the number of days worked during that period.

- (3) The provisions of this section shall not apply to
 - (a) persons holding positions of supervision or management whose basic rate of pay and other terms and conditions of employment shall be fixed by their employers at a level which adequately compensates them; or
 - (b) employees who are remunerated on a piece work basis or by the task and are not subject to continuous supervision.

55. (1) The money wages of an employee shall be payable in legal tender, provided that the payment of wages by cheque on a bank in the Virgin Islands or by direct deposit or by postal order shall be deemed to be payment in legal tender in cases in which payment in such manner is customary or necessary or is consented to by the employee. Form of wages.

(2) Where an employer pays an employee's wages by cheque drawn on a bank in the Virgin Islands and the cheque is dishonoured by non acceptance upon presentation for payment, and upon subsequent presentation the same occurs, the employer is liable to pay to the employee, in addition to the employee's wages,

- (a) one-tenth of the value of the employee's cheque; and
- (b) any charges the employee may have suffered upon presentation of the cheque, whether for the first time or a subsequent time.

(3) Nothing contained in subsection (1) shall be construed as prohibiting the giving of food, a dwelling-place or other allowances and privileges in addition to money wages as a remuneration for services, except that

- (a) the allowances and privileges shall not include any alcoholic beverage or any noxious drugs;
- (b) the allowances are appropriate for the personal use and benefit of the employee and his or her family; and
- (c) the allowances and privileges are fairly evaluated at cost to the employer.

(4) Nothing in this section shall be construed as prohibiting the distributing to an employee of gratuity received from customers of the employer as part of remuneration for services, and the amount distributed in gratuity shall not be considered a part of any basic wage which is fixed by an Order made under section 40.

Wages to be paid to employee.

56. Wages shall be paid directly to the employee to whom they are due or to a person specified by him or her in writing except as provided in section 58.

Deductions.

57. (1) Subject to subsection (2), an employer may deduct from remuneration payable to an employee under any contract of employment the following:

- (a) any tax, rate or other deduction imposed by any law;
- (b) any money advanced by the employer by way of loan, provided the amount deducted accords with the agreement made between the employer and the employee at the time of the loan, and that no interest, discount or similar charge may be imposed on such loan; or
- (c) any sum of money which an employee has authorised in writing to be deducted for other purposes, except for the purpose of obtaining or retaining employment for or in respect of any fine, or for bad or negligent work or for damage to the materials or other property of the employer, except when the damage is occasioned by the willful misconduct of the employee.

(2) The total sum which may be deducted or stopped in any pay period shall not exceed one-third of the gross wage, excluding the value of any payments in kind, of the employee in the applicable pay period.

(3) Nothing in this section shall prevent an employer from recovering from an employee, whose employment is terminated, the outstanding balance of a loan granted by the employer to the employee, which loan may be deducted from any accrued gross wages due to the employee.

Statement of deductions.

58. Where an employer makes a deduction from an employee's

wages, he or she shall, simultaneously with the payment made, furnish the employee with an accurate statement of wages earned and describe the deduction made.

59. (1) Notwithstanding anything to the contrary contained in any other law, the remuneration of an employee is liable to attachment or seizure within the following limits only: Limitation on attachment or seizure of wages.

(a) up to one-half in respect of maintenance payments; or

(b) up to one-third in respect of all debts of any kind and however contracted.

(2) The proportion specified in subsection (1)(b) shall not be applicable cumulatively on the ground that there are several debts or several creditors.

(3) The aggregate of the sums attached and seized under subsection (1)(a) and (b) shall not, in the case of any employee, exceed fifty percent of his or her remuneration.

(4) The sums attached or seized shall be divided among the claimants in proportion to their established claims.

60. (1) In an establishment in which a customer pays a gratuity which is a specified percentage of the customer's bill, the employer shall cause the gratuity to be pooled and distributed among his or her employees in a period of four weeks in accordance with this section. Gratuity.

(2) Where an establishment to which subsection (1) applies has at least five employees, the employer shall establish a gratuity committee (in this section referred to as the "Committee") for periodic distribution of the gratuity.

(3) The Committee shall consist of three representatives as follows:

(a) one person appointed by the employer to represent the employer;

(b) two persons representing the employees to be elected by the employees within the first six weeks of each year to serve for a term of one year and the results of such election shall be filed with the Labour Department by the 28th

day of February each year, provided that where any person so elected is unable for any reason to serve his or her full term, the employees may elect another person to represent them in his or her stead and for the remainder of his or her term and shall file the result of the election with the Labour Department within fourteen days of obtaining that result.

(4) From the total amount of gratuity accumulated over every period of four weeks there shall be deducted by the employer the Government tax, if any, on gratuity.

(5) A further amount to be agreed by the employer and employee or if there is a Committee, the Committee but not exceeding seven and a half percent of the balance after the Government tax, if any, is deducted may be retained by the employer for administrative expenses.

(6) The employer shall distribute the remainder of the gratuity among the employees of the establishment on such basis as may be agreed in writing from time to time by the employer and employees or if there is Committee, by the Committee.

(7) The employer prepared a record showing the total amount of gratuity accumulated in each period of four weeks, the total amount of Government tax which is deducted, the amount retained by the employer for administrative expenses, the list of employees to whom the balance is distributed and the amount paid to each of those employees.

(8) Within seven days after the close of the period to which the record relates, one copy, along with the amount of tax deducted, if any, shall be forwarded by the employer to the Commissioner of Inland Revenue who shall issue a receipt for the amount received, and one copy shall be sent by the employer to the Commissioner for his or her information.

(9) An employer who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

Periods and place
of wage
payments.

- 61.** (1) Wages shall be paid at regular time intervals of
- (a) not more than two weeks, in the case of employees whose wages are fixed by the hour, day, week or fortnight, or by the piece of work performed;

- (b) not more than one month, in the case of employees whose wages are fixed on a monthly or annual basis; or
- (c) in the case of employees employed to perform a task the completion of which requires two weeks or more, not more than one fortnight in proportion to the amount of work completed,

but the provisions of this section shall not apply where a collective agreement is entered into fixing other intervals for the payment of wages.

(2) Payment of wages shall be made at or near the work place and on ordinary working days only, but where, for practical reasons, this requirement cannot apply, the employer shall allow the employee reasonable time off with pay to enable him or her to receive his or her wages.

(3) Any arrangement under subsection (2) shall be approved in writing by the Commissioner.

(4) An employer shall not pay wages to any employee at or within any retail shop or place engaged in the sale of spirits, wine, beer or other spirituous or fermented liquor, except where such wages are paid by the owner or occupier of such shop or place to any employee *bona fide* employed by him in that shop or place.

62. An employer shall not, in any employment contract or in any other manner, coerce or require, or attempt to coerce or require, an employee to

Employee not to be required or coerced regarding manner of spending wages, or to use stores or services.

- (a) spend any part of his or her wages at any place or in a particular manner, or with any person; or
- (b) purchase or make use of stores or services which may be available from shops or stores established at or in connection with any workplace.

63. An employee is entitled to leave privileges during the course of his or her employment in accordance with the Code.

Employees' leave rights generally.

64. (1) Subject to subsection (2), an employee who has successfully completed his or her probationary period is entitled to be granted vacation leave at the rates set out below in respect of each year of service:

Vacation leave.

- (a) employees with less than ten years' service, to a minimum of twelve normal working days;

- (b) employees with ten years' service and less than twenty years' service, to a minimum of fifteen normal working days; and
- (c) employees with twenty years' service or above, to a minimum of twenty normal working days.

(2) Where the employment contract provides for periodic employment, an employee shall qualify for the grant of vacation leave if he or she has worked with the same employer for an aggregate of not less than four months in any period of twelve months.

(3) An employee to whom subsection (2) applies is entitled to be granted one day of vacation leave for every twenty-six days worked in any period of twelve months, and any fraction of a day which is obtained by dividing the number of days worked by twenty-six shall be reckoned as one day.

(4) Where the employment contract provides for part-time employment, an employee shall qualify for the grant of vacation leave in accordance with subsection (1).

Vacation leave pay.

65. (1) An employee to whom section 64(1) or (4) applies shall be paid vacation leave pay at the basic wage rate, along with all allowances, at which he or she was paid in respect of the last normal working week immediately prior to the commencement of such vacation leave.

(2) An employee to whom section 64(2) and (3) applies shall be paid vacation leave pay at the basic daily wage rate for each day of his or her vacation leave.

(3) An employee who is employed on a piece-work basis or by the task shall, in respect of each day of his or her vacation leave, be paid vacation leave pay at the rate of 1/65th of the total basic wage, and the cash equivalent of any form of payment earned, in respect of the last thirteen weeks of employment (which need not be consecutive) immediately preceding the commencement of his or her vacation leave.

When vacation leave pay to be paid.

66. The payment of vacation leave pay shall be made not later than the last working day prior to the commencement of such vacation leave, unless the employer and the employee, or their representatives, agree otherwise.

Public holidays, etc. not to affect vacation leave.

67. (1) Public holidays, whether or not they fall during the period of vacation leave, and agreed regular days of rest shall not be counted as a part of the annual vacation leave provided in section 64.

(2) Periods of absence from work due to maternity leave, or to illness or injury for a period not exceeding three months, shall not be deducted from the period of an employee's service for the purpose of the calculation of vacation leave entitlement.

68. (1) The dates of the taking of earned vacation leave shall be fixed by agreement between the employer and the employee or their representatives and, by similar agreement, the employer may advance leave not yet earned.

Mutual agreement affecting vacation leave.

(2) By mutual agreement between the employer and the employee or their representatives, the vacation leave earned by the employee may be allowed to accumulate for a period of two years:

(3) Where vacation leave is allowed to accumulate under subsection (2), such leave shall be granted and taken not later than six months after the end of the second year, and at least two weeks uninterrupted leave shall be taken before the end of the year following that in respect of which entitlement arises.

(4) An agreement between an employer and an employee by which the employee would forego the taking of earned leave, shall not be deemed to deny the employee the right to vacation leave at a future time to be mutually agreed between the employer and the employee.

69. A person whose employment is for any reason terminated shall receive vacation leave pay in respect of vacation leave earned but not yet taken, and such vacation leave pay shall be calculated in accordance with section 65 and, where applicable, as though a reference in that section to the commencement of vacation leave were a reference to the date on which the person's employment is terminated.

Vacation leave pay upon termination of employment.

70. (1) Except as is provided for in section 71, an employee who becomes ill shall, where service with his or her employer is for a continuous period of not less than four months, be eligible for sick leave with pay for a period of not less than twelve working days in any one year.

Sick leave.

(2) Where the employment contract provides for part-time employment, an employee shall be eligible for sick leave in accordance with subsection (1).

(3) An employee to whom this section applies shall not be eligible for sick leave with pay unless that employee

- (a) notifies the employer of the illness on the first day of his or her absence; and
- (b) submits a medical certificate, signed by a medical practitioner or, where a medical practitioner is not available, in the Sister Islands only, by a qualified registered nurse employed by the Government, the BVI Health Services Authority or other public authority no later than the second day of illness.

Sick leave for periodic employees.

71. (1) An employee whose employment is periodic, and who has worked for the same employer for a total of not less than four months in that year, is entitled to sick leave with pay in that year, at the rate of one day for every twenty-six days worked.

