

M O N T S E R R A T
L A B O U R C O D E 2012
No. 20 of 2012

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I ASSENT

Adrian Davis

Governor

DATE: 27.12.12

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AN ACT TO CONSOLIDATE, AMEND AND UPDATE
LABOUR LEGISLATION IN MONTserrat.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and
with the advice and consent of the Legislative Assembly of
Montserrat, and by the Authority of the same as follows:—

PRELIMINARY

1. Short title

This Act may be cited as the Labour Code, 2012.

2. National policy underlying the Code

The following expressions of national policy shall be
used in interpreting the Code—

- (a) the legitimate employment interests of
Montserradians shall be paramount and shall

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override all other competing expression on national policy in this section;

- (b) standards for a competitive economy, the promotion of direct foreign investment and an 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;
- (c) 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;
- (d) collaboration and co-operation among Government, employers and employees and social dialogue shall be promoted in the system of labour administration;
- (e) fundamental international principles and standards at work that are applicable to Montserrat shall be applied in a manner that is proportionate to the socio-economic circumstances of Montserrat;
- (f) procedures for the settlement of disputes shall be expeditious, fair and inexpensive and shall take into consideration the public interest;
- (g) 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;
- (h) employers and employees shall be free to associate with one another or with their representative associations, in order to promote their economic interest, without interference, restraint or coercion;
- (i) the principles and standards enshrined in the decent work agenda of the International Labour Organisation shall be promoted in a manner that takes into consideration the specific circumstances of Montserrat.

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3. Interpretation

In this Code, unless the context otherwise requires—

“bargaining agent” means a trade union or staff association 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;

“Chief Magistrate” means the person appointed as such under section 4 of the Magistrate’s Court Act;

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

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

“commission agent” means a person whose services are remunerated by commission or a combination of salary and commission;

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

“confinement” means the delivery of a child, whether alive or dead;

“continuous employment” means an uninterrupted period of employment with an employer, and any predecessor-employer, provided that any break in employment not exceeding 6 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;

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“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 2 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 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 a person who enters into or who works under a contract of employment, 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;
- (e) a managerial employee who is not responsible for policy formulation or in effective control of a department or branch of the undertaking; and

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(f) where appropriate, a former employee;

“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 Air Traffic Services (including meteorological, tele-communications, security, fire and crash services connected with airports), Electricity Service, Fire Service, Medical and Health Services, Police Service, Port Services, Prisons Service, Telecommunications Services, and Water Service;

“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 Montserrat;

“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;

“gross misconduct” means a serious offence which includes but is not limited to theft, dishonesty, wilful damage to property, violent behaviour, possession or use of illicit drugs at the workplace, and a serious breach of confidentiality or company policy;

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

“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. of 1 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 Estimates of Expenditure of Montserrat;

“parent or guardian” means the 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

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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 continuously for an employer or his or her successor for at least 4 months but less than 12 months per year;

“predecessor employee” in relation to the 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 employed, is no longer the employer of that person;

“redundancy” means abolition of a post where the post of the employee is no longer required by the employer 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

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volume of work or sales, reduced demand
or surplus inventory;

“severance pay” means remuneration to which an employee whose employment is terminated on grounds of redundancy is entitled;

“ship” means any seagoing ship or boat of any description registered in Montserrat;

“strike” means the concerted stoppage of work by employees in contemplation or furtherance of a trade dispute whether they are parties to the trade dispute or not or whether the stoppage is or is not in breach of the terms and conditions of employment and whether it is carried out during or on the termination of the employment, but does not include an act or omission required for the safety or health of employees, or refusal to work as a result;

“substantially equivalent employment” means employment 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 employed, has become the new employer of that person;

“Tribunal” means the Labour Tribunal established under section 23;

“wages” means any money or any 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;

“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

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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 or young person for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child or young person for illicit activities, in particular for the production and trafficking of drugs 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 18 years.

4. Application of the Code

- (1) The Code applies to all employers and employees.
- (2) Despite subsection (1), only—
 - (a) Parts 8, 9, 10 and 12, apply to the public service; and
 - (b) Parts 8, 9 and 10 apply to the police service.

5. Employers may establish working conditions above minimum standard in the Code

Nothing in the Code precludes an employer from offering to his or her employees’ better terms and conditions than those set out in the Code.

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PART 1—ADMINISTRATION

6. Appointment of Labour Commissioner and Labour Officers

- (1) The Deputy Governor shall appoint a Labour Commissioner and such number of Labour Officers as may be necessary.
- (2) The Labour Commissioner and Labour Officers shall be subject to the general direction of the Minister.
- (3) The Labour Commissioner shall be in charge of the administration of the Labour Department.

7. Duties and Responsibilities of Labour Commissioner

- (1) The Labour Commissioner shall be responsible for the enforcement of the Code and in particular shall—
 - (a) promote the settlement of any differences between employers and employees in accordance with the provisions of the Code;
 - (b) advise the Minister on all labour matters and on measures to improve industrial relations;
 - (c) encourage the decent work agenda of Montserrat in accordance with applicable principles and standards of the International Labour Organization, including the promotion of tripartism;
 - (d) make technical advice available to employers and employees and their respective organisations at their request;
 - (e) be responsible for the inspection of all workplaces in accordance with the Code;
 - (f) maintain a register of employers seeking employees and employees seeking employment;
 - (g) determine applications for bargaining status of trade unions;
 - (h) administer within Montserrat the overseas farm workers programme and other such programmes as may be introduced;

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- (i) process applications for work permits for approval of the Governor acting on the advice of Cabinet and in the case of renewals to the Minister;
 - (j) establish and maintain the labour market information system;
 - (k) prepare an annual report on the work of the Labour Department not later than 30th April following the year in review; and
 - (l) prepare reports on the application of Conventions of the International Labour Organization that have been extended to Montserrat.
- (2) The annual report published by the Labour Commissioner shall include but not limited to the following—
- (a) statistics of jobs provided through the Labour Department's job placement services;
 - (b) statistics of work permits granted;
 - (c) statistics of inspection visits;
 - (d) statistics of disputes;
 - (e) statistics of violations;
 - (f) statistics of workplace accidents;
 - (g) statistics of occupational diseases; and
 - (h) any other information that the Minister may require.
- (3) The annual report of the Labour Commissioner shall be submitted to the Minister who shall submit it to the Legislative Assembly at its next sitting.

8. Powers of Labour Commissioner

- (1) The Labour Commissioner may—
- (a) 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 Code;
 - (b) enforce the posting of notices as required by law;

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- (c) require the production of any records, books, registers or other documents, the keeping of which is required by any law relating to conditions of employment, in order to ensure that the Code is being respected, and copy the documents or make extracts of them;
 - (d) 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;
 - (e) may serve an improvement order in writing on an employer where the Labour Commissioner is of the opinion that the safety and health of any employee is at risk;
 - (f) issue a written warning to an employer requiring him or her to remedy any contravention of this Code identified during an inspection, within a stated time which is reasonable in the circumstances.
 - (g) with the consent of the employer—
 - (i) enter during working hours any workplace liable to inspection;
 - (ii) carry out any examination, test or enquiry which he or she considers necessary in order to ensure observance of the Code;
 - (iii) take or remove from any workplace for purposes of analysis, samples of materials or substances used or handled, subject to the employer or employer's representative being notified at the time of such taking or removal of any such samples of materials or substances; or
 - (iv) take photographs and video recording of any workplace.
- (2) If the Labour Commissioner has reason to believe that a contravention of the Code has occurred or is about to occur at a workplace, the Labour Commissioner may

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apply to a Magistrate for a search warrant authorising him or her—

- (a) to enter the workplace;
 - (b) to carry out any examination, test or enquiry which he or she considers necessary in order to ensure observance of the Code;
 - (c) to take or remove from the workplace for purposes of analysis, samples of materials or substances used or handled, subject to the employer or employer's representative being notified at the time of such taking or removal of any such samples of materials or substances;
 - (d) to take photographs and video recording of the workplace.
- (3) The Labour Commissioner may be accompanied by a police officer or any other employee of the Crown where the Labour Commissioner has reasonable grounds to believe that the presence of the police officer or Crown employee is necessary for the inspection and enforcement.
- (4) (a) A person aggrieved by the decision of a labour officer in the exercise of a power under this Code may seek redress from the Labour Commissioner.
- (b) A person aggrieved by the decision of the Labour Commissioner may seek redress from the Tribunal.
- (5) The Labour Commissioner and the labour officer shall be issued with identity cards by the Governor with a photograph of the holder, indicating his or her name and designation.
- (6) The Labour Commissioner or the labour officer shall produce the identity card when visiting any premises or when questioning a person in connection with the exercise of his or her powers.
- (7) The Labour Commissioner may institute or cause to be instituted any prosecution for the purposes of enforcing the provisions of the Code.

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- (8) The Labour Commissioner may delegate his or her powers to a labour officer.

9. Notification of presence on inspection visit

The Labour Commissioner shall, when on an inspection visit, 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.