(2) Any fraction of a day which is obtained by dividing the number of days worked by twenty-six shall be reckoned as one day.

(3) An employee to whom this section applies shall not be granted sick leave with pay unless he or she fulfils the conditions set out in section 70(3) as regards notification and the submission of a medical certificate.

Sick leave pay and social security benefit.

72. (1) Subject to sections 70 and 71 in respect of sick leave taken in any period of twelve consecutive months, the employer shall pay to the employee the basic wages which he or she would have received had the employee worked on each of those days.

(2) The minimum daily rate of sick leave pay payable to an employee to whom section 71 applies shall be the total basic wage paid to the employee in respect of the normal working week nearest, preceding that in which the illness occurred divided by the number of working days in the employee's normal working week.

(3) An employer is entitled to deduct for sick leave pay or benefits due to an employee under the Code any pay or benefits received by that employee under the Social Security Ordinance for his or her illness, injury or incapacitation.

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(4) The reference in this section and section 75 to the Social Security Ordinance includes the Regulations made under the Ordinance.

Entitlement to maternity and paternity leave.

73. (1) On the production of a certificate from a medical practitioner stating the presumed date of confinement, a female employee who

has completed twelve months continuous employment shall be granted a period of maternity leave by her employer.

(2) The period of maternity leave shall not be less than thirteen weeks of which not less than six weeks shall be taken after the date of confinement.

(3) The remainder of the period of maternity leave may be taken before the presumed date of confinement or following the period of compulsory leave, or partly before the presumed date of confinement and partly following the period of compulsory leave.

(4) The leave before the presumed date of confinement shall be extended by any period elapsing between that date and the actual date of confinement, and the period of compulsory leave to be taken after confinement shall not be reduced on that account.

(5) Where a female employee is granted maternity leave under this section, the husband or *de facto* spouse of the employee shall, upon application, be granted paternity leave without pay for such period as requested in the application, but in any case not exceeding one month, to be taken during the period his wife or *de facto* spouse is on confinement or not later than six months from the birth of the child.

(6) The Minister may make Regulations for the granting of leave to the adoptive parent of a child and paternity leave.

74. Where a female employee to whom section 73 applies is granted maternity leave under that section, and a medical practitioner certifies that any illness necessitating absence from work arises out of pregnancy or confinement or both, the employer shall grant the employee an additional period of leave not exceeding three months. Additional period of leave.

75. Where a female employee is granted leave in accordance with sections 73 and 74, she shall be entitled to any benefits as may be prescribed under the Social Security Ordinance or any other law for the time being amending or replacing it. Payment of maternity benefits.
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76. While a female employee is absent from work on maternity leave in accordance with sections 73 and 74 it shall not be lawful for an employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence. Employee not to be given notice of dismissal while on maternity leave.

Special leave for jury service and other purposes.

77. (1) An employee who is required to attend court for jury service shall be granted leave with full pay by his or her employer for that purpose.

(2) An employee who is required to attend any hearing of the Tribunal or Board constituted in accordance with Part II shall be granted leave on full pay by his or her employer for the purpose of attending such hearing.

Penalties and employee's right to recover.

78. (1) An employer who

- (a) enters into any agreement or contract or gives any remuneration for employment contrary to the minimum standards set out in section 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 or 62,
- (b) makes any deduction from the wages of an employee, or receives any payment from an employee, contrary to the sections mentioned in paragraph (a), or
- (c) otherwise contravenes any of the sections mentioned in paragraph (a),

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, and for each subsequent offence to a fine not exceeding seven thousand dollars.

(2) An employee is entitled to recover in a court so much of his or her wages as have not been paid to him or her, including any entitlement under section 55(2) but exclusive of sums lawfully deducted, plus interest at the rate to be determined by the court.

(3) An employer who contravenes section 47 and 48 commits an offence.

(4) An employer who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding five thousand dollars, and in addition, the court may order the employer to pay the employee such sum as the court thinks fit.

(5) An employer who

- (a) refuses or fails to allow an employee to take paid vacation leave to which he or she is entitled under this Part, or

- (b) fails to pay an employee any vacation leave pay, sick leave pay or special leave pay to which he or she is entitled under this Part,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars, and in addition, if the court is satisfied that by reason of the offence the employer owes the employee a sum of money, it may order the payment of such sum, with or without interest, to the employee as the court thinks fit.

79. (1) Where a minimum basic wage rate is fixed under section 40, an employer who fails to pay wages at or above such wage rate commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Penalty for not paying minimum basic wage rate.

(2) Where an employer is convicted of failure to pay wages at or above the minimum basic wage rate to an employee, then, if notice of intention so to do had been served upon the employer with the summons, warrant or complaint, evidence may be given of any failure on the part of the employer to pay wages at or above the minimum basic wage rate to that employee during the two years immediately preceding the date on which the information was laid or the complaint was served and, on proof of the failure, the court may order the employer to pay to the employee such sum as in the opinion of the court represents the difference between the amount which should have been paid during those years and that which was actually paid, plus ten percent interest per annum or part of it from the date any wage was due until it is paid.

(3) The power given in subsection (2) shall not derogate from any right of the employee to recover wages in any other proceeding, but the employee shall not be entitled to recover more than the sum of the difference referred to in subsection (2).

(4) Where an employer who is charged with an offence under this section proves to the satisfaction of the court that he or she used due diligence to enforce the execution of an Order made under section 40 and that the offence was in fact committed by an agent or some other person without the employer's knowledge, consent or connivance, he or she shall not be convicted of the offence, but this is without prejudice to the power of the court

- (a) to proceed against the agent or other person for the offence; and

(b) to order the employer to pay the sum due under subsection (2).

(5) On prosecution of an employer for failing to pay wages at or above the minimum basic wage rate, the onus shall lie on that employer to prove that he or she has not paid wages at less than the minimum basic wage rate.

Penalties where person other than employer may be violator.

80. (1) Where an employer is charged with an offence under this Part, the employer shall be entitled upon information duly laid by him or her, to have any other person whom the employer claims is the actual offender brought before the court and if, after the commission of the offence is proved, the employer proves to the satisfaction of the court that he or she has used due diligence to comply with the provisions of this Part and that the other person committed the offence in question without his or her knowledge, consent or connivance, the other person shall be summarily convicted of the offence.

(2) If an offence is proved under subsection (1), the court may order the employer or the other person convicted to pay to the employee any sums that are lawfully owed to the employee under the provisions of this Part, and the order may be enforced in the same manner as a judgement or order in a civil case.

(3) The power of the court to issue an order under subsection (2) shall not derogate from any right of the employee to recover the sum by any other proceeding provided that no employee shall be entitled in any other proceeding to recover any amount which the court has ordered to be paid under subsection (2).

PART V TERMINATION OF EMPLOYMENT, DISCIPLINARY ACTION, AND CONTINUITY OF EMPLOYMENT

Limitation on termination of employment by employer.

81. (1) The employment contract of an employee shall not be terminated by an employer without a valid and fair reason for such termination connected with the capacity or conduct of the employee, or with the operational requirements of the undertaking, establishment or service, pursuant to section 88, 89, 101 or 103, and unless the notice requirements in section 90 are complied with.

(2) Subject to section 89, an employer may not terminate the appointment of an employee unless the employer has informed the employee in writing of the nature and particulars of the complaint against the employee and has given the employee or his or her representative a fair

opportunity to defend himself or herself including access to his or her employment record.

82. (1) Without derogating from the generality of section 81, the termination of the employment contract of an employee on any of the following grounds is deemed to be unfair: Meaning of unfair dismissal.

- (a) trade union membership or participation in union activities outside working hours or, with the consent of the employer, during working hours;
- (b) seeking office as, or acting or having acted in the capacity of, an employees' representative;
- (c) making a complaint or participating in proceedings against the employer involving an alleged contravention of any enactment or having recourse to competent administrative authorities;
- (d) participation, or proposed participation in industrial action including a strike, which takes place in conformity with the provisions of the Code or any other labour relations law;
- (e) race, colour, sex, sexual orientation religion, ethnic origin, nationality, political opinion or affiliation, disability, HIV status, or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;
- (f) marital status, family responsibility, pregnancy or absence from work during maternity leave as certified by a medical practitioner;
- (g) temporary absence from work due to illness or injury as certified in accordance with section 70(3)(b), provided that the employee informs the employer on the first day of absence and submits the certificate to his or her employer no later than the second day of absence;

- (h) absence from work due to compulsory military service or other civil obligation in accordance with law;
- (i) the 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.

(2) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding three thousand five hundred dollars.

Constructive dismissal.

83. (1) An employee is entitled to terminate his or her employment contract 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 contract.

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

Appeals against unfair dismissal.

84. In any case where an employee or his or her representative alleges that such employee is unfairly dismissed and no settlement of the allegation is reached in direct discussion with the employer, the allegation may be referred to the Commissioner in accordance with the provisions of section 26, by either the employer or the employee, or by their representatives.

Burden of proof.

85. (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.

(2) In the circumstances referred to in section 83, it shall be for the employee to prove the reason which made the continuation of the employment contract unreasonable.

(3) The test as to whether or not a dismissal was unfair under section 82 or 83 is whether or not, under the circumstances the employer acted unreasonably.

Remedies for unfair dismissal.

86. (1) Where the Tribunal determines upon a dispute referred to it under section 27 that the dismissal was unfair or illegal, the Tribunal

- (a) may order either that

- (i) the employee be reinstated;
- (ii) the employee be re-engaged in a position that is substantially equivalent if the post held by the employee is not immediately available; or
- (iii) compensation be paid in lieu of reinstatement or re-engagement,

if this remedy is acceptable to both parties; or

- (b) may order the employer to pay the employee such punitive sum as it thinks fit.

(2) Where the Tribunal orders that compensation be paid, it shall take into account, among other things,

- (a) any vacation pay earned, but not taken;
- (b) any wages lost by the employee, on account of the dispute, up to the date of determination of the issue by the Tribunal;
- (c) the termination notice to which the employee would have been entitled;
- (d) the employment category of the employee, his or her seniority and the ease or difficulty with which he or she can secure alternative employment; and
- (e) the duty of the employee to seek to mitigate his or her losses.

87. (1) Where an employee reaches the age at which he or she becomes entitled to an age benefit under the Social Security Ordinance, the employer and employee may agree on a date upon which the employee's services shall be terminated.

Retirement of employee entitled to age benefit under Social Security Ordinance Cap 266.

(2) For the purposes of subsection (1), an employee reaches the age at which he or she becomes entitled to an age benefit

- (a) under the Social Security Ordinance, upon attaining the age of sixty five years; or

- (b) under a pension plan or retirement scheme, upon becoming eligible for a pay-out in accordance with that pension plan or retirement scheme.

(3) Any date agreed upon pursuant to subsection (1) shall take into account the notice periods specified in section 90.

Termination of employment contract within probationary period and short term contracts.

88. (1) The employment contract of any employee may be terminated by the employer at any time during the probationary period for any valid and fair reason with twenty-four hours notice.

(2) Where an employment contract is for a specified term not exceeding four months, an employer may terminate the employee's services for any valid and fair reason with twenty-four hours notice.