10. Prohibition of victimisation

- (1) An employer shall grant his or her employees reasonable opportunity for communicating freely with the Labour Commissioner.
- (2) An employer who threatens or takes any prejudicial action against an employee who communicates with the Labour Commissioner and or a labour officer during an inspection visit or who has made or proposes to make a complaint or has taken part or proposes to take part in proceedings against the employer for breach of the Code commits an offence and is liable on summary conviction to a fine of \$5,000.00.

11. Limitations and restrictions on Labour Commissioner

- (1) The Labour Commissioner shall—
- (a) not have a direct or indirect interest in any enterprise under his or her inspection or supervision;
- (b) not reveal manufacturing or commercial secrets or working processes which have 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.

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- (2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of \$5,000.00.

12. Records and returns

- (1) An employer shall, at an address in Montserrat, keep in such form as the Labour 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 18 years,
- and, where applicable, shall keep at that address a copy of each written statement furnished to an employee.
- (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 6 years after the date of termination.
- (3) Upon request by the Labour Commissioner or Labour Officer, the employer shall make the employee's record available to the Labour Commissioner or a labour

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Officer for inspection and copying, in the presence of the employer or his or her representative.

- (4) An employer who contravenes subsections (1) or (2) with intent to deny an employee's statutory employment benefits commits an offence and is liable on summary conviction to a fine of \$5,000.00.
- (5) The Labour Commissioner may by notice require employers to submit returns containing such particulars and information contained in the employers' records kept under sub section (1).
- (6) The Labour Commissioner may compile, analyse and tabulate statistics collected from returns submitted under this section and, subject to the directions of the Minister, cause the statistics or abstracts to be published without disclosing the identity of the employer or employee.

13. Obligations of employers

An employer whose premises are visited by the Labour Commissioner shall—

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

14. Offences

A person who—

- (a) wilfully, hinders or obstructs the Labour Commissioner or a labour officer in the exercise of his or her statutory powers and duties;
- (b) fails or refuses, without good reason, to permit his or her employees free access to and communication

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with the Labour Commissioner or a labour officer or both while on a visit for inspection;

- (c) refuses or wilfully neglects to furnish the Labour Commissioner or a labour officer, 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 Labour Commissioner or a labour officer, any information or return which is false in any material particular,

commits an offence and is liable on summary conviction to a fine of \$5,000.00.

15. Liability of employer for agent etc.

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

16. Limitation of liability

Proceedings shall not lie against, and compensation shall not be payable by, the Labour Commissioner or a labour officer in respect of any act done in good faith under the Code.

PART 2 —LABOUR ADVISORY BOARD

17. Appointment of Labour Advisory Board

- (1) The Governor acting on the advice of Cabinet shall appoint a Labour Advisory Board consisting of—
 - (a) two representatives of Government, one of whom shall be appointed Chairperson of the Board;
 - (b) one member nominated by each registered trade union;
 - (c) one member representing the Chamber of Commerce;

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- (d) one member representing the Small Business Association; and
- (e) the Labour Commissioner or his designate.

18. Quorum of the Board

- (1) A **quorum** of the Board shall be—
 - (a) one representative of Government;
 - (b) one representative of trade unions;
 - (c) one representative of either the Chamber of Commerce or the Small Business Association;
 - (d) the Labour Commissioner or his designate.
- (2) Subject to subsection (1), the Board may regulate its own proceedings.

19. Labour Advisory Board to advise the Minister

- (1) The Labour Advisory Board shall make recommendations to the Minister on labour matters.
- (2) After considering the recommendations of the Labour Advisory Board, the Minister may submit his or her recommendation to the Governor acting on the advice of Cabinet for a decision.

20. Posting of notices of minimum wage

An employer affected by a minimum wage order shall post in a conspicuous place a notice fully informing the employees of the contents of the order.

21. Offence of failure to post notices or pay minimum wage

- (1) An employer who fails to comply with section 20 or who pays less than the minimum wage commits an offence and is liable on summary conviction to a fine of \$2,000.00; and to a fine of \$5,000.00 for a subsequent conviction.
- (2) Where it is found that an employer has paid less than the minimum wage, the Court shall order the employer to pay to the employee the difference between the amount

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which should have been paid and the amount which was paid together with interest where appropriate.

- (3) Where it is alleged that an employer has paid less than the minimum wage, the burden of proof shall be on the employer to prove that there was no violation of the minimum wage order.

PART 3—SETTLEMENT OF DISPUTES

22. Procedure for the settlement of disputes

- (1) Any dispute arising out of any matter covered by the Code or any law relating to employment 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 Labour Commissioner for settlement.
- (2) Upon notice of the dispute, the Labour Commissioner or a labour officer shall investigate the matter and make every effort to settle the dispute by conciliation in accordance with industrial relations practice, and 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; and
 - (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.
- (3) Where the Labour Commissioner fails to achieve a settlement within 30 days from the date of notice of the dispute or such longer period as the parties may agree, the Labour Commissioner shall refer the dispute to the Labour Tribunal for determination.
- (4) Anything said or admitted during conciliation at the level of the Labour Commissioner and any document prepared for the purposes of the conciliation shall not be admissible in evidence—

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- (a) in any subsequent investigation of the dispute concerned unless the person who said or admitted the thing, or to whom the document relates, consents to its admission;
- (b) against any person in any court or at any inquiry or in any other proceeding and no evidence in respect of the conciliation may be given against any person.

23. The Labour Tribunal

- (1) There is established a Labour Tribunal to settle any dispute transmitted to it by the Labour Commissioner.
- (2) The rules of the Tribunal shall be made by the Governor acting on the advice of Cabinet.
- (3) Subject to subsection (2), the Tribunal shall regulate its own procedure.

24. Appointment of the Tribunal

- (1) The Governor acting on the advice of Cabinet shall appoint 6 members to the Tribunal—
 - (a) 3 members representing the interests of employers; and
 - (b) 3 members representing the interests of employees.
- (2) The appointment shall be for such period as the Governor acting on the advice of Cabinet shall specify and each appointment shall be subject to renewal.
- (3) The Chief Magistrate shall be the Chairperson of the Tribunal.
- (4) Despite subsection (3), the Chief Magistrate may delegate the function of Chairperson, on a case by case basis, to another magistrate.

25. Remuneration of members of the Tribunal

The Chairperson and members of the Tribunal shall receive such remuneration as is prescribed by the Governor acting on the advice of Cabinet.

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26. Appeals of the Tribunal

- (1) A decision of the Tribunal is final and may only be appealed on a point of law by way of case stated to the Court of Appeal.
- (2) An appeal under subsection (1) shall be brought within 28 days of the issuance of the written decision.

27. Awards of the Tribunal

- (1) The Tribunal in the exercise of its powers shall—
 - (a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the parties and the community as a whole;
 - (b) act in accordance with equity, good conscience and the substantial merits of the case before it, with due regard to the principles and practices of good industrial relations.
- (2) An award of the Tribunal shall be recoverable as a civil debt.
- (3) A certificate signed by the Chairperson of the Tribunal shall be conclusive evidence in any court of the debt.

28. Order by Tribunal

- (1) The Tribunal shall have the power to make orders declaring the rights of the parties in any matter arising out of this Code.
- (2) Failure of any party wilfully or without cause to comply with an order shall be an offence punishable on summary conviction by a fine of \$1,000.00.
- (3) The Chairperson of the Tribunal shall have the power to instruct the Labour Commissioner to take action under this section on the Tribunal's behalf.

29. Strike and lockout

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

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- (2) 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 22(3);
 - (b) 50 percent plus 1 of the employees voted in favour of a resolution for that action; and
 - (c) at least 3 working days written notice is given to the Minister, the employer and any other interested party, of an intention to embark on that action.
- (3) A lockout shall not take place in an essential service.
- (4) 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 22(3); and
 - (b) at least 3 working days written notice is given to the Minister, the employees and any other interested party, of an intention to embark on that action.
- (5) A strike or lockout shall cease on reference of the dispute by the Commissioner to the Tribunal.
- (6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine \$3,000.00.

PART 4—BASIC CONDITIONS OF EMPLOYMENT

30. Conformity with Code

- (1) An employer shall provide terms and conditions of employment of his or her employees that are no less than the minimum provisions of the Code.
- (2) An employer, who grants to an employee terms and conditions that are less than the minimum standards of the Code, shall be required to remedy the breach from the date of employment of the employee.

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31. Contracts of employment deemed to be indefinite duration

Where it appears to the Tribunal that a fixed term employment contract is renewed so as to evade the provisions of the Code, the Tribunal shall determine that contract to be for an indefinite period.

32. Written terms and conditions of employment

- (1) Where an employee is engaged by an employer for a term of employment exceeding 3 months, the employer shall furnish the employee and the Labour Commissioner with a written statement within 10 working days of engagement containing the terms and conditions of employment including—
 - (a) the name and address of the employer and employee and the responsibilities and duties of the employee;
 - (b) the regular hours of work and rest periods;
 - (c) the starting pay, methods of computing the pay and pay scale;
 - (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 vacation and sick entitlement.
- (2) The written statement is to be signed by the employer, the employee and a witness.
- (3) Where a migrant worker is recruited from abroad, the employer shall ensure that the terms and conditions of employment are conveyed to him or her in a language that he or she understands prior to his arrival in Montserrat and should indicate what arrangements are made for his or her accommodation and return to his or her home country or the country from where he or she was recruited.
- (4) Where, subsequent to the giving of a statement under subsection (1) the employer desires to change the

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responsibilities and duties of the employee, the employer shall furnish the employee and the Labour Commissioner with a new written statement at least 7 days before the proposed change.

33. Probationary period

- (1) The probationary period shall not exceed 6 months for employees of the rank of supervisor and above and 3 months for all other employees.
- (2) During the probationary period, the employer shall provide the employee with adequate 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) Subsection (1) shall not apply to an employee who is employed for a period of less than 4 months.
- (4) An employer shall, within 1 day of the end 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.

34. Rest periods and normal hours of work

- (1) Except for emergencies, an employer shall grant to his or her employees a period of rest comprising at least 24 consecutive hours in each week.
- (2) The normal hours of work, inclusive of the meal interval, shall be 8 hours and the standard workweek shall be 40 hours.

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35. Meal intervals

- (1) Except for emergencies, an employer shall not require or permit an employee—
 - (a) to work for more than 5 hours continuously without a meal interval of not less than 1 hour or, where agreed by the employer and employee, of not less than 30 minutes;
 - (b) to perform any work during his or her meal interval.
- (2) For the purposes of this section, a period shorter than that specified under sub section (1) shall not be considered as a meal interval.

36. Overtime pay

- (1) Subject to this section, an employer shall pay his or her employee at the rate of at least 1 1/2 times his or her basic rate of pay for work in excess of 8 hours on any work day or in excess of 40 hours in any week and double time his or her basic rate of pay where the employee works on a public holiday.
- (2) An employee shall not be forced to work overtime.
- (3) In arranging for overtime work, the employer shall take into account the special circumstances of young persons, pregnant women, nursing mothers and disabled persons.
- (4) The provisions of sub section (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 if his or her duties and compensation are not commensurate with such status and the Tribunal may inquire into the matter and make a determination.
- (6) The payment of double time for work on Sunday shall not apply to shift employees in an establishment where

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services are normally provided on Sundays and who are granted compensatory time off.

37. Limitation on overtime

- (1) Except as provided in sub section (2), an employer shall not employ any person in excess of 12 hours in any period of 24 hours.
- (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 an 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 rest period be less than 8 hours.
- (3) 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 this section.

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

Where an employee reports for work 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, that employee shall be paid on the following basis—

- (a) where the employee works for more than 6 hours a day, the employee shall be paid for the day; or

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- (b) where the employee works for less than 6 hours, he or she shall be paid for the time so worked at his or her basic hourly rate of pay.

39. Pay for period of call out or being on call

- (1) Where an employee who is required by his or her employer is called out for work 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.

40. Payment in respect of public holidays

- (1) Where an employee does not work for his or her employer on a public holiday, he or she shall not suffer loss of pay, provided that he or she worked on his or her scheduled work-day immediately before and immediately after the said public holiday.
- (2) Where an employer requires an employee to work on a public holiday, whether as part of the employee's scheduled work day or not, the employer shall pay to the employee at double time his or her basic wage for each hour worked on that day.
- (3) Where employees are remunerated on a piece-work or by 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.
- (4) The overtime pay for work on a public holiday shall not apply to persons holding positions of supervision or management whose basic rate of pay and other terms and conditions of employment are at a level which adequately compensates them.

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41. Wages to be paid in legal tender

The wages of an employee is to be paid in legal tender either directly in cash or by bank transfer, bank cheque, money order or other lawful means of monetary payment with the consent of the employee.

42. Remuneration other than wages

Nothing in the Code shall render illegal an agreement or contract with an employee for giving to him or her food, a dwelling place or other allowances or privileges in addition to money wages as a remuneration for his service, provided that no employer shall give to a worker any illicit drugs or intoxicating liquor by way of such remuneration.

43. Agreements to place and manner of spending wages illegal

An employer shall not impose in a contract for the employment of an employee any terms as to the place at which, or the manner in which, or the person with whom, any wages paid to the worker are to be expended, and every contract between an employer and an employee containing such terms shall be illegal, null and void.

44. Interest on advances prohibited

- (1) An employer shall not make any deduction by way of interest or any similar charge on account of any advance of wages made to an employee in anticipation of the regular period of payment of such wages.
- (2) Any deduction from an employee's wages for an advance made by an employer to the employee should not exceed 1/3 the wages of the employee.

45. Deduction or payment in respect of fines prohibited

An employer shall not make any deduction or make any agreement or contract with an employee for any deduction from the wages to be paid by the employer to

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the employee, or for any payment to the employer by the employee, in respect of any fine, or for bad or negligent work where the fine is not wholly or partially attributable to the employee's negligence or recklessness.

46. Deduction for pension funds

An employer may with the consent of the employee make deductions from the wages of the employee and pay to the appropriate person any contributions to a pension fund or scheme agreed to by the worker and approved of by the Labour Commissioner.

47. Statement of deductions

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 written statement of wages earned and describe the deduction made.

48. Wages not to be paid on certain premises

An employer shall not pay wages to an employee at or within any retail shop or place for the sale of any spirits, wine, beer or other spirituous or fermented liquor, except where the employee is employed therein.

49. Payment of remuneration on termination

All wages and other remuneration due to an employee on the termination or completion of his or her contract of employment shall be paid within 7 calendar days after the termination or completion.

50. Penalties

Any employer who—

- (a) enters into any agreement or contract or gives any remuneration for employment contrary to the provisions of the Code or declared by the provisions of the Code to be illegal; or

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- (b) makes any deduction from the wages of any worker or receives any payment from an employee contrary to the provisions of the Code,

commits an offence and is liable on summary conviction to a fine of \$2,000.00 and to a fine of \$5,000.00 for a second or subsequent offence.

51. Employee's entitlement to paid holiday leave

- (1) After each calendar year of continuous employment with an employer an employee shall be entitled to paid holiday leave on the following basis—
 - (a) employees with less than 10 years' service, to a minimum of 2 weeks' paid holiday;
 - (b) employees with 10 years' service and less than 20 years' service, to a minimum of 3 weeks' paid holiday; and
 - (c) employees with 20 years' service or above, to a minimum of 4 weeks' paid holiday.
- (2) An employee who is employed on a part-time basis or piece-work basis shall be paid vacation leave pay at the rate of 1/65th of the total basic wage earned, in respect of the last 13 weeks of employment (which need not be consecutive) immediately preceding the commencement of his or her vacation leave.
- (3) An employer shall grant favourable consideration to a request by an employee for payment of his or her holiday pay on the last working day prior to the commencement of such leave.
- (4) Absence during periods of incapacity resulting from sickness or injury certified by a medical practitioner during the period of holiday and public holidays shall not be counted as a part of the annual holiday leave.
- (5) An agreement between an employer and an employee to forego the taking of earned leave in any year shall not be deemed to deny the employee the right to holiday leave at a future time to be mutually agreed between the employer and the employee.

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- (6) A person whose employment is for any reason terminated shall receive vacation leave pay in respect of holiday leave earned but not taken.
- (7) An employee may, with the approval of the employer, accumulate holiday leave, provided that the total leave entitlement at any time shall not exceed 20 days.
- (8) An employee may, with the agreement of the employer, take his or her paid holiday in not more than 2 parts in any year.

52. Sick leave

- (1) After not less than 13 weeks of continuous service with an employer, an employee shall be eligible to not less than 24 days of paid sick leave during each year of service.
- (2) Payment shall be at the normal rate of wages less any amount to which the employee is entitled by virtue of the Social Security Act.
- (3) No employee shall be entitled to wages for more than 2 consecutive days of sickness unless his incapacity to work resulting from sickness or injury is certified by a registered medical practitioner.

53. Maternity leave

- (1) On the production of a certificate from a registered medical practitioner stating the presumed date of confinement, a female employee who has completed 12 months continuous employment shall be granted a period of maternity leave of 3 months with pay by her employer.
- (2) Payment shall be at the normal rate of wages less any amount to which the employee is entitled by virtue of the Social Security Act.
- (3) 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 for such period as requested in the application, but

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in any case not exceeding 2 weeks with pay, to be taken—

- (a) during the period his wife or de facto spouse is on maternity leave; or
 - (b) not later than 6 months from the birth of the child.
- (4) Where a female employee is granted maternity leave, and a medical practitioner certifies that an illness necessitating absence from work arises out of the pregnancy or confinement or both, the employer shall grant the employee an additional period of leave not exceeding 3 months.

54. Protection from dismissal while on maternity leave

While a female employee is absent from work on maternity leave, it shall be unlawful for an employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such time that the notice would expire during the absence.

55. Special leave for jury service and other civic purposes

- (1) An employee who is required to be absent from work for jury service or other civic natures of a national nature 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 shall be granted leave with full pay by his or her employer for that purpose.