Termination of employment contract with notice.

89. (1) The employment contract of an employee may be terminated with notice, or with pay in lieu of notice, for any valid and fair reason connected with the capacity or conduct of the employee, or the operational requirements of the undertaking, establishment or service.

(2) Without derogating from the generality of subsection (1), notice of termination may be given by an employer in any of the following circumstances:

- (a) where two medical practitioners certify that the employee is unfit to continue in employment because of an incapacity of the mind or body which has lasted for at least six months and which is likely to be permanent;
- (b) where the employee could not continue to work in the position held without contravention of a provision of a law; or
- (c) where the employee is made redundant.

(3) For the purposes of the Code,

“redundancy” means where the work required of the employee is affected because

- (a) the employer has modernised, automated or mechanised all or part of his or her business;
- (b) the employer has discontinued or ceased to carry on all or part of his or her business;

- (c) the employer has reorganised or relocated his or her business to improve efficiency;
- (d) the employer's need for employees in a particular category has ceased or diminished;
- (e) it has become impossible or impracticable for the employer to carry on his or her business at its usual rate or level or at all, due to a shortage of material, a mechanical breakdown, a *force majeure* or 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.

90. (1) Where an employer is required by section 89 to give an employee notice of termination of the employment contract, such notice shall be determined on the following basis unless a written contract provides more favourable terms: Notice periods.

- (a) where the employee's length of service does not exceed seven years, the period of notice shall be at least equivalent to the interval of time between the affected employee's pay days;
- (b) where the employee's length of service exceeds seven years but does not exceed fifteen years, the period of notice shall be at least one month;
- (c) where the employee's length of service exceeds fifteen years, the period of notice shall be at least two months.

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

(3) A notice of termination under subsection (1) shall not be given by an employer during an employee's period of absence on any leave granted under the Code.

Payment in lieu
of notice.

91. (1) In lieu of providing notice of termination, the employer may, at his or her 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 at the expiry of any required period of notice.

(2) An employer, having given notice to terminate employment, and not having exercised the option provided in subsection (1), shall not be required to pay the employee's wages if that employee voluntarily quits his or her employment prior to the effective date of termination specified in the notice.

Recovery of
remuneration and
notice pay.

92. (1) Any amount due to an employee whose service is terminated shall be paid to the employee by the employer not later than the last working day before the termination becomes effective.

(2) Without prejudice to any other method of recovery, an amount due as pay for a period of notice may be recovered by civil proceedings in a court.

Winding up of
employer's
business, etc.

93. (1) The winding up of, or appointment of a receiver with respect to an employer's business shall cause the employment contract of any employee to terminate one month from the date of winding up or the appointment of a receiver, unless it is otherwise terminated within that period pursuant to section 87, 88, 89, 101 or 103.

(2) This section shall not apply where, notwithstanding the winding up or appointment of a receiver, the business continues to operate or is transformed.

(3) Notwithstanding any enactment to the contrary, on the winding up of, or appointment of a receiver with respect to, an employer's business, the claim of an employee, or those claiming on his or her behalf, to the following payments to which he or she is entitled under the Code or any contract shall have priority over other creditors, including the Government and the social security system:

- (a) wages, overtime pay, commissions and other forms of remuneration including gratuity relating to work performed during the twenty-six weeks preceding the date of winding up or appointment of a receiver;
- (b) vacation pay due;
- (c) amounts due in respect of other types of paid absence accrued during the twelve months

preceding the date of winding up or appointment of a receiver; and

- (d) severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment.

94. 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 the contract is otherwise terminated in accordance with section 87, 88, 89, 101 or 103. Death of employer.

95. (1) Where on termination of an employee's employment contract the employee requests a certificate of employment, the employer shall provide the employee with that certificate. Certificate of employment.

(2) The certificate of employment referred to in subsection (1) shall include

- (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 duties upon which the employee was employed during the employment contract; and
- (e) the wages and other remuneration payable at the date of termination of the contract.

(3) A certificate of employment shall not contain the reason for termination of the employment contract or an evaluation of the employee's work, unless requested by the employee.

96. A temporary cessation of work on any of the following grounds shall not constitute a break in an employee's continuity of employment: Continuity of employment.

- (a) an industrial dispute;
- (b) illness for two days or illness certified in accordance with section 70(3)(b) where the absence from work exceeds two days;

- (c) industrial injury;
- (d) maternity leave certified by a medical practitioner;
- (e) the operation of any law;
- (f) an act of God or *force majeure*;
- (g) absence permitted or condoned by the employer;
- (h) temporary lay-off;
- (i) suspension; or
- (j) leave without pay.

Rights of employees on change of ownership.

97. (1) Where there is a change of ownership of business or undertaking and the successor-employer offers any or all involved employees continued employment with the business, the employees, shall carry forward their service and accrued rights to the successor-employer.

(2) Where the employee accepts continued employment with the successor-employer, the arrangements made at the time of the change of ownership in respect of the employee, including details of the employee's length of service and accrued rights, shall be notified to the Commissioner by the successor-employer in a statement signed by the employee and jointly by the predecessor-employer and successor-employer.

(3) Where the employer is a body corporate and there is a change in its corporate identity due to any merger and acquisition, amalgamation, restructuring, change of ownership or other similar circumstance affecting the rights of employees, the employer is deemed to have changed ownership for purposes of subsections (1) and (4).

(4) Where there is a change of ownership, the predecessor-employer shall pay to those employees who have not been offered continued employment with the successor- employer their outstanding wages, vacation pay, severance pay and any other entitlement due to them.

(5) Where there is a change of ownership of a business or undertaking, the predecessor-employer shall, where practicable, give at least one month's notice of that change in ownership to the employees.

98. Subject to section 97 and an agreement between the parties where a person for any reason sells or disposes of a business, all of the obligations under the Code of the person selling or otherwise disposing of the business are binding on the person acquiring the business.

Effect of sale of business.

99. (1) Where an employer intends to terminate simultaneously the employment contract of three or more employees on the grounds of redundancy, he or she shall notify the Commissioner as soon as practicable and, except in exceptional circumstances, not less than one month before the effective date of termination.

Commissioner to be informed of intended multiple terminations for reasons of redundancy.

(2) The notification to the Commissioner shall state the number and categories of employees to be terminated, the reasons for that action, the period over which the termination is to take place, whether there has been any consultation with a trade union, any other representative of the employees or with the employees themselves to mitigate the effects of the redundancy and the results of that consultation.

(3) The Commissioner shall, as soon as possible after receipt of the notification under subsection (1), inform the Minister of its contents.

(4) An employer who terminates the employment of an employee on the grounds of redundancy shall give preference to the re-employment of that employee if he or she decides to hire a person, within a period of six months from the date of the termination, to perform duties that are the same or substantially the same as those that were formerly performed by the employee, and shall make every reasonable effort to notify that employee of the vacancy.

100. (1) An employee who is engaged for a specified term of employment and who intends not to continue with that employment at the end of the specified term is not required to give advance notice of that intention unless the terms of his or her employment contract specify otherwise.

Employee's notice of termination.

(2) An employee, other than an employee mentioned in subsection (1), shall give advance notice to his or her employer of an intention voluntarily to terminate his or her employment, which shall correspond to the periods of notice required of employers specified in sections 88 and 90 and where the contract of employment is not in writing, the period of notice to be given by the employee shall not be less than two weeks.

(3) Where an employee gives notice in accordance with subsection (2), the employer may, at his or her discretion, require the employee to cease employment at the commencement of the period of notice and simultaneously pay the employee a sum equal to the wages and other

remuneration and all other benefits that would have been due to the employee at the expiry of the required period of notice.

(4) Where an employee fails to give the employer notice as required in subsection (2), the employee shall be liable to pay to the employer an amount equal to the single time pay which the employee would have received had he or she worked for such part of the notice period as was not served.

(5) Where an employee is liable to make any payment under subsection (4), the employer may deduct the amount payable from monies, if any, due to the employee from the employer.

Summary
dismissal for
serious
misconduct.

101. (1) An employer is entitled to dismiss summarily, without notice, an employee who is guilty of serious misconduct of a nature that it would be unreasonable to require the employer to continue the employment contract.

(2) The serious misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment contract and has a detrimental effect on the business and it includes, but is not limited to, situations in which the employee has

- (a) conducted himself or herself in a manner as to clearly demonstrate that the employment contract cannot reasonably be expected to continue;
- (b) been convicted of an offence in the course of his or her employment, the penalty for which prevents the employee from meeting his or her obligations under his or her employment contract for twelve working days or more.

(3) The employer shall, when terminating an employment contract under the provisions of this section, provide the employee with a written statement of the precise reason for the action and the employer shall be conclusively bound by the contents of the statement in any proceeding contesting the fairness of the dismissal.

(4) An employer who fails to provide the statement referred to in subsection (3) shall be stopped from introducing testimony as to facts which might have been included in the statement, in any proceeding contesting the fairness of the dismissal.

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

(2) For purposes of this section,

“disciplinary action” includes in order of severity -

(a) a written warning;

(b) suspension from duty for a period not exceeding one week without pay.

(3) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard to the nature of the violation, the terms of the employment contract, the employee’s duties, 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.

(4) Where action is taken by an employer in accordance with this section, he or she shall advise the employee concerned in writing of the misconduct or action in breach of the employment contract and of what steps the employer is likely to take in the event of any repetition of the behaviour in respect of which the disciplinary action is taken.

(5) A complaint that any disciplinary action taken against an employee was unfair or unreasonable may be made by the employee to the Commissioner pursuant to section 26.

103. (1) Where an employee is guilty of an offence in breach of his or her employment contract, or of any misconduct such that the employer cannot reasonably be expected to continue to employ him or her if it is repeated, the employer may, when taking disciplinary action in accordance with section 102, warn the employee that repetition of the behaviour will result in summary dismissal. Termination for repeated misconduct, breach of contract or unsatisfactory performance.

(2) If the employee, after being warned pursuant to subsection (1), is guilty of a similar offence or misconduct in the following six months, the employer may terminate the employee’s employment without further notice.

(3) An employer who dismisses an employee under subsection (2) shall provide the employee with a written statement of the reasons for the action and the principles set out in section 101(3) and (4) shall apply to the provision of, or failure to provide, such statements.

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

(5) Where, after the probationary period has expired, the employee is not performing his or her duties in a satisfactory manner, the employer may give him or her a written warning to that effect.

(6) If the employee, after he or she is warned pursuant to subsection (5) and in compliance with subsection (7), does not, during the following three-month period, demonstrate that he or she is able to perform and has performed duties in a satisfactory manner, the employer may terminate the employment contract.

(7) An employer shall not terminate the employment of an employee for unsatisfactory performance unless the employer has given the employee written warning pursuant to subsection (5) and appropriate instructions to correct the unsatisfactory performance and the employee continues to perform his or her duties unsatisfactorily for a period of three months.

PART VI SEVERANCE PAYMENTS AND RETIREMENT BENEFITS

Right of
severance pay.

104. (1) An employee whose period of continuous employment is at least twelve months is entitled to severance pay upon termination of such employment on any of the grounds specified in paragraphs (a), (b) or (c) of section 89(2) or in section 93 or 94.