56. Compassionate leave

An employee shall be entitled to 3 days compassionate paid leave on the death or critical illness in Montserrat of his or her parent, child, brother or sister or spouse and 5 days compassionate paid leave where the death or critical illness occurs abroad.

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57. Offences and penalties for non-compliance

- (1) Subject to section 51, an employer who contravenes this Part commits an offence and is liable to a fine of \$5,000.00.
- (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 this Part but exclusive of sums lawfully deducted, plus interest at the rate to be determined by the court.

**PART 5—DISCIPLINE AND TERMINATION OF
EMPLOYMENT**

58. Disciplinary action by employer

- (1) An employer is entitled to take disciplinary action including dismissal in accordance with this Code.
- (2) Disciplinary action includes—
 - (a) a verbal warning;
 - (b) a written warning;
 - (c) reduction in wages or salary;
 - (d) demotion; and
 - (e) dismissal.
- (2) An employer shall not impose a fine or other monetary penalty on an employee as a form of disciplinary action or otherwise.

59. Procedure for disciplinary action

An employer shall not take disciplinary action against an employer without—

- (a) a valid and fair reason connected with the capacity or conduct of the employee;
- (b) informing the employee in writing of the nature and particulars of the complaint against the employee; and
- (c) giving the employee or his or her representative a

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fair opportunity to defend himself or herself, including access to his or her employment record and all supporting documents or statements to be used against him or her.

60. Termination of employment on grounds of incapacity arising from a medical condition or injury

An employer may terminate the employment of an employee where 2 medical practitioners certify that the employee is unfit to continue in employment because of incapacity of the mind or body which has lasted for at least 6 months and which is likely to be permanent.

61. Termination on other lawful grounds

- (1) An employer is entitled to dismiss summarily, without notice, an employee who is guilty of gross misconduct of a nature that it would be unreasonable to require the employer to continue the employment contract.
- (2) The gross 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 12 working days or more.
- (3) 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, warn the employee in writing that repetition of the behaviour will result in summary dismissal.

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- (4) Where the employee, after being warned in accordance with subsection (3), is guilty of a similar offence or misconduct in the following 6 months, the employer may terminate the employee's contract without further notice.
- (5) An employer who dismisses an employee under subsection (4) shall provide the employee with a written statement of the reasons for the action.
- (6) The employer shall be deemed to have waived his or her right to terminate the employment of an employee for misconduct where he or she has failed to do so within 6 months after having knowledge of the misconduct.
- (7) 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.
- (8) Where the employee, after he or she is warned pursuant to subsection (7), does not, during the following 3 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.
- (9) 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 (7) and appropriate instructions and training where required to correct the unsatisfactory performance and the employee continues to perform his or her duties unsatisfactorily for a period of 3 months.
- (10) An employer may terminate the employment of an employee where the employee could not continue to work in the position held without contravention of the law.
- (11) An employer may terminate the employment of an employee where the employee is made redundant.

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62. Prohibited grounds for dismissal

The following shall not constitute valid reasons for termination of employment or other forms of discipline—

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of any enactment;
- (d) participation or proposed participation in legitimate industrial action including a strike, which takes place in conformity with the Code;
- (e) race, colour, age (except for purposes of retirement and restrictions on work and employment of young persons and children), sex, sexual orientation, marital status, religion, political opinion or affiliation, national extraction or social origin, ethnic origin, disability or HIV status;
- (f) 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 by a medical practitioner, provided that the employee informs the employer on the first day of absence and submits the certificate to the employer no later than the third 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 oneself from a work situation which he or

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she reasonably believes presents an imminent and serious danger to life or health.

63. Right of employer and employee to minimum periods of notice

- (1) Except in the case of summary dismissal, the minimum notice required to be given by an employer to an employee to terminate the contract of employment where the employee has been continuously employed for 13 weeks or more shall be—
 - (a) not less than 1 week if the period of continuous employment is 13 weeks or more but less than 2 years;
 - (b) not less than 2 weeks if the period of continuous employment is 2 years or more but less than 5 years;
 - (c) not less than 4 weeks if the period of continuous employment is 5 years or more but less than 10 years;
 - (d) not less than 6 weeks if the period of continuous employment is 10 years or more but less than 15 years;
 - (e) not less than 8 weeks if the period of continuous employment is 15 years or more.
- (2) Notwithstanding subsection (1), an employer may, during the probationary period of an employee or where the employee's employment is for a term not exceeding 3 months, terminate the employment of the employee for any valid and fair reason with 24 hours' notice.
- (3) An employee may agree to receive payment of wages in lieu of notice where the employer terminates the employee's employment and notice is required.
- (4) Subject to subsection (1), an employer who terminates an employee's contract of employment may, in his or her discretion, pay the employee in lieu of notice.

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- (5) An employee who wishes to terminate his employment shall give to the employer the period of notice stated in subsection (1).
- (6) Subject to subsection (5), an employee who terminates his or her contract of employment may, in his or her discretion, pay the employer in lieu of notice.
- (7) An employer may waive the right to receive notice where the employee resigns.

64. Rights of employee during period of notice

During each pay period of the period of notice the employee shall not be paid less than his or her basic rate of wages.

65. Constructive dismissal

- (1) An employee is entitled to terminate his or her employment contract without notice or with less than the required notice, where the employer's conduct has made it unreasonable to expect the employee to continue the employment contract.
- (2) Where the employee terminates the employment contract in accordance with subsection (1), he or she is deemed to have been unfairly dismissed by the employer for purposes of the Code.

66. Appeals against unfair dismissal

Where an employee claims to be unfairly dismissed and no settlement of the complaint is reached in direct discussion with the employer, the allegation may be referred to the Labour Commissioner by either the employer or the employee, or by their representatives and failing settlement, to the Tribunal.

67. Burden of proof

- (1) Where an employee claims to be unfairly dismissed, the employer has to prove that it was reasonable for him to dismiss the employee and that the procedures set out in the Code were duly observed.

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- (2) Where the employee claims to be constructively dismissed, the employee has to prove that the continuation of the employment contract was unreasonable to him or her.

68. Remedies for dismissal

- (1) Where an employee is dismissed in contravention of the Code, he or she is entitled to—
- (a) compensation as assessed by the Tribunal;
 - (b) reinstatement to the position held before dismissal;
or
 - (c) re-engagement in a position that is substantially equivalent to the position held before dismissal if the position is not immediately available.
- (2) Where the Tribunal orders compensation, it shall take into account, among other things—
- (a) any vacation pay earned, but not taken;
 - (b) any wages and other remuneration 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 mitigate his or her losses.

69. Winding up of employer's business

- (1) An employee's employment contract is deemed to be terminated 1 month from the date of winding up or the appointment of a receiver of the employer's business.
- (2) This section shall not apply where, despite the winding up or appointment of a receiver, the business continues to operate or is transformed.

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- (3) Despite 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 26 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 12 months preceding the date of winding up or appointment of a receiver; and
 - (d) severance pay, compensation for unfair dismissal and other payments due upon termination of his or her employment.
- (4) Where 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 1 month from the date of the employer's death, unless the contract was terminated in accordance with the Code.

70. Certificate of employment

- (1) Where an employee is dismissed by his or her employer for whatever cause, he or she shall be entitled to a statement in writing from the employer giving—
- (a) the dates between which the employee was employed;
 - (b) the nature of the work done by the employee; and
 - (c) the wages and other remuneration payable at the date of termination of the contract.

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- (2) Nothing adverse to the employee shall be expressed in any certificate given in compliance with subsection (1).

71. Continuity of employment

For the avoidance of doubt it is declared that the continuity of employment of an employee is not broken by—

- (a) strikes;
- (b) lockouts;
- (c) sickness: provided that any continuous period of sickness exceeding 2 days is certified by a registered medical practitioner;
- (d) maternity and paternity leave;
- (e) injury leave;
- (f) holiday or compassionate leave, paid or unpaid, taken with the permission of the employer;
- (g) periods of absence due to jury service or other civic duties of a national nature;
- (h) periods of absence to attend the hearing of a complaint or dispute before the Labour Commissioner or the Tribunal;
- (i) the operation of any law;
- (j) an Act of God or force majeure;
- (k) temporary lay-off;
- (l) suspension.

72. Rights of employees on change of ownership

- (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 an employee accepts continued employment with the successor-employer, the successor-employer shall

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notify the Labour Commissioner of the details of the arrangements made at the time of the change of ownership in a statement signed by the employee, the predecessor-employer and the successor-employer which sets out the employee's length of service and accrued rights.

- (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.

73. Effect of sale of business

Subject to section 72 and any 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.

74. Notification of redundancy to Labour Commissioner

- (1) Where 5 or more employees are likely to be redundant the employer shall, before dismissing the employees, notify the Labour Commissioner in writing as soon as practicable and, except in exceptional circumstances, not less than 1 month before the effective date of termination.

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- (2) The notification to the Labour Commissioner shall state—
 - (a) the number and categories of employees to be terminated;
 - (b) the reasons for that action;
 - (c) the period over which the termination is to take place;
 - (d) 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
 - (e) the results of the consultation.
- (3) The Labour 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 12 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.

**PART 6—SEVERANCE PAYMENTS, GRATUITY AND
SERVICE CHARGE**

75. Redundancy

- (1) Where an employee's employment contract is terminated on grounds of redundancy, he or she is entitled to severance pay from his or her employer calculated as follows—
 - (a) where the employee has worked for more than 1 year but less than 5 years, he or she shall be paid 2 weeks pay for every year of completed service;

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- (b) where the employee has worked for more than 5 years but less than 10 years, he or she shall be paid 2 1/2 weeks pay for every year of completed service;
 - (c) where the employee has worked for more than 10 years but less than 15 years, he or she shall be paid 3 weeks pay for every year of completed service;
 - (d) where the employee has worked for more than 15 years, he or she shall be paid 3 1/2 weeks pay for every year of completed service.
- (2) The weekly rate of pay for the purpose of calculating severance pay is the highest weekly basic rate of pay during his or her employment with that employer.
 - (3) A periodic or part-time 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 4 year period.
 - (4) An employee to whom retirement benefits have been paid by virtue of his or her having attained the age of 60 and who is subsequently dismissed on the grounds of redundancy shall only be entitled to severance pay for the period he or she was employed after attaining the age of 60.
 - (5) Severance pay shall not be income for the purpose of the Income and Corporation Tax Act.
 - (6) If the employer fails to pay the severance pay at the time the employee is dismissed, the employee shall have the right to apply to the Tribunal who shall assess the amount of severance pay and award it to the applicant.
 - (7) An employee shall not be entitled to severance pay—
 - (a) if the employer offers him alternative employment which, in all the circumstances of the case, is suitable employment in relation to the employee;
 - (b) where the business in which he is employed is taken over as a going concern and his employment is

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continued by the new employer without interruption.

- (8) Without prejudice to the generality of subsection (7), the Tribunal shall take into account the following factors in deciding whether alternative employment is suitable in respect of any employee—
 - (a) the nature of the work to be done;
 - (b) the rate of pay;
 - (c) the location of the place of work;
 - (d) the family circumstances of the employee.
- (9) An employee shall not be entitled to severance pay by virtue of a temporary cessation of work.
- (10) **“Temporary cessation of work”** in this section means that although the work of the business or part of the business of the employer has ceased or diminished, the employer-employee relationship is, in the opinion of the Tribunal, still in existence, and it is the intention of the parties to resume normal working within 3 months from the cessation of operations.

76. Gratuity

- (1) An employee who has retired at the retirement age set out in the Social Security Act or has resigned after 10 years of service shall, subject to the provisions of this section, be entitled to a gratuity from that employer paid at the same rate as severance pay.
- (2) No gratuity shall be payable to an employee who is dismissed in accordance with the Code.
- (3) An employee who is dismissed on the grounds of redundancy after having given 10 years of continuous service to an employer shall be entitled to severance pay and not to the gratuity.
- (4) Gratuity is payable within 90 days after the termination of employment after 10 years of service.

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- (5) Where an employee is entitled otherwise than under this section to a retirement benefit from an employer, the employee shall not be entitled to that benefit in addition to a gratuity under this section but shall be granted the greater of the two benefits only.
- (6) The benefit payable under this section shall be in addition to any retiring benefit to which an employee may be entitled under the Social Security Act.
- (7) Gratuity paid under this section shall not be income for the purpose of the Income and Corporation Tax Act.

77. Service charge

In an establishment in which a customer pays a service charge, the employer shall caused the service charge to be pooled and distributed among his or her employees in every period of 4 weeks on such basis as is agreed upon with the employees, with the employer retaining 10% for administrative costs.

PART 7—FORCED LABOUR

78. Prohibition of forced labour

- (1) No person shall be required to perform forced labour.
- (2) “**Forced labour**” means work or service, including overtime work, that is exacted from any person under the menace of any penalty and is not offered voluntarily, but does not include—
 - (a) any compulsory military service or work of a purely military character;
 - (b) any work or service that forms part of the normal communal or civic obligations of residents of Montserrat;
 - (c) any work or service exacted from a person as a consequence of a conviction in any court, provided the person is not hired to or placed at the disposal of private individuals, companies or associations and

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- the work or service is carried out under the supervisions and control of a public authority;
- (d) any work or service exacted in emergency situations where the life or well-being of the whole or part of the population is endangered, but only to the extent that such labour is reasonably justifiable in the circumstances;
 - (e) minor communal services of a kind performed by members of the community in the direct interest of the community.
- (3) A person who contravenes this Part commits an offence and is liable on summary conviction to a fine of \$3,000.00.

**PART 8—EQUALITY OF TREATMENT IN
EMPLOYMENT**

79. Definition of discrimination

- (1) For the purposes of this Part, a person discriminates against another person where 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, age (except for purposes of retirement and restrictions on work and employment of young persons and children), 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 or marital status;
 - (b) any characteristic which pertains generally or is generally imputed to persons of a particular race, age (except for purposes of retirement and restrictions on work and employment of young

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persons and children), sex, sexual orientation, religion, colour, ethnic origin, indigenous population, nationality, political opinion, disability, HIV or other medical status, family responsibility, pregnant state or marital status.

- (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.

80. Prohibition of discrimination

- (1) Subject to sections 81 and 82, 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—
 - (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 a job.
- (2) Subject to sections 81 and 82 an employer shall not discriminate against an employee—
 - (a) in the terms or conditions of employment afforded to that employee;
 - (b) in the conditions of work, occupational safety and health measures;
 - (c) in the provision of facilities related to or connected with employment;

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- (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.

81. Bona fide occupational qualifications

- (1) Nothing in section 80 shall apply to any distinction, exclusion or preference based on the grounds listed in section 80(2) where a genuine occupational qualification for a job 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, sexual orientation, 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

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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.

82. Special positive action

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 79 shall not be deemed to be unlawful discrimination.

83. Sexual harassment

- (1) 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 80.
- (2) “**Sexual harassment**” means unwanted conduct of a sexual nature in the workplace or in connection with the

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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.

84. Equal remuneration for work of equal value

- (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.

85. Inducement to discriminate

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.

86. Burden of proof

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.

87. Proof of exemption

A person who claims an exemption from this Part has the onus of proving the basis of the exemption.

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88. Offences and penalties

A person who contravenes this Part commits an offence and is liable on summary conviction to a fine of \$3,000.00 and to a fine of \$5,000.00 for a second or subsequent offence.

89. Remedies

- (1) Without prejudice to any other remedy that may be available in any competent court, where any person is aggrieved by any act or omission of an employer which contravenes 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 Labour Commissioner.
- (2) Where any dispute referred to the Labour Commissioner is subsequently referred to the Tribunal, 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, despite—
 - (i) the vacancy in question is already filled; and
 - (ii) 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) voiding a decision found to have been based on unlawful discrimination;
 - (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.

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**PART 9—PROTECTION OF CHILDREN AND YOUNG
PERSONS**

90. Prohibition of employment of children

- (1) A person shall not employ, or permit a child to be employed, as an employee,
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$3,000.00 and to a fine of \$5,000.00 for a second or subsequent offence.
- (3) This section shall not apply to—
 - (a) light work approved by the Minister for children of the age of 14 years and over and subject to the number of hours and other conditions determined by the Minister after consultation with Labour Advisory Board, where practicable;
 - (b) artistic performances approved by the Minister and subject to conditions determined by the Governor acting on the advice of Cabinet after consultation with the Labour Advisory Board, where practicable;
 - (c) the exercise of manual labour by a child under an 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; or
 - (d) work in an undertaking being an undertaking that is not dangerous in which only members of the same family are employed.

91. Prohibition of employment of young persons and children on ships

- (1) No young person shall be employed or work on a ship other than a ship upon which only members of the same family are employed.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.00.

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92. Liability of parent or guardian

- (1) Where a child is employed in contravention of this Part, the parent or guardian of that child is deemed to have committed an offence and is liable on summary conviction to a fine of \$3,000.00 and to a fine of \$5,000.00 in the case of a subsequent offence.
- (2) It is a defence to subsection (1) if the parent or guardian proves that the employment occurred without his or her knowledge, consent, acquiescence or connivance.

93. Restrictions on employment at night of young persons

- (1) Except as provided in this Part, no young person shall be employed or work during the night in any public or private undertaking, other than an undertaking in which only members of the same family are employed.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$3,000.00.
- (3) Subsection (1) shall not apply to the night work of a young person over the age of 16 years in the case of an emergency which—
 - (a) could not have been controlled or foreseen;
 - (b) is not of a periodical character; and
 - (c) interfere with the normal working of the undertaking.

94. Registers to be kept

- (1) Every employer shall keep a register of all persons under the age of 18 years employed by him or her.
- (2) The register shall contain particulars of the names, addresses, and dates of birth of all such persons, and of the dates on which they enter and leave the employment, and
- (3) An employer shall on request at any reasonable time produce the register for inspection by the Labour Commissioner, a labour officer or a police officer.

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- (4) An employer who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine of \$3,000.00.