(2) A periodic employee shall be deemed to satisfy the conditions as to length of service if he or she had worked with the same employer and any predecessor-employer for at least a consecutive four year period.

(3) An employer who lays off an employee for a temporary period shall inform the employee in writing and indicate the proposed date for his or her re-engagement prior to the lay-off.

(4) Where a periodic employee is employed by two or more employers to perform duties that benefit the same person or associated companies, then two or more employers shall be jointly responsible for severance payment of the employee.

(5) An employer who fails, without reasonable excuse, to pay severance pay within two months of the date on which payment of severance pay is due commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

(6) Where an employer is convicted of an offence under subsection (5), the Magistrate shall, in addition to any penalty under subsection (5), order him or her to pay the employee an additional ten per cent of the amount of severance pay to which the employee is entitled.

105. (1) In the case of an employee who is not a periodic employee and who is not paid on a piece-work basis, severance payment shall consist of three-quarters of one day's pay or nine days' pay per year, at the employee's latest basic rate of pay, for each month or major fraction thereof of his or her period of employment with his or her employer and any predecessor-employer.

Methods of calculation of severance pay.

(2) In the case of an employee who is not a periodic employee and

- (a) who is paid on a piece-work basis, or
- (b) whose employment contract provides for part-time employment,

severance payment shall consist of three-quarters of one day's pay or nine days' pay per year, at the employee's latest basic rate of pay, for each month or major fraction thereof of his or her period of employment with his or her employer and any predecessor-employer, and for the purposes of this subsection one day's pay shall be equal to his or her earnings over the period of thirteen weeks immediately preceding the date of termination, divided by the number of days worked.

(3) In the case of a periodic employee,

- (a) severance payment shall consist of three-quarters of one day's pay or nine days' pay per year for each twenty-nine days worked;
- (b) any fraction of a day which is obtained by dividing the number of days worked by twenty-nine shall be reckoned as one day; and
- (c) one day's pay shall be calculated as equal to the total of his or her basic wage in the last twelve-

month period worked divided by the number of days worked.

(4) The method of calculation of severance payment specified in subsection (1), (2) or (3) shall take effect from the date the Code comes into force.

(5) The method of calculation of severance payment in respect of service prior to the date the Code takes effect shall remain at six days for each year of service.

(6) Where an employees' basic rate of pay is reduced during the last six months of his or her employment prior to retrenchment, the basic rate of pay to be used for calculation of severance payment of that employee shall be his or her basic rate of pay prior to that pay cut.

Entitlement to severance pay not to be affected by other payments.

106. The payment of severance pay under section 104 shall not affect, nor shall it be affected by, the employee's entitlement, if any, to payment in lieu of notice under section 91 or to any compensatory award made under section 86.

Severance pay, when payable; temporary termination; payment of interest.

107. (1) On the date of termination of employment of an employee entitled to severance pay under section 104, the employer shall pay the severance pay computed in accordance with section 105.

(2) If the termination is stated as temporary, no severance pay need be paid to the terminated employee at the time of termination, provided that

- (a) if the date of re-employment is more than three months immediately following the date of termination, the employee may choose to receive severance pay from the employer on the date of termination;
- (b) where the employer has stated a date for re-employment but is unable to do so on or before that stated date, severance pay shall be payable on the stated date; or
- (c) if no date of re-employment is given and three months have elapsed without the employee being re-employed, severance pay shall be payable immediately upon the expiration of the three-month period,

and, in which case, interest at the rate of ten percent per annum on the amount of severance pay due shall be payable for the interval between the original termination date and the date of actual payment.

(3) If after severance pay is paid in accordance with subsection (1) or (2) the employee is again employed by the same employer, he or she shall, for subsequent severance pay purposes, be considered to be newly hired and the term of employment shall be considered to have commenced on the date of re-employment.

108. If an employee's employment contract in his or her last occupation is terminated because of redundancy but he or she is offered other employment by the employer at a reduced wage, the employee may accept the offer of employment without forfeiture of severance pay, but if he or she accepts the offer of employment after having received severance pay, the employee shall be considered newly hired for the purposes of subsequent severance pay.

Reduction in pay because of redundancy.

109. (1) Subject to the provisions of section 104, where the employment contract of an employee is terminated on the grounds set out in section 97, he or she shall be eligible for severance pay, unless

Limitation on severance pay.

- (a) he or she has otherwise elected in accordance with the provisions of section 97; and
- (b) he or she is offered by a successor-employer an employment contract which is the same as that held prior to the disposal of the business and he or she has accepted that offer.

(2) Where the employment contract of the employee continues either on the basis of an election made under section 97 or on the basis of subsection (1) of this section, details of the employee's length of service and entitlements shall be communicated to the Commissioner in a statement signed by the employee and jointly by the predecessor-employer and successor-employer.

- (3) Severance pay shall not apply where the employee
 - (a) is fairly dismissed;
 - (b) unreasonably refuses to accept an offer of re-employment by the employer at the same place of work, under no less favourable terms than he

or she was employed immediately prior to the termination;

- (c) is employed by a partnership and his or her employment ceases on the dissolution of the partnership, and he or she 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 favourable terms than he or she was employed immediately prior to the dissolution; or
- (d) is employed by an employer who dies, and the employee either enters into the employment of the personal representative, widow, 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.

Recovery of
severance pay.

110. An employee may, without prejudice to any other remedy available to him or her, bring civil proceedings in a court of competent jurisdiction to recover the severance payment to which he or she may be entitled under this Part.

Retirements
benefits.

111. (1) An employer shall make provision for retirement benefits to be paid to his or her permanent employees by means of a pension scheme, an annuity, provident fund or other form of retirement scheme which may be contributory.

(2) An employee, who is employed by an employer prior to the employer establishing a pension or similar retirement scheme that does not provide for coverage for service with the employer prior to the establishment of the pension or retirement scheme, and who becomes a member of the pension or other retirement scheme is entitled to a payment under subsection (3) in respect of any non pensionable service with that employer, in addition to his or her pension benefit under the scheme.

(3) Where an employer does not provide a pension scheme or other retirement scheme for an employee, who has been employed with that employer for at least ten years and retires at age sixty five or at an agreed retirement age or where the employee retires at an earlier age on grounds of

ill- health, he or she shall pay to that employee retirement benefits calculated on the following basis:

- (a) nine days pay for each completed year of service after the commencement of the Code;
- (b) three days pay for each completed year of service for the first ten years of service prior to the commencement of the Code;
- (c) four days pay for each completed year of service between ten and twenty years' service prior to the commencement of the Code;
- (d) five days pay for each completed year of service between twenty and thirty years' service prior to the commencement of the Code; and
- (e) six days pay for each completed year of service beyond thirty years' service prior to the commencement of the Code;

(4) The rate of pay to be applied for calculation under subsection (3) shall be based on the wages of the employee at each year of entitlement.

(5) Where an employee becomes entitled within five years from the commencement of the Code, to a retirement benefit under subsection (2) or (3), the employer may pay that part of the retirement benefit that relates to service prior to the commencement of the Code in six equal payments over a period of two years.

(6) Where an employee becomes entitled, after two years from the commencement of the Code, to a retirement benefit under subsection (2) or (3), the employer shall pay all retirement benefits due to the employee in one lump sum payment within one month of the employee's retirement.

(7) Nothing in subsection (2) or (3) shall be construed to cause an employer to derogate from his or her obligation under a more favourable retirement benefit scheme that he or she may have established prior to the commencement of the Code.

(8) Where an employer is unable to pay retirement benefits under subsection (2) or (3) by reason of exceptional financial hardship, the employer may appeal to the Minister for variation of the obligation.

PART VII
EQUALITY OF TREATMENT IN EMPLOYMENT

Objectives.

112. The objectives of this Part are

- (a) to eliminate discrimination against persons with respect to employment and occupation;
- (b) to promote recognition and acceptance of the principle of equal opportunity and treatment in employment and occupation; and
- (c) to promote gender equity and equality.

Interpretation.

113. In this Part,

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

“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;
- (e) widowed; or
- (f) the *de facto* spouse of a person.

“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.

Definition of
“discrimination”.

114. (1) For the purposes of this Part, 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, colour, sex, sexual orientation, religion, ethnic origin, political opinion or affiliation, indigenous population, social origin, national extraction, disability, HIV or other medical status, family responsibility, pregnancy, marital status or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;
- (b) any characteristic which pertains generally or is generally imputed to persons of a particular race, sex, sexual orientation, religion, colour, ethnic origin, indigenous population, nationality, political opinion, disability, HIV or other medical status, family responsibility, pregnant state, marital status or, except for purposes of retirement and restrictions on work and employment of young persons and children, age.

(3) Discrimination on the grounds of HIV or other medical status includes the requirement by an employer to have an applicant for a job or an employee subjected to an HIV test.

(4) Discrimination on the grounds of pregnancy includes the requirement to have an applicant for a job subjected to a pregnancy test.

115. (1) Subject to sections 116, 117 and 118, an employer, or any person acting or purporting to act on behalf of a person who is an employer, shall not, in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment, discriminate against that other person in

Prohibition of discrimination.

- (a) the advertisement of a job;
- (b) the procedures used for the purpose of determining who should be offered that employment;
- (c) determining who should be offered employment;
- (d) the terms or conditions on which employment is offered; or

(e) the creation, classification or abolition of jobs.

(2) Subject to sections 116, 117 and 118, an employer shall not discriminate against an employee

(a) in the terms or conditions of employment afforded to that employee by the employer;

(b) in the 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.

Bona fide
occupational
qualifications.

116. (1) Nothing in section 115 shall apply to any distinction, exclusion or preference based on the grounds listed in section 114(2) where a genuine occupational qualification exists.

(2) For the purposes of this Part, 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, HIV status, pregnancy, family responsibility, marital status or age, in dramatic performances or other entertainment for reasons of authenticity;

(b) in a religious institution, the essential nature of the job calls for a particular religious affiliation or belief, and the essential nature of the job would be materially different or unable to be

- carried out if performed by a person of a different religious affiliation or belief;
- (c) the job needs to be held by a man or a woman to preserve privacy or to comply with recognised cultural practices;
 - (d) the nature of the 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 or usage of such facilities for members of both sexes;
 - (e) the job requires a married couple; or
 - (f) on the grounds of disability 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.

Preference to
Virgin Islander
or Belonger.

- 117.** (1) An employer shall
- (a) seek to employ a Virgin Islander or Belonger in preference to a non-Virgin Islander or non-Belonger where such a Virgin Islander or Belonger is qualified; and
 - (b) not terminate the employment of a Virgin Islander or a Belonger in preference to a non-Virgin Islander or non-Belonger.

(2) Subsection (1) shall not be construed as forbidding the taking of personnel actions genuinely related to an employee's capacity or conduct in relation to the employment in question.

Special positive
action.

118. Special measures taken by, or required of, employers of a temporary nature to promote equality of opportunity in employment based on the grounds set out in section 114 shall not be deemed to be unlawful discrimination within the meaning of section 115.

Sexual
harassment.

119. Any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, shall constitute unlawful discrimination based on sex within the meaning of section 114.

Equal
remuneration.

120. (1) An employer shall pay equal remuneration to men and women performing work of equal value for the employer and there shall be equal evaluation for equal work.