95. False certificate or representation as to age

Where a child or young person is employed based on—

- (a) the production to the employer, by or with the consent or connivance of the parent or guardian, of a false or forged birth certificate; or
- (b) the false representation of his parent or guardian that the child or young person is of an age at which the employment is not in contravention of this Code,

that parent or guardian is guilty of an offence and liable on summary conviction to a fine of \$3,000.00.

96. Restrictions on employment of young persons

- (1) A person shall not employ a young person unless that young person undergoes a medical examination which certifies that he or she is fit for the work he or she is expected to perform.
- (2) The employer of a young person shall ensure that the young person undergoes a medical examination every year and that he or she is fit for the work that he or she is expected to perform.
- (3) The Governor acting on the advice of Cabinet may, by Order, declare any type of work to be hazardous work for young persons.
- (4) A person shall not employ a young person to perform work which has been declared under subsection (3) to be hazardous work.
- (5) Where the Labour Commissioner is aware of the involvement of a child or young person in a worst form of child labour, the Labour Commissioner shall, communicate and collaborate with other agencies of Government to ensure that the child or young person is removed from that kind of labour and rehabilitated.

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- (6) For purposes of subsection (5), “rehabilitation” includes access to education, training and social welfare.
- (7) A person who contravenes subsections (1), (2), or (4) commits an offence and is liable on summary conviction to a fine of \$3,000.00 and to a fine of \$5,000.00 for a second or subsequent offence.
- (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 of \$10,000.00.
- (9) For purposes of subsection (8), a child or young person is considered to be employed whether or not he or she is in an employment contract or is paid or not paid for his or her services.

PART 10—HEALTH, SAFETY AND WELFARE

97. Interpretation

In this Part, unless the context otherwise requires—

“**hazardous work**” means work that poses an unreasonable risk to the health and 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 an employer, 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

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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, lessee, 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;

“workplace” means a factory, shop, office, place of work or other premises but does not include—

- (a) premises occupied for residential purposes only; or
- (b) other categories of establishment exempted by the Minister in accordance with this Code.

98. Duties of operators

The operator of a 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 in this Part are carried out;
- (c) every supervisor and every employee performing work complies with the Code;
- (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;

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- (f) a copy of the occupational safety and health policy is posted at a conspicuous location in the workplace;
- (g) the equipment, materials and protective devices and clothing as prescribed are provided by the employer for its employees and are suitable and adequate and maintained in good condition;
- (h) the equipment, materials and protective devices and clothing provided by the employer are used by its employees as prescribed;
- (i) the workplace, machinery, equipment and processes under his or her control are safe and without risk to safety and health as far as is reasonably practicable;
- (j) that any machine, device, tool or equipment at its workplace is in good condition; and complies with the Code.

99. Registration of work places

- (1) The operator of a workplace shall, within 3 months of the commencement of the workplace, file with the Labour Commissioner a notice stating—
 - (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) any prescribed particulars.
- (2) Where there is a material change in any of the particulars appearing in the notice filed in accordance with subsection (1), the operator of that workplace shall, within 1 month of that change, file with the Labour Commissioner a notice setting out the details of the change.

100. Risk assessment

The operator of a workplace shall within 1 year from the commencement of operations at the workplace make a suitable and sufficient assessment of—

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- (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 any enactment.

101. Safety and health policy and emergency plan

- (1) The operator of a workplace where there are 20 or more employees 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, together with an implementation plan; and
 - (b) an emergency plan in writing based on the risk assessment which shall include—
 - (i) suitable and rapid means of obtaining first aid help and transportation from the workplace 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 workplace, to evacuate the workplace and to notify rescue personnel.
- (2) The operator of a workplace shall submit the statement and the emergency plan prepared in accordance with subsection (1), to the Labour Commissioner and shall bring them to the notice of all employees.
- (3) The operator 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.

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102. Health

The operator of a workplace shall, as the 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.

103. Safety

(1) The operator of a workplace shall, as the particular circumstances require—

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

(2) The operator of a workplace shall take such action as is necessary to remove from the workplace 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.

(3) The operator of a workplace who has reasonable cause to believe that an employee is under the influence of alcohol, addictive drugs or any other substance at the workplace, may request the employee to take a drug test.

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104. Welfare

The operator of a workplace shall, as the particular circumstances require—

- (a) make available adequate supply of wholesome 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;
- (f) provide and maintain other facilities such as canteen, mess rooms and rest rooms, as are reasonable under the circumstances; and
- (g) wheelchair access.

105. Special protective measures

It is the responsibility of the operator of a workplace, as the particular circumstances require, to ensure that—

- (a) a person is not permitted to take food or drink into a room where lead, arsenic or any 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 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 enactment;

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- (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 or extreme cold, facilities adequate to protect employees from the heat, steam or cold are provided and maintained; and
- (g) adequate signage to warn employees and the public of potential dangers at the workplace are prominently displayed.

106. Protective clothing and devices

- (1) An operator of a workplace shall ensure that he provides a person entering an area in a workplace where he or she is likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury, with suitable protective clothing or devices of an approved standard and adequate instructions in the use of the protective clothing or devices.
- (2) An operator of a workplace shall ensure that no person is permitted to be in an area mentioned in subsection (1) unless he or she is wearing the protective clothing or device provided under that subsection.
- (3) The operator of a workplace shall conspicuously display in areas where protective clothing or devices are required to be worn, a notice to that effect.

107. Hazardous chemicals

- (1) The operator of a workplace shall—
 - (a) ensure that all hazardous chemicals present in the workplace are labelled in a way easily understandable by the employees or are identified in the prescribed manner;

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- (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 a hazardous chemical is transferred into another container or equipment, the container or equipment is labelled in a manner which will make known to an employee, its identity, any hazards associated with its 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) The operator of a workplace shall ensure that a hazardous chemical is not used, handled or stored in the workplace unless the prescribed requirements concerning identification, chemical safety data sheets and worker instruction and training are met.
- (3) The operator of a workplace shall advise the Labour Commissioner in writing if the operator, 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 operator in such a manner as to allow examination by the employees;
 - (b) furnished by the operator to a representative of the health and safety committee, to a representative of

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the trade union, or to an employee selected by the employees to represent them;

- (c) filed by the operator with the Labour Commissioner on request or as prescribed.
- (5) A person shall not remove or deface the identification referred to in subsection (1)(a), for a hazardous chemical.

108. Special protection for pregnant employees

- (1) The operator of a workplace who receives a medical certificate from a female employee stating that she is pregnant, shall adapt the working conditions of the female employee to ensure that she is not—
 - (a) involved in the use of, or exposed to, chemicals, substances or anything dangerous to her health or the health of her unborn child; or
 - (b) subjected to working conditions dangerous to her health or the health of her unborn child,and where appropriate, the operator may assign alternative work, where available, to her without prejudice to her right to return to her previous job.
- (2) The operator of a workplace 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) Despite any other enactment, during an employee's pregnancy and for a period of 6 months after the 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.

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109. Employment of young persons on dangerous machines

- (1) In every workplace, 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 the operation of the machine; or
 - (b) is under adequate supervision by a person who has special knowledge and experience in the operation of the machine.
- (2) The section applies to prescribed machines, which are of such a dangerous character that a young person ought not to work at them unless the requirements of subsection (1) are complied with.

110. Obligations of persons employed

- (1) An employee 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.
- (2) An employee shall not—
 - (a) wilfully interfere with, misuse or damage any means, appliance, convenience or other thing;
 - (b) wilfully and without reasonable cause do anything likely to endanger himself or herself or others;
 - (c) fail to wear protective clothing and use protective equipment or devices as instructed by the employer; or
 - (d) enter, or remain, when under the influence of alcohol, addictive drugs or 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—

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- (a) the absence of, or defect in, any equipment or protective device and clothing 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 of which he or she is aware.
- (4) An employee shall have 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.
- (5) An employer may deem any breach by an employee of this section as an act of gross misconduct.

111. Prohibition of deduction of wages

- (1) 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 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 a deduction.
- (2) Despite subsection (1), an employer may make a deduction from the wages of an employee for any absence arising out of action taken by the employee under section 103(2).

112. Regulations and Orders

- (1) The Governor acting on the advice of Cabinet may make Regulations—
- (a) prescribing the standards to be achieved in respect of any of the obligations contained in this Part and the methods required to attain them;
 - (b) establishing advisory committees on which employers and employees are represented to assist him or her in this function.
- (2) The Governor acting on the advice of Cabinet may, by Order—

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- (a) require the operator of a workplace to take special measures regarding the health, safety or welfare of employees;
- (b) require the operator of a workplace to take specified measures regarding 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.

113. Joint workplace safety and health committees

- (1) The operator of a workplace that employs 20 or more employees shall establish a joint management-employees safety and health committee with equal representation from management and employees.
- (2) The joint committee established in accordance with subsection (1) shall have power to—
 - (a) identify situations that may be a source of danger or hazard to employees;
 - (b) recommend to the operator and the employees the establishment, maintenance and monitoring of programmes, measures and procedures respecting the safety of employees;
 - (c) obtain information from the operator respecting—
 - (i) the identification of potential or existing hazards involving materials, processes or equipment; and
 - (ii) safety and health experience and work practices and standards in similar or other industries of which the operator has knowledge;

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- (d) obtain information from the operator 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 present at the beginning of the testing referred to in paragraph (d) to ensure that valid testing procedures are used or that the test results are valid.

114. Accident and safety programme

- (1) The Labour Commissioner may, with the approval of the Governor acting on the advice of Cabinet, undertake—
 - (a) research into the cause of, and the means of preventing, employment injury, and
 - (b) programmes to reduce or prevent employment injury.
- (2) In fulfilling his or her obligations under subsection (1), the Labour Commissioner may cooperate with any other department of Government or any organisation performing similar research or programmes.

115. Reports by an operator

An operator of a workplace shall, within 48 hours of an accident, report to—

- (a) the Labour Commissioner, the joint management-employees safety and health committee, the employees' safety representative and the recognised trade union, an accident involving an employee, or any other person present in the workplace, which results in disability for more than 3 days or death;
- (b) the Labour Commissioner—
 - (i) an accident not covered under paragraph (a);

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- (ii) a fire or an explosion;
- (iii) the collapse or failure of any building or structure; and
- (iv) an accident involving machinery or plant which results in the cessation of work beyond the shift or day on which the accident takes place.

116. Duties of operator

The operator of a workplace that is not a construction site shall ensure that—

- (a) the facilities prescribed are provided;
- (b) the facilities prescribed to be provided are maintained as prescribed;
- (c) the arrangements at the workplace comply with the Code; and
- (d) the workplace is not constructed, developed, reconstructed, altered or added to, except in compliance with the Code.

117. Exemptions and extensions

- (1) The Governor acting on the advice of Cabinet may, by Order, exempt a workplace from the application of any provision of this Part.
- (2) An exemption shall not be effective for more than 6 months.
- (3) Despite subsection (2), the Governor acting on the advice of Cabinet may, by Order, extend an exemption for 6 months.
- (4) An Order made under subsection (1) or (3) shall set out the reasons for and terms of the exemption.
- (5) An Order under this section may contain conditions.

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118. Offences

- (1) A person who contravenes an obligation under this Part commits a summary offence and where no penalty is provided is liable to a fine of \$5,000.
- (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 the contravention committed by the operator of a workplace under subsection (1), 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.

119. Multiple offences

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

120. Penalties for specific offences

- (1) A person who—
 - (a) forges or counterfeits any certificate required by, under or for the purposes of this Code;
 - (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 the Labour Commissioner or a labour officer;

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- (f) wilfully connives in any forging, counterfeiting, giving, signing, uttering, making use, personating or pretending under this section;
- (g) wilfully makes a false entry in any register, notice, certificate or document required by, under or for the purposes of this Code;
- (h) wilfully makes or signs a false declaration required by, under or for the purposes of this Code; 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 of \$10,000.00.

(2) The operator of a workplace who—

- (a) obstructs or delays the Labour Commissioner or a labour officer in the due exercise of any power conferred on him or her by or under this Code;
- (b) refuses to answer or falsely answers, any inquiry authorised by or under this Code;
- (c) fails to produce any register, book, document or other record he or she is required to produce by or under this Code; 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 of \$10,000.00.

(3) If any person suffers personal injury or dies in consequence of the operator of the workplace having contravened any provision of this Code, the operator commits an offence and is liable on summary conviction to a fine of \$10,000.00.

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

Where an act or default for which the 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 operator.

122. Records as evidence

- (1) Where an entry in a register or record is required to be made by this Code—
 - (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 Code 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.

123. Other remedies

Compliance or non compliance by an operator of a workplace or an employee with this Part shall not prevent any person from seeking compensation under any other law.

PART 11—WORK PERMITS

124. Interpretation

In this Part, unless the context otherwise requires—

“**engage in employment**” means—

- (a) take or continue in employment;

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- (b) practice any profession;
 - (c) engage in any trade or business; or
 - (d) engage or be employed in any form of occupation, whether or not for reward, profit or gain;
- “**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-resident of Montserrat to enter and work in Montserrat for a single period not exceeding 1 year.

125. Prohibition against employment

- (1) Subject to the provisions of this Code, a person who is not a Montserratian shall not engage in employment or self-employment in Montserrat unless he or she has a work permit.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000.00.
- (3) A person not belonging to Montserrat who is convicted of an offence under the provisions of this section may be deemed a prohibited immigrant and be dealt with as such.
- (4) Upon the trial of any person for a contravention of the provisions of subsection (1), it shall be presumed that the person alleged to have been engaged for profit or reward or to have been employed for a wage, salary or other remuneration in contravention of subsection (1) is not a person belonging to Montserrat unless the contrary is proved by the person charged.

126. Application for work permit

- (1) (a) A work permit shall be issued by the Governor acting on the advice of the Cabinet.
- (b) A renewal, extension or temporary work permit shall be issued by the Minister.

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- (2) 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 an application, in the prescribed form, with the Labour Commissioner.
- (3) Unless the applicant is a self-employed person, the application shall be accompanied by a statement in the prescribed form, completed by the intended employer.
- (4) The Governor acting on the advice of Cabinet may, in approving a work permit, impose any condition it may consider appropriate to promote the work permit policy of Montserrat.
- (5) The Minister shall, in considering an application under subsection (3) take into account the extent to which the employer has complied with conditions imposed under subsection (2), the Social Security Act and the Income and Corporation Tax Act.
- (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 through the Labour Commissioner, an application in the prescribed form.
- (7) A work permit holder shall not seek alternative employment in Montserrat during the validity of the work permit unless he or she has the prior approval of the Minister.
- (8) Despite any other provision, a person who has the written consent of the primary employer may engage the services of a work permit holder for not more than 5 days per month.
- (9) The Governor acting on the advice of Cabinet may vary the conditions of a work permit.

127. Exemption

- (1) The Governor acting on the advice of Cabinet may, by Order, exempt a person or class of persons from the requirements of a work permit.

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- (2) The following persons are exempt from the requirements of a work permit—
- (a) the holder of a certificate of permanent residence;
 - (b) the holder of a permit of economic residence;
 - (c) a Member of Her Majesty's naval, military or air forces;
 - (d) an employee of the Government of Montserrat;
 - (e) a citizen of a member state of the Organization of Eastern Caribbean States;
 - (f) the holder of a skilled CARICOM Certificate;
 - (g) a person whose parent was born in Montserrat;
 - (h) a person who is married to a Montserratian;
 - (i) a person who has acquired at least 5 years secondary or tertiary education in Montserrat;
 - (j) a person employed in Montserrat by the University of the West Indies, the Canadian University Service Overseas, the United States Peace Corps, the United Kingdom Programme for Voluntary Services Overseas, the United Kingdom Technical Assistance Scheme, the Organisation of Eastern Caribbean States, the Caribbean Community, the Commonwealth Secretariat or similar organisation;
 - (k) directors, inspectors and auditors of any company, organisation or body, whether incorporated or established in Montserrat or elsewhere, which either operates in Montserrat or controls a company, partnership or other organization which operates in Montserrat;
 - (l) persons visiting Montserrat on behalf of a principal abroad, in connection with the appointment of, or for holding business consultations with, a local business agent or local distributor of goods manufactured or produced abroad;
 - (m) persons visiting Montserrat in connection with their occupation as commercial travellers and for the

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purpose of soliciting orders for goods on a commission basis or otherwise, for or on behalf of a manufacturer, producer or supplier abroad;

- (n) a person visiting Montserrat for the purpose of inspecting the plant, machinery, equipment of a factory or other industrial works, or for the purpose of giving technical advice or assistance on the operation of any local undertaking, business or enterprise;
- (o) writers, journalists, broadcasters, photographers, sculptors and painters (excluding commercial and industrial photographers and painters);
- (p) visiting members of a Red Cross Society, St. John's Ambulance Brigade, Boys Scout Association or Girl Guides Association; and
- (q) a person who belongs to a class of persons exempted by an Order made by the Governor acting on the advice of Cabinet.

128. Application Requirements for work permit

- (1) The employer applying for a work permit on behalf of a person shall provide with the application—
 - (a) the person's—
 - (i) name, nationality, country of origin;
 - (ii) passport number, date and place of issue;
 - (iii) proposed date of arrival in Montserrat;
 - (iv) certificate of character;
 - (v) medical certificate of fitness;
 - (b) proof of advertisement of the post in Montserrat;
 - (c) the reason for employing a non-national;
 - (d) a statement of the proposed terms of employment, including the basic rate of pay, arrangements for accommodation, medical care;

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- (e) arrangements for the return travel of the prospective employee; and
 - (f) the prescribed fee.
- (2) A person who makes a false statement in an application for a work permit or work permit renewal or in response to any queries put to him or her in the course of an investigation during the work permit application process, commits an offence and is liable on summary conviction to a fine of \$5,000.00.