(2) For the purposes of subsection (1),

- (a) "equal remuneration" means rates of remuneration that have been established without differentiation based on the grounds of sex; 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.

121. (1) Where employment in a particular occupation is largely provided through partnership firms, it is an offence for such firms, or for persons proposing to form themselves into such a partnership firm, to discriminate against any person on the grounds set out in section 114(2) Partnerships.

- (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, or subjecting persons in the firm to, detrimental treatment.

(2) Subsection (1)(a) and (b) does not apply if the treatment afforded to the partner or potential partner is based on an essential occupational qualification.

122. It is an offence for an organisation of employers, trade unions or other organisations of employees, or any other organisation 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 114(2) Employer and employee organisations.

- (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; or
- (c) in the case of a person who is a member of the organisation,
 - (i) by denying or deliberately omitting to afford him or her or limiting his or her access to any benefits, facilities or services provided by the organisation;
 - (ii) by depriving him or her of membership or varying the terms of membership;
 - (iii) by limiting his, or her or depriving him or her of, access to, or the acquisition of, leadership positions within the organisation; or

- (iv) by subjecting him or her to any other detriment.

Inducement to discriminate.

123. It is an offence 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.

Burden of proof.

124. Except where otherwise provided in this Part, the person alleging a violation of this Part shall bear the burden of proving discrimination, inducement or attempted inducement.

Proof of exceptions.

125. Where by any provision of this Part, conduct is excepted from conduct that is a contravention of this Part, the onus of proving the exception lies upon the party claiming the exception.

Offences and penalties under this Part.

126. (1) Any person who

- (a) commits an offence under section 122 or 123, or
- (b) otherwise contravenes the provisions of this Part commits an offence and,

is liable on summary conviction to a fine not exceeding seven thousand dollars, and for a second or subsequent offence, to a fine not exceeding ten thousand dollars.

(2) Where any partnership, or group of persons proposing to form themselves into a partnership, contravenes section 121(1), the individual partners shall, upon the contravention being proved, be each liable to a fine not exceeding two thousand dollars, and for a second or subsequent offence, to a fine not exceeding five thousand dollars.

(3) Where an offence under this Part is proved to have been committed by an employer who is not a natural person, and is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, chairman, manager or other officer, they shall each be liable to be proceeded against accordingly.

Remedies.

127. (1) Without prejudice to any other remedy that may be available in any competent court, where any person who is aggrieved by any act or omission of an employer in contravention of the provisions of this Part,

and no settlement of the issue is reached in direct discussion with the employer, the dispute may be referred for settlement to the Commissioner under section 26.

(2) Where any dispute referred to the Commissioner in accordance with subsection (1) is subsequently referred to the Tribunal by the Minister in accordance with the provisions of section 27, the Tribunal may, if an offence is proved, make an order

- (a) directing the payment of compensation by the employer, or any other person or body covered under the provisions of this Part, to the aggrieved employee for any loss caused directly or indirectly as a result of the contravention;
- (b) directing the employer or other relevant person or body covered under this Part to redress the contravention including an order to employ, re-employ or reinstate any person, notwithstanding that the vacancy in question is already 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) making any decision found to have been based on unlawful discrimination void;
- (d) prescribing any other remedy the Tribunal may deem fair and just to remedy the cause and effect of the act or omission of the employer.

PART VIII PROTECTION OF CHILDREN AND YOUNG PERSONS

128. (1) A person shall not employ, or permit a child to be employed, as an employee, and a person who employs a child or permits him or her to work in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

Prohibition of employment of children.

- (2) This section shall not apply to
- (a) light work approved by the Minister for children not below the age of fourteen years and subject

to the number of hours and other conditions determined by the Minister after consultation with employers' and employees' representative organisations, where practicable;

- (b) artistic performances approved by the Minister and subject to conditions determined by the Minister after consultation with employers' and employees' representative organisations, where practicable; or
- (c) the exercise of manual labour by a child under order of detention in a reformatory or industrial school, or by a child receiving instruction in manual labour in a school, provided that such work is approved and supervised by a public authority.

Liability of parent or guardian.

129. Subject to section 130(8), where a child is employed in contravention of this Part, the parent or guardian of that child is deemed to have committed an offence unless he or she proves that the employment occurred without his or her knowledge, consent, acquiescence or connivance and is liable on summary conviction to a fine not exceeding two thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding three thousand dollars.

Restrictions on employment of young persons.

130. (1) A person shall not employ a young person unless that young person is fit for the work he or she is expected to perform after a thorough medical examination, and the employer of a young person shall ensure that the young person is medically examined every six months and that he or she is fit for the work that he or she is expected to perform.

(2) A person shall not, without the prior written consent of the Minister responsible for education, employ during school hours, a young person who is within the compulsory school age.

(3) A person shall not employ a young person on night work, and for the purpose of this subsection "night work" means work performed between the hours of 8:00 p.m. on one day and 5:00 a.m. on the following day.

(4) A person shall not employ a young person in any form of work which the Minister may, by Order, declare to be hazardous work for the purposes of this section.

(5) Where the Commissioner is aware of the involvement of a child or young person in a worst form of child labour, the Commissioner shall, communicate and collaborate with other agencies of the Crown to ensure that the child or young person is removed from that kind of labour and rehabilitated.

(6) For purposes of subsection (5), “rehabilitation” includes access to education, training and social welfare.

(7) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding seven thousand dollars.

(8) A person who employs or induces another to employ or procures the employment of a child or young person in the worst form of child labour commits an offence and is liable on summary conviction to a fine not exceeding twenty-five thousand dollars.

(9) For purposes of subsection (6), a child or young person is considered employed whether or not he or she is in an employment contract or is paid or not paid for his or her services.

131. (1) An employer shall keep a register of young persons employed by him or her.

Registers to be kept.

(2) The register referred to in subsection (1) shall contain particulars of the names, addresses and dates of birth of young persons, and of the dates on which they enter and leave the employment, and the employer shall on request at any reasonable time, produce that register for inspection by any authorised public officer.

(3) An employer who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

132. (1) The prohibitions and restrictions under this Part on the employment of children and young persons, save section 130(3), shall not apply to students who participate in the Government’s vacation work programme for students, except that a student shall not be engaged to perform any work which by its nature or the circumstances in which it is carried out is, in the opinion of the Commissioner, likely to jeopardise the health, safety or morals of the student.

Government’s vacation work programme for students.

(2) For the purposes of subsection (1),

- (a) the Chief Education Officer shall, where students are required to participate in a vacation work programme, prepare and submit a report to the Commissioner
 - (i) in respect of the institutions in which the students are expected to work;
 - (ii) on the type of work the students will be engaged in;
 - (iii) on the duration of the work concerned; and
 - (iv) on the number of hours to be worked by the students;
- (b) the Commissioner may, after consultation with such persons as he considers necessary, prepare guidelines on the engagement of students to perform work under the vacation work programme.

False representation as to age.

133. A person who misrepresents the age of a child or young person for the purposes of contravening a provision of this Part commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

PART IX HEALTH, SAFETY AND WELFARE

Interpretation.

134. In this Part, unless the context otherwise requires,

“building operation” includes the construction, alteration, repair, maintenance or demolition of a structure, harbour facility, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer or sewage system;

“employee” includes a person performing duties in a workplace with the expressed or implied permission of the operator of the workplace, on a part-time or full-time basis, whether or not the person is receiving remuneration for his or her services, and the expression “to employ” shall be construed accordingly;

- “employer” means any person or undertaking, corporation, company, public authority or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract employer; and may be an operator, principal contractor, contractor or sub-contractor; and includes the heirs, successors and assigns of an employer;
- “factory” includes the premises in which manufacturing takes place, and the term includes any warehouse or storage place, building operation, harbour operation, mine or quarry;
- “fumes” includes gases or vapours;
- “harbour operation” includes any work performed at a harbour, whether natural or artificial or at a pier, jetty or other installation in or at which ships can dock, obtain shelter or ship, or unship, goods or passengers;
- “hazardous work” means work that poses an unreasonable risk to the health or safety of an employee;
- “machinery” includes all manufacturing equipment, machines whether operated manually or mechanically, prime movers of machines, units designed to transmit power or motion, units designed to transport items or persons in connection with a manufacturing process, appliances used in the process, and all the parts of the appliances;
- “occupier” means the person who has the ultimate control over the affairs of a workplace or any other place of employment or work;
- “operator of a workplace” includes the owner of a building containing a workplace, the owner or hirer of a machine or implement used in a workplace other than the principal operator thereof to the extent that any obligation under this Part relates to persons who are employed in or about or in connection with such machine and who are in the employment or pay of such owner or hirer;
- “owner” includes a trustee, receiver, mortgagee in possession, tenant, lessees, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate; and an owner does not become an employer at a construction site by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely oversee quality control at a construction site;

“prime mover” includes an engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or other source of energy;

“sanitary conveniences” include urinals, water closets, earth closets, privies, ash-pits and any similar conveniences.

Duties of employers.

135. (1) An employer at any work place including a construction site shall ensure that,

- (a) a safe, sound, healthy and secure working environment is provided as far as is reasonably practicable;
- (b) the measures and procedures prescribed by the Code and the Regulations are carried out;
- (c) every supervisor and every employee performing work complies with the Code and the Regulations;
- (d) every reasonable precaution is taken in the circumstances for the protection of a worker;
- (e) reasonable precaution is taken in the circumstances to protect the general public who comes into contact with the work site;
- (f) all applicable standards and policies established by the Labour Department and other relevant agencies of the Government in consultation with stakeholders are complied with;
- (g) a copy of the occupational safety and health policy is posted at a conspicuous location in the workplace;
- (h) the equipment, materials and protective devices and clothing as prescribed are provided;
- (i) the equipment, materials and protective devices and clothing provided by the employer are suitable and adequate and maintained in good condition;
- (j) the equipment, materials and protective devices

and clothing provided by the employer are used as prescribed;

- (k) the workplace, machinery, equipment and processes under his or her or control are safe and without risk to safety and health as far as is reasonably practicable;
- (l) that the machine, device, tool or equipment is in good condition; and
- (m) that the machine, device, tool or equipment complies with the Code and the Regulations.

136. (1) The employer and operator of a workplace shall, within six months of the commencement of the Code, file with the Commissioner a notice stating

Registration of workplaces.

- (a) the hazardous chemicals, the hazardous physical agents and the hazardous biological agents present in the workplace and indicating whether the workplace is a major hazard installation; and
- (b) other particulars prescribed by Regulations,

and a person who commences to operate a workplace subsequent to the coming into force of the Code shall, within three months from the commencement date, file a similar notice.

(2) When there is a material change in any of the particulars appearing in the notice filed in accordance with subsection (1), the employer and operator of that workplace shall, within one month of that change, file with the Commissioner a notice setting forth the details of the change.

137. (1) Every employer shall within one year from the commencement of the Code make a suitable and sufficient assessment of

Risk assessment.

- (a) the risks to the safety and health of his or her employees to which they are exposed whilst they are at work; and
- (b) the risks to the safety and health of persons not in his or her employment arising out of or in connection with the conduct by him or her of his or her undertaking,

for the purpose of identifying the measures he or she needs to take to comply with the requirements and prohibitions imposed upon him or her by or under the relevant statutory provisions.

(2) Any assessment referred to in subsection (1) or (2) shall be reviewed by the employer who made it if

- (a) there is reason to suspect that it is no longer valid; or
- (b) there has been a significant change in the matters to which it relates,

and where as a result of any review, changes to an assessment are required, the employer or self-employed person concerned shall make them.

(3) Where the employer employs twenty or more employees, he or she shall record

- (a) the significant findings of the assessment; and
- (b) any group of his or her employees identified by it as being especially at risk.

Safety and health
policy and
emergency plan.

138. (1) An employer of a workplace where twenty or more employees are employed shall prepare or revise, in consultation with the employees' representatives

- (a) a written statement of the general policy with respect to the safety and health of the employees, specifying the organisation and arrangements for the time being in force for carrying out that policy and the provisions of the Code; and
- (b) an emergency plan in writing based on the risk assessment made in accordance with section 137 which shall include
 - (i) suitable and rapid means of obtaining first aid help and transportation from the industrial establishment to a hospital for injured workers; and
 - (ii) measures and procedures to be used to control a major fire, to react to serious

damage to the industrial establishment,
to evacuate the industrial establishment
and to notify rescue personnel,

and the employer of the workplace shall submit the statement or the emergency plan, and any revision of the statement or plan to the Commissioner and bring them to the notice of all persons employed in the workplace.

(2) An employer of a workplace shall ensure, as far as is reasonably practicable, that no unsafe structure exists in the workplace that is likely to expose persons to risks to bodily injury.

139. The employer and operator of a workplace shall, as the Health. particular circumstances require,

- (a) keep the workplace in a clean state;
- (b) keep the workplace from being overcrowded;
- (c) maintain a reasonable temperature in the workplace;
- (d) provide adequate ventilation in the workplace;
- (e) provide adequate lighting;
- (f) provide effective means for draining floors; and
- (g) provide adequate sanitary conveniences.

140. (1) The employer and operator of a workplace shall, as the Safety. particular circumstances require,

- (a) take adequate measures for the prevention of fire and for adequate means of escape for employees;
- (b) ensure that all machinery used is operated and maintained in a manner as to be safe for employees; and
- (c) ensure that the workplace is properly maintained.

(2) The employer is entitled under the Code to take such action as is necessary to remove an employee whom the employer has reasonable cause to believe is under the influence of alcohol, addictive drugs or any other substance which may adversely affect the health and safety of the employee or other persons in or about the workplace and may request the employee to take a drug test.

Welfare.

141. (1) The employer of a workplace shall, as the particular circumstances require,

- (a) make available adequate supply of wholesome of drinking water;
- (b) provide and maintain suitable washing facilities;
- (c) provide accommodation for clothing not worn during working hours and for the drying of work clothing;
- (d) provide and maintain suitable facilities for employees to sit during the course of their employment;
- (e) provide and maintain readily accessible first aid equipment; and
- (f) provide and maintain other facilities such as canteen, mess rooms and rest rooms, as are reasonable under the circumstances.

Special protective measures.

142. It is the responsibility of the employer of any workplace, as the particular circumstances require, to ensure that

- (a) a person is not permitted to take any food or drink into any room where any lead, arsenic or other poisonous substance is used;
- (b) suitable goggles or protective screens are provided to protect the eyes of any persons employed in a process involving a special risk of injury to the eyes;
- (c) where a work process involves a reasonable possibility of injury to other parts of an employee's body, suitable protective equipment is furnished;

- (d) an employee is not required manually to lift, carry or move anything in excess of the maximum weight specified by any Regulations made under this Part;
- (e) where a person is employed in any process involving exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances are provided and maintained;
- (f) where a process involves heat or steam, facilities adequate to protect employees from the heat or steam are provided and maintained;
- (g) a person is not required to use white phosphorous (sometimes called “yellow phosphorous”) in any process; and
- (h) with respect to any process involving the use of, or exposure to, products containing benzene (which term, as used in the Code, means the aromatic hydrocarbon C_6H_6 itself or any product the benzene content of which exceeds one percent by volume), harmless or less harmful substitutes are used if they are available but, if substitutes are not available then
 - (i) the process shall be, as far as is practicable, carried out in an enclosed system or where an enclosed system is not practicable, the place of work in which the process is carried out shall be equipped with effective means to ensure the removal of benzene fumes to the extent necessary for the protection of the health of the employees;
 - (ii) the word “benzene” and appropriate danger signals shall be clearly visible on any container holding benzene; and
 - (iii) an employee who may be exposed to benzene shall receive appropriate instructions about safeguarding health and preventing accidents, as well as

about action to be taken if there is any evidence of poison.

Protective clothing and devices.

143. (1) Persons entering an area in a workplace where they are likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury, shall be provided with suitable protective clothing or devices of an approved standard and adequate instructions in the use of the protective clothing or devices, and a person shall not be permitted to be in that area unless he or she is wearing the protective clothing or device.

(2) The employer and operator of a workplace shall conspicuously display in areas where protective clothing or devices are required to be worn, a notice to that effect.

Hazardous chemicals.

- 144.** (1) An employer shall
- (a) ensure that all hazardous chemicals present in the workplace are labeled in a way easily understandable to the employees, or are identified in the prescribed manner;
 - (b) obtain or prepare, as may be prescribed, an unexpired chemical safety data sheet for all hazardous chemicals present in the workplace;
 - (c) ensure that the identification required by paragraph (a) and chemical safety data sheets required by paragraph (b) are available in English and other languages as may be prescribed;
 - (d) ensure that when hazardous chemicals are transferred into other containers or equipment, the contents are indicated in a manner which will make known to employees, their identity, any hazards associated with their use, and any safety precautions to be observed; and
 - (e) ensure that information is provided on the handling and disposal of hazardous chemicals which are no longer required and containers which have been emptied but which may contain residues of hazardous chemicals, so that the risk to safety and health and to the environment is eliminated or minimized.

(2) An employer shall ensure that a hazardous chemical is not used, handled or stored in the industrial establishment unless the prescribed requirements concerning identification, chemical safety data sheets and worker instruction and training are met.

(3) An employer shall advise the Commissioner in writing if the employer, after making reasonable efforts, is unable to obtain a label or chemical safety data sheet required by subsection (1).

(4) A copy of the most recent version of the inventory and of every unexpired chemical safety data sheet required by this Part in respect of hazardous chemicals in a workplace shall be

- (a) made available by the employer in such a manner as to allow examination by the employees;
- (b) furnished by the employer to a representative of health and safety committee, if any, or to an employee selected by the employees to represent them, if there is no health and safety committee or if there is no trade union, an employee selected by the employees to represent them;
- (c) filed by the employer with the Commissioner on request or if so prescribed.

(5) A person shall not remove or deface the identification referred to in subsection (1)(a), for a hazardous chemical.

145. (1) An employer shall, after being notified by a female employee that she is pregnant and upon production of a medical certificate to that effect, adapt the working conditions of the female employee to ensure that she is not

Special protection for pregnant employees.

- (a) involved in the use of, or exposed to, chemicals, substances or anything dangerous to the health of the unborn child; or
- (b) subjected to working conditions dangerous to the health of the unborn child, and where appropriate, the employer may assign alternative work, where available, to her without prejudice to her right to return to her previous job.

(2) An employer shall not require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of the child.

(3) Notwithstanding any other law, during an employee's pregnancy, and for a period of six months after birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of work, where the employee is required to perform work that poses a danger to her safety or health or that of her child, unless there is no other available suitable alternative employment or that in doing so the employer will incur costs greater than ordinary administrative costs.

Employment of young persons on dangerous machines.

146. (1) In every industrial establishment, a young person shall not work at a machine to which this section applies, unless he or she is fully instructed as to the dangers arising in connection with its operation, and the precautions to be observed, and

- (a) has received sufficient training in work at the machine; or
- (b) is under adequate supervision by a person who has special knowledge and experience in the operation of the machine.

(2) This section applies to machines as may be prescribed, being machines which are of a dangerous character that a young person ought not to work at them unless the requirements of subsection (1) are complied with.

Disposal of waste.

147. An employer shall, before the expiration of one year from the date on which the Code comes into force or a longer period as the Minister may, upon application in writing by an employer, approve, make arrangements for the safe and efficient disposal of wastes and effluents resulting from any processes carried on and the arrangements shall be designed so as to ensure that the disposal does not result in any danger to persons, property or to the environment.

Noise and vibration.

148. (1) An employer shall take adequate steps to prevent hearing impairment caused by noise, and diseases caused by vibration, from occurring to persons in, or in the vicinity of, his or her workplace and shall comply with directives as

- (a) an inspector may issue, in order to reduce the level of noise or vibration generated by a machine, device or process; and
 - (b) the Chief Medical Officer may issue, in order to protect persons employed from hearing impairment caused by noise or from diseases caused by vibration.
- (2) An employer shall
- (a) ensure that protective equipment necessary for compliance with subsection (1) is worn or used by employees at all appropriate times;
 - (b) arrange for the initial and periodic medical examination and assessment of those employees who are exposed to the risk of injury to their hearing or of contracting a disease caused by vibration;
 - (c) keep a record of the results of examinations and assessments under paragraph (b) which shall include audiometric tests and the monitoring of the work environment; and
 - (d) arrange programmes for preservation of hearing.

149. (1) An employee to whom this Part applies shall make use of all means, appliances, conveniences or other things provided under the Code for the health, safety and welfare of employees, to the extent that his or her employment involves their use.

Obligations of persons employed.

- (2) An employee shall not
- (a) willfully interfere with, misuse or damage any means, appliance, convenience or other thing;
 - (b) willfully and without reasonable cause do anything likely to endanger himself or herself or others; or
 - (c) enter, or remain, at a workplace, when under the influence of alcohol, addictive drugs or any other substance which may adversely affect the

health and safety of the employee or other persons in or about that workplace.

(3) An employee shall report to his or her employer or supervisor

(a) the absence of, or defect in, any equipment or protective device and clothing of which he or she is aware and which may endanger himself or herself or another employee or person; and

(b) any contravention of the Code or any Regulations of which he or she is aware.

Prohibition of deduction of wages.

150. The operator of a workplace shall not, in respect of the cost of anything done or to be done by him or her in pursuance of this Part or any Regulations or Order issued under the Code, make any deduction from the sum contracted to be paid by him or her to any person employed, nor shall he or she receive or allow any other person to exact or to receive any payment in lieu of such deduction except that the wages may be deducted from an employee for any absence arising out of action taken by the employee under section 149(2)(c).

Regulations and Orders.

151. (1) The Minister may make Regulations prescribing the standards to be achieved in respect of any of the obligations set forth in this Part and the methods required to attain them, and he or she may establish advisory committees on which employers and employees are represented to assist him or her in this function.

(2) The Minister may, by Order,

(a) require the operator of a workplace to take special measures bearing on the health, safety or welfare of employees;

(b) require the operator of a workplace to take specified measures bearing on the health, safety or welfare of employees whose duties relate to the business of the workplace and are performed, in whole or in part, outside the workplace;

(c) require arrangements to be made for medical supervision in any workplace; or

- (d) require medical examinations of employees in any workplace at the expense of the operator of the workplace to ascertain whether their health has been or is being adversely affected by their employment.

152. (1) At a construction site or other workplace where a committee is not required under section 153, the employer shall cause the employees to select at least one safety and health representative from among the employees of a relevant department or section within the workplace who does not exercise managerial functions.

Safety and health representatives.

(2) The safety and health representative shall accompany the inspector during an inspection and may make such representation as may be desirable to protect the safety and health of employees.

153. (1) A joint workplace safety and health committee is required at a workplace at which twenty or more employees are regularly employed.

Joint workplace safety and health committees.

(2) Subject to subsection (3), this section does not apply

- (a) to an employer at a construction site at which work is expected to last less than three months; or
- (b) to a prescribed employer or workplace or class of employers or workplaces.

(3) Notwithstanding subsections (1) and (2), the Minister may, by Order, require an employer to establish and maintain one or more joint workplace safety and health committees for a workplace and may, in the Order, provide for the composition, practice and procedure of any committee so established.

(4) It is the function of a committee and it has power to

- (a) identify situations that may be a source of danger or hazard to employees;
- (b) recommend to the employer and the employees the establishment, maintenance and monitoring of programmes, measures and procedures respecting the safety of employees;

- (c) obtain information from the employer respecting
 - (i) the identification of potential or existing hazards of materials, processes or equipment; and
 - (ii) safety and health experience and work practices and standards in similar or other industries of which the employer has knowledge;
- (d) obtain information from the employer concerning the conducting or taking of tests of any equipment, machine device, article, material, chemical, physical agent or biological agent in or about a workplace for the purpose of occupational safety and health; and
- (e) be consulted about, and have a designated member representing employees be present at the beginning of testing referred to in paragraph (d) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

Accident and safety programme.

154. The Commissioner may, with the approval of the Minister, undertake

- (a) research into the cause of, and the means of preventing, employment injury, and
- (b) programmes to reduce or prevent employment injury,

in the course of which he or she may cooperate with any other department of Government or any other organisation undertaking similar programmes.

Special powers of inspector.

155. (1) An inspector may take for analysis samples of material used or intended to be used in a workplace which he or she thinks may prove on analysis to be likely to cause bodily injury to employees.

(2) An inspector who has reasonable cause to believe that a condition exists at a workplace which is likely to cause bodily harm to any persons employed or performing duties, shall serve written notice upon the operator thereof of an intention to recommend that the Minister issue an appropriate Order under section 153.

(3) When an inspector is of the opinion that the employment of any young person in a workplace or any process or part is or may be prejudicial to that young person's health, he or she may serve written notice on the operator of the workplace requiring the cessation of, or the imposition of specified limitations upon, that young person's employment and the requirements of the notice shall become an obligation under this Part.

156. An employer shall, within forty-eight hours of an accident or death referred to in this section, report to Reports by employer.

- (a) the Commissioner, the joint workplace safety and health committee, the employees' safety representative and the recognised trade union accidents involving an employee, or any other person present in the workplace, which result in disability for more than three days or death;
- (b) the Commissioner
 - (i) other accidents, fires and explosions;
 - (ii) the collapse or failure of any building or structure; and
 - (iii) any accident with machinery or plant which results in the cessation of work beyond the shift or day on which the accident took place.

157. The owner of a workplace that is not a construction site shall Duties of owner.
ensure that

- (a) the facilities prescribed are provided;
- (b) the facilities prescribed to be provided are maintained as prescribed; and
- (c) the workplace complies with the Regulations, and that the workplace is not constructed, developed, reconstructed, altered or added to,

except in compliance with the Code and the Regulations.

Exemptions and extensions.

158. (1) The Minister may, by Order, exempt a workplace from the application of one or more of the provisions of this Part.

(2) An Order made under subsection (1) shall set forth the reasons and terms of the exemption.

(3) The exemption shall be effective for not more than six months in the absence of an Order of extension by the Minister which shall set forth the reason for the extension.

(4) Any extension made under subsection (3) shall be effective for not more than six months in the absence of an order of further extension by the Minister which shall set forth the reason for further extension.

(5) An Order of exemption or extension may contain conditions which shall be met in order to qualify for the exemption or extension.

Non-exclusivity of provisions of this Part.

159. Except where otherwise expressly provided, the provisions of this Part shall be in addition to, and not in substitution for or diminution of, the provisions of any other Part.

Offences.

160. (1) A person who contravenes an obligation created under this Part, or any Regulations or Order, commits an offence.

(2) If the contravention is by an employee, the operator of the workplace shall also be liable if it is proved that the operator failed to take reasonable steps to prevent the contravention.

(3) Where an offence committed by the operator of a workplace under this Part, or any Order or Regulations, is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, chairman, manager, other officer or person other than the operator, he or she, as well as the operator, is deemed to have committed the offence and is liable to be proceeded against.

Multiple offences.

161. Where an employer employs persons in a workplace other than in accordance with this Part or any Regulations or Order, there shall be deemed to be a separate contravention in respect of each person so employed.

162. (1) A person who fails to comply with section 139 commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars. Penalties for specific offences.

(2) A person who

- (a) forges or counterfeits any certificate required by, under or for the purposes of this Part or any Regulations or Order;
- (b) gives or signs any certificate knowing it to be false in any material particular;
- (c) knowingly utters or makes use of any certificate so forged or counterfeited, or which is false as mentioned in paragraph (b);
- (d) knowingly utters or makes use of any certificate as applying to a person to whom it does not apply;
- (e) falsely pretends to be an inspector;
- (f) willfully connives in any forging, counterfeiting, giving, signing, uttering, making use, personating or pretending referred to in this subsection;
- (g) willfully makes a false entry in any register, notice, certificate or document required by, under or for the purposes of this Part or any Regulations or Order;
- (h) willfully makes or signs a false declaration required by, under or for the purposes of this Part or any Regulations or Order; or
- (i) knowingly makes use of any false entry or declaration referred to in paragraph (g) or (h),

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(3) The operator of a workplace who

- (a) obstructs or delays an inspector in the due exercise of any power conferred on him or her by or under this Part;
- (b) refuses to answer or falsely answers, any inquiry authorised by or under this Part;
- (c) fails to produce any register, book, document or other record he or she is required by or under this Part to produce; or
- (d) conceals or prevents, or attempts to conceal or prevent, any person from appearing before or being examined by an inspector,

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(4) If any person suffers personal injury or dies in consequence of the operator of the workplace having contravened any provision of this Part or any Regulations or Order, the operator commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Penalties for offences for which no express penalty is provided.

163. A person who commits an offence, for which express penalty is not provided, is liable on summary conviction to a fine not exceeding five thousand dollars, and on a second or subsequent conviction to a fine not exceeding eight thousand dollars.

Power of court to order cause of contravention to be remedied.

164. Where the employer or operator of a workplace is convicted of an offence under this Part, the court may, in addition to or instead of imposing a fine, order him or her, within the time specified in the Order, to take steps as may be specified for remedying the matters in respect of which the contravention occurred, and may, on application, extend the time specified.

Penalty for person actually committing offence for which operator is liable.

165. Where an act or default for which the employer or operator of a workplace is liable is in fact the act or default of an agent of the operator or other person, that agent or other person commits an offence and is liable on summary conviction to the penalty prescribed for the offence as if he or she were the employer or operator.

Procedure where inspector or operator believes the offender to be other than operator.

166. (1) Where it appears to an inspector at the time of discovering the commission of an offence

- (a) that an employer or operator of the workplace used due diligence to enforce the execution of this Part;
- (b) that the offence is committed by a person other than the operator; and
- (c) that the offence is committed without the consent, connivance or willful fault of the operator,

the inspector shall make a written report of the matter to the Commissioner who shall investigate the matter.

(2) Where the Commissioner is satisfied that a contravention of this Part has occurred, he or she shall refer the matter to the Director of Public Prosecutions.

167. (1) Where an entry in a register or record is required to be made by this Part or any Regulations or Order, Records as evidence.

- (a) an entry made in the register or record by or on behalf of the operator of a workplace shall be admissible against him or her as evidence of the facts stated in the register or record; and
- (b) the absence of the entry shall be admissible as evidence that the requirement has not been observed.

(2) Where, in any proceedings under this Part with respect to a young person, it appears to the court that the young person is of or below the age alleged by the defendant, the onus lies on the defendant to prove that the young person is not of or below that age.

168. Compliance or non compliance by an employer or employee with this Part shall not prevent any person from seeking compensation under any other law. Other Remedies.

PART X WORK PERMITS

169. In this Part, unless the context otherwise requires, Interpretation.

“emergency work permit” means a work permit issued to a non-Belonger to

enter the Virgin Islands on a single occasion to undertake emergency work not anticipated by the employer for a period not exceeding seven days;

“engage in employment” means

- (a) take or continue in any employment;
- (b) practise any profession;
- (c) engage in any trade or business; or
- (d) engage or be employed in any form of occupation,

whether or not such employment, profession, trade, business or occupation is taken, continued, engaged in, practised or carried on for reward, profit or gain;

“periodic work permit” means a work permit issued to a non-Belonger to enter and work in the Virgin Islands for a single employer for short periods within a one year period;

“self-employment” means employment on one’s own behalf and not under a contract of employment, express or implied;

“temporary work permit” means a work permit issued to a non-Belonger to enter and work in the Virgin Islands for a single period not exceeding three months; and

“work permit” means a work permit issued under this Part.

Prohibition
against
employment.

170. Subject to section 172, a person who does not belong to the Virgin Islands shall not engage in employment or self-employment in the Virgin Islands unless he or she has obtained a work permit issued by the Minister.

Applications for
work permit and
interim work
permit.

171. (1) An application for a work permit shall be made by the intended employer on behalf of the person for whom the permit is sought, by filing with the Labour Department an application in triplicate, in the prescribed form and, unless the applicant is a self-employed person, that application shall be accompanied by a statement in the prescribed form, completed by the intended employer.

(2) The Minister shall, in approving any work permit, have the discretion to impose any conditions he or she may consider appropriate to

promote the national policy underlying the Code in section 2, the work permit policy, the employment of Virgin Islanders and Belongers and any man power development plan of the Virgin Islands.

(3) An application for renewal or extension of a work permit shall be made by, or on behalf of the person for whom the work permit is sought, by filing with the Labour Department an application in the prescribed form and, unless the applicant intends to be self-employed, the application shall be accompanied by a statement in the prescribed form completed by the intended employer.

(4) The Minister shall, in considering an application under subsection (3) take into account the extent to which the employer has complied with a condition imposed under subsection (2).

(5) An application for a work permit to engage a person in employment as the employer of another person who is himself or herself a non-Belonger employee shall be made by the non-Belonger employee as the employer of that person and that person shall subject to subsection (9) not be permitted to obtain another work permit for any other job.

(6) An application for a temporary work permit or its renewal shall be made by the employer on behalf of the person for whom the permit is sought, by filing directly with the Minister, an application in the prescribed form.

(7) An application for a periodic work permit or its renewal shall be made by the employer on behalf of the person for whom the permit is sought, by filing directly with the Minister an application in the prescribed form.

(8) An application for an emergency work permit shall be made by the employer on behalf of the person for whom the permit is sought, by filing directly with the Minister, an application in the prescribed form.

(9) Where an employer is granted a work permit, a second employer may, with the consent of the primary employer, apply for a part-time work permit on behalf of that employee provided that the total working hours of that employee shall not exceed twelve hours per day and the Minister is satisfied that the welfare of the employee is not abused.

(10) An application for a part-time work permit shall be made by the employer on behalf of the person for whom the permit is sought, by filing directly with the Minister, an application in the prescribed form.

(11) Subject to subsection (9), a work permit holder shall neither seek employment nor be given a work permit to work with another employer during the validity of the work permit unless, after investigation by an inspector, the Commissioner is satisfied that the employer's conduct towards the employee has made it unreasonable for him or her to remain in that job.

(12) The Minister may vary the conditions of a work permit granted under this section at any time.

Application.

172. This Part shall not apply to an employee who

- (a) is holder of a certificate of residence;
- (b) is a member of Her Majesty's regular naval, military or air forces;
- (c) is duly accredited to the Virgin Islands by or under Her Majesty or the Government of any Commonwealth or foreign State; or
- (d) is a person or belongs to a class of persons exempted by an Order made by the Cabinet.

Action upon application for work permit.

173. (1) The Minister may, by Order, delegate any of his or her functions under section 171 or this section to the Commissioner.

(2) The Minister shall subject to section 171(2) decide whether or not, and under what conditions, the work permit should be granted, renewed or extended.

(3) A statement in a work permit stating the conditions upon which the permit is granted, renewed or extended shall be conclusive evidence of those conditions.

(4) Where a work permit is granted, renewed or extended, it shall be in the prescribed form and its validity shall be dependent upon compliance with section 178.

(5) Subject to section 171(2) and (4), a work permit shall be effective for a period not exceeding three years at a time and the permit may, upon application duly filed under section 171, be renewed or extended by the Minister from time to time.

174. (1) A person who fails to comply with section 170 or 171 commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and any work permit granted to him or her shall be cancelled. Penalty applicable to employees or self-employed persons.

(2) The Commissioner may request the assistance of the Commissioner of Police, the Chief Immigration Officer or Comptroller of Customs or any other government agency for purposes of enforcing this Part.

175. (1) An employer who employs a person Penalty applicable to employers.

(a) who requires a work permit without that person having first obtained the work permit; or

(b) in non-compliance with the conditions attaching to that person's work permit,

commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars.

(2) Nothing in subsection (1) shall prevent a person who has the written consent of the primary employer from engaging the service of a work permit holder for not more than five days.

(3) Where an offence under subsection (1) is committed by a body corporate, the chairman and every director and every officer of the body corporate who knowingly authorises or permits the offence is liable on summary conviction to the same penalty as if they were individual employers.

176. A person who makes a false statement in any prescribed form which is filed under section 171 with the Labour Department or the Minister, or in response to any queries put to him or her in the course of an investigation made under section 173, commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars. False statements in application, etc.

177. (1) The Minister shall with the approval of Cabinet, by Order specify the fee to be paid for every application for, grant, renewal or extension of a work permit under this Part. Fees.

(2) The Minister may specify different fees for different persons or categories of persons and for persons receiving different wages or salaries.

(3) Fees for applications, work permits and exemptions shall be paid into the Consolidated Fund.

(4) Where a work permit is granted for any period less than one year, the amount of fees payable shall be pro-rated from time to time as the Minister may by Order determine.

Government policy on international migration for employment.

178. (1) The Minister shall cause to be prepared, and reviewed annually, a comprehensive policy on international migration for employment that

- (a) is based on the economic and social needs of the Virgin Islands; and
- (b) takes into account
 - (i) the short-term need of human resources;
 - (ii) the short-term availability of human resources in the Virgin Islands; and
 - (iii) the long-term social and economic consequences of migration for Virgin Islanders, Belongers and migrant employees.

(2) The Minister shall submit the policy prepared under subsection (1), and each revision, to the Cabinet for its approval and the approved policy shall be laid before the House of Assembly as soon as practicable.

Provisions relating to termination of employment.

179. An employee who leaves the Virgin Islands upon the termination of his or her employment is entitled to

- (a) any outstanding remuneration for work performed, including severance payments where due; and
- (b) benefits which may be due in respect of injury suffered in the course of his or her employment.

PART XI RECOGNITION OF BARGAINING AGENTS FOR BARGAINING UNITS

Regulations.

180. The Minister shall, after consultations with stakeholders, make Regulations respecting the recognition of bargaining agents.

**PART XII
MISCELLANEOUS**

181. (1) A person shall refer a dispute or complaint to the Commissioner within six months of the ground for the dispute or complaint coming to the knowledge of that person. Limitation upon referring dispute or complaint.

(2) The Commissioner shall not investigate or resolve a dispute or complaint referred to him or her after the six-month period mentioned in subsection (1).

182. Prosecution for an offence under the Code shall not be commenced after the expiration of one year from the date on which the Commissioner becomes aware of the offence. Limitation upon prosecution.

183. (1) A public contract shall be deemed to incorporate the Rules set out in the Schedule as if the Rules were expressly set out in that contract. Labour clauses in public contracts.

(2) Every contractor under a public contract shall keep displayed in a conspicuous place in his or her establishment and workplace for the information of the employees, a notice containing the conditions of their employment so printed that it may be read by all employees. Schedule

(3) In this section, a “public contract” arises where

(a) at least one of the parties to the contract is the Government or a statutory board;

(b) the execution of the contract involves

(i) the expenditure of funds by the Government or a statutory board; and

(ii) the employment of employees by the other party to the contract; and

(c) the contract is for

(i) the construction, alteration, repair or demolition of public works;

(ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment; or

(iii) the performance or supply of services.

Conflict between the Code and any other law.

184. Subject to the powers of the Director of Public Prosecutions under the Virgin Islands Constitution Order, 2007 and any other law, where there is a conflict or inconsistency between any provision of the Code and any other law relative to labour matters, the provisions of the Code shall prevail.

Residual Penalty.

185. Where a person contravenes a provision of the Code for which a penalty has not been specified, the person is liable on summary conviction to a fine not exceeding eight thousand dollars.

Regulations.

186. (1) The Minister may make Regulations giving effect to the principles and provisions of the Code.

(2) Regulations made under this section may provide that any breach of any regulation shall be punished by the imposition of a fine not exceeding eight thousand dollars.

(3) Regulations made by the Minister shall be published in the *Gazette*.

(4) Regulations made by the Minister shall, as soon as practicable after its publication in the *Gazette*, be laid before the House of Assembly.

187. (1) The Labour Ordinance, the Labour Code Ordinance and the Trade Disputes (Arbitration and Inquiry) Act are repealed.

(2) Notwithstanding the repeal of the enactments mentioned in subsection (1),

(a) any Rule, Order or Regulations made under the repealed enactments shall, until revoked, continue to be in force to the extent that the Rule, Order or Regulations is not inconsistent with the Code;

(b) any requirement performed, table of fees, licenses or certificates issued, notice, decision, determination, direction or approval given, application made, or thing done, under any of the repealed enactments, shall, if in force on the

Repeals and savings.
Caps. 292, 293 and 299

date immediately prior to the coming into force of the Code, continue in force, or in the case of a license or certificate, continue in force until the date of expiry of the license or certificate as set out in the license or certificate, and shall, so far as it could have been made, issued, given or done under the Code have effect as if made, issued, given or done under the corresponding provision of the Code.

188. A reference to the Chief Labour Officer in an enactment or document existing prior to the coming into force of the Code shall be construed as a reference to the Labour Commissioner under the Code. Consequential Amendment.

SCHEDULE

[Section 183]

LABOUR CLAUSES IN PUBLIC CONTRACTS RULES

1. The contractor shall pay rates of wages and observe hours and conditions of employment, not less favourable than those established in the trade or industry in the district where the work is carried out, by collective agreement, other recognised machinery of negotiation or arbitration, between organisations of employers and employees which are representative respectively of substantial proportions of the employers and employees engaged in the trade or industry concerned (hereinafter referred to as “established rates and conditions”), or failing such established rates and conditions in the trade or industry in the district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.
2. In the absence of any established rates and conditions as defined in paragraph 1, the contractor shall pay rates of wages and observe hours and conditions of employment not less favourable than those which are or would be paid and observed in the trade or industry in which the contractor is engaged, by employers whose general circumstances are similar.
3. Before being placed on any list of Government contractors, the contractor shall certify that to the best of his or her knowledge and belief the wages, hours of work and other conditions of employment of all employees employed by him or her in the trade or industry in which he is offering himself as a contractor are fair and reasonable having regard to paragraphs 1 and 2.
4. In the event of any dispute or complaint arising as to what wages ought to be paid or what hours or other conditions of employment ought to be observed in accordance with the requirements of paragraphs 1 and 2, it shall, if not otherwise disposed of, be referred by the Commissioner to the Minister who may, if he or she thinks fit, refer the matter to the Tribunal in accordance with the provisions of the Code. In arriving at its decision, the Tribunal, in the absence of any established rates and conditions in the trade or industry concerned as specified in paragraph 1, shall have regard to any agreement, custom, practice or award that may be brought to its notice relating to the wages, hours or conditions of employment of employees employed in a capacity similar to that of the employees to whom the dispute relates in trades or industries carried on under similar circumstances.

5. The contractor shall keep proper wages books and time sheets showing the wages paid to and times worked by employees in the execution of the contract, and he or she shall, whenever required, produce wage books and time sheets for inspection by any person authorised by the Commissioner.
6.
 - (1) A sub-contractor shall be bound in all cases to conform to the conditions of the main contract and the main contractor shall be responsible for the observance of all contract conditions on the part of the sub-contractors.
 - (2) The contractor shall not transfer or assign a contract or any portion thereof without the written permission of the Commissioner.
 - (3) No portion of the work to be performed on a contract shall be done at the homes of the employees, except in so far as work is so performed by practice or custom.
7. Contractors and sub-contractors shall recognise the freedom of their employees to be members of registered trade unions.
8. A contractor shall not be entitled to payment of any money which would otherwise be payable under the terms of contract in respect of the work and labour performed in the execution of the contract unless and until he or she has filed together with his or her claims for payment a certificate
 - (a) showing the rates of wages and hours of employment of the various classes of employees employed in the execution of the contract;
 - (b) stating whether any wages in respect of the work and labour remain in arrears; and
 - (c) that all the labour conditions of the contract have been duly complied with.
9. The contractor shall from time to time furnish to the Commissioner further information and evidence as the Commissioner may require in order to satisfy himself or herself that the conditions of these Rules are complied with.
10. In the event of default being made in payment of any money in respect of wages of employees employed on the contract and if claim thereafter is filed with the Commissioner and satisfactory proof is furnished to the Commissioner, the Commissioner may, failing payment by the contractor, arrange for the payment of the claim out of the moneys at any time

payable under the contract and the amount so paid shall be deemed payments to the contractor.

11. If a contractor or subcontractor fails to comply with any of these Rules, the Commissioner may take action to ensure compliance and make representations to the relevant authority concerning the status of the contractor or subcontractor for future contracts.

Passed by the House of Assembly this 27th day of May, 2010.

Roy Harrigan

Speaker.

Phyllis Evans

Clerk of the House of Assembly.