129. Rights of migrant worker

- (1) An employer shall inform a work permit holder, where recruited from abroad, of his or her terms and conditions of employment, arrangements for accommodation and return travel to his or her home country or country of recruitment prior to his or her arrival in Montserrat.
- (2) An employer shall not compel a work permit holder to live with his or her employer.
- (3) An employer shall not compel a work permit holder, who is employed as a domestic worker, to remain in the household of his or her employer during periods of weekly rest and holidays.
- (4) An employer shall not keep a work permit holder's travel and identity documents in his or her possession.

130. Penalty applicable to employers

An employer who contravenes this Part commits an offence and is liable on summary conviction to a fine of \$5,000.00.

131. Revocation of work permit

A work permit may be revoked by the Governor acting on the advice of the Cabinet.

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132. Fees

The Governor acting on the advice of Cabinet shall, by Order specify the fee to be paid for every application for the grant, renewal or extension of a work permit.

**PART 12—REGISTRATION, STATUS AND
RECOGNITION OF TRADE UNIONS AND EMPLOYERS’
ORGANISATIONS**

133. Interpretation

In this Part—

“employers’ organisation” means any association established by employers, the principal purposes of which are the representation and promotion of employers’ interests and the regulation of relations between employers and employees;

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

“Registrar” means the Registrar of the High Court;

“rules” means rules made by a trade union as authorized by this Code;

“trade dispute” means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person;

“trade union” means any association of persons registered under the Code, the principal purposes of which are the representation and promotion of employees interests and the regulation of relations between employees and employers, and includes a federation of trade unions, but not an organization or association that is dominated by an employer or employers’ organization.

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134. Exemption

This Part shall not apply to members of the police service.

135. Basic employee rights

Every employee has the right to—

- (a) take part in the formation of a trade union or federation of trade unions;
- (b) be or not to be a member of any trade union or federation of trade unions;
- (c) take part in lawful trade union activities;
- (d) hold office in a trade union;
- (e) take part in the election of shop stewards or safety representatives;
- (f) be elected a shop steward or safety representative or be a candidate for such election;
- (g) act in the capacity of a shop steward or safety representative;
- (h) exercise any right conferred or recognised by the Code or any enactment and assist any employee, shop steward, safety representative or trade union in the exercise of those rights.

136. Freedom of association protection for employees

- (1) No employer or employers' organisation, and no person acting on behalf of an employer or an employers' organisation, shall, with respect to any employee or any person seeking employment—
 - (a) require that person not to join a trade union or relinquish trade union membership;
 - (b) discriminate or take any prejudicial action, including discipline or dismissal against that employee or person because of his or her trade union membership or participation in lawful trade union activities;

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- (c) discriminate or take any prejudicial action, including discipline or dismissal, against that employee or person because of his or her exercise or anticipated exercise of any right conferred or recognised under the Code or any enactment;
 - (d) threaten that employee or person that he or she will suffer any disadvantage from exercising any right conferred or recognised under the Code, an enactment or a collective agreement;
 - (e) promise that employee or person any benefit or advantage for not exercising any right conferred or recognised under the Code or an enactment;
 - (f) restrain or seek to restrain that employee or person, by a contract of employment or otherwise, from exercising any right conferred or recognised under the Code or an enactment, and any such contractual term which purports to exert any such restraint shall be void, whether agreed to before or after the commencement of the Code.
- (2) Nothing in this section shall be interpreted as preventing an employer from dismissing or otherwise disciplining an employee for a valid reason, in accordance with the Code.

137. Protection of trade union from employer interference

No person shall commit an act which is designed to—

- (a) promote the establishment of an employees' organisation under the domination of an employer or employers' organisation; or
- (b) support an employees' organisations by financial or other means with the object of placing that organisation under the control of an employer or employers' organisation.

138. No compulsion to join or not to join an organisation

- (1) No person shall seek, by the use of any threat or intimidation, to compel or coerce any other person to

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join or not join, to support or not support, an employees' or employers' organisation or union.

- (2) A person who is eligible for membership in a trade union or employers' organisation under its rules has a right to membership in that trade union or organisation if he or she pays any fees that are properly payable to it, and such person has the right to remain a member as long as he or she complies with the rules of the trade union or organisation.
- (3) A trade union or employers' organisation shall not discriminate in its rules or through its actions against any person on the grounds of race, sex, sexual orientation, religion, ethnic origin, national extraction, colour, indigenous population, social origin, political opinion, disability, age, pregnancy, marital status or family responsibilities.

139. Federations

A trade union or employers' organisation may participate in, be affiliated with, contribute to or join any national or international federations of trade unions or employers' organisations.

140. Remedies

- (1) A person who alleges an infringement of a right or protection contained in this Part may present a complaint to the Tribunal.
- (2) Where an employee or person seeking employment alleges in a complaint that he or she was dismissed or denied employment contrary to this Part, the burden is on the employer to prove that the dismissal or denial had no connection to the employee's or applicant's trade union membership or activities.
- (3) Where the Tribunal finds that the complaint is well founded, it shall make an order as it deems necessary to secure compliance with the provisions of this Part, including an order—

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- (a) for the reinstatement of an employee, if requested and deemed appropriate;
- (b) for the restoration to an employee of any benefit, entitlement or advantage; and
- (c) for the payment of compensation.

141. Register of trade unions

The Registrar shall keep a register of all trade unions registered under this Code.

142. Registration

- (1) Every trade union and employers' organisation to which this Code applies shall be registered in accordance with the Code.
- (2) The rights and benefits conferred by this Code upon a trade union or an employers' organisation and its members may be exercised only if the organisation is registered in accordance with the provisions of this Part.
- (3) Any 7 members or more of a trade union or 3 members or more of an employers' organisation may, by subscribing their names to the rules of the union or organisation and otherwise complying with the provisions of this Code, apply to the Registrar for its registration as a trade union or employers' organisation.
- (4) The applicants shall transmit 3 copies of the rules of the trade union or employers' organisation, authenticated by signature of the president or chairperson and secretary, to the Registrar along with the application for registration.
- (5) If the Registrar is satisfied in respect of any application that—
 - (a) the requirements of this section have been met;
 - (b) the rules are consistent with this Code and do not contain provisions which are contrary to the provisions of any enactment;

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- (c) the name of the trade union or employers' organisation is not identical to that of any existing trade union or organisation or so closely resembling that name as to be likely to deceive its own members or members of the public,

the Registrar shall register the trade union or employers' organisation and furnish it with a certificate of registration.

- (6) A trade union or employers' organisation which was registered prior to the commencement of the Code shall be deemed registered under the Code.
- (7) A person aggrieved by the refusal or failure of the Registrar to register a trade union or employers' organisation may apply to the High Court within the time and in the manner and on the conditions directed by the Rules of Court.

143. Rules of trade union

The rules of every trade union and employers' organisation shall include the information contained in the Schedule.

144. Alterations in constitution or name

- (1) A trade union or employers' organisation may amend its rules, in accordance with the procedures set out in its rules.
- (2) The trade union or employers' organisation shall transmit the proposed amendments to the rules to the Registrar, and if the Registrar is satisfied that said amendments are consistent with the Code, the Registrar shall issue a written certificate of approval.
- (3) The amendments shall take effect from the date of the Registrar's certificate of approval.
- (4) Subject to section 142 (5)(c) any trade union or employers' organisation may change the name under which it is registered in the same manner as an

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amendment of its rules, and if the provisions of this section have been complied with.

- (5) Where a trade union or employers' organisation has changed its name, the Registrar shall issue a new certificate and make the amendment to the register.

145. Annual return to registrar

- (1) Within 6 calendar months after the end of each financial year, a trade union and employers' organisation shall submit to the Registrar a return which shall include—
- (a) its address;
 - (b) the names and addresses of its current office holders;
 - (c) the number of fully paid up members;
 - (d) an audited annual financial statement for that financial year.
- (2) The Registrar shall suspend or withdraw registration of any trade union or employers' organisation which fails to submit a return in accordance with subsection (1).
- (3) Any trade union or employers' organisation subject to such a suspension or withdrawal under subsection (2) may apply to the High Court for an order to reinstate its registration.

146. Legal status

- (1) A trade union and employers' organisation registered under the Code shall be deemed to be a body corporate with the capacity to contract and to hold property, and to sue and to be sued.
- (2) Despite subsection (1), no civil proceedings except those expressly allowed by the Code or any enactment may be brought against a trade union or employers' organisation registered under the Code or against any of its officers, representatives or members, in respect of an act done in good faith, by or on behalf of that trade union or

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organisation in the furtherance or purported furtherance of the objects of its rules.

- (2) Subsection (2) shall not be construed as exempting a trade union or employers' organisation or any of its officers, representatives or members from contractual liability for goods or services, from obligations incurred in respect of property or from liability for any criminal malicious or negligent act.

147. Amalgamation

- (1) A trade union or employers' organisation may, in accordance with its rules and subject to the provisions of this Code, amalgamate with any other trade union or organisation.
- (2) In the event of amalgamation, the newly constituted trade union or organisation shall assume all the rights and duties of its predecessor organisations unless the High Court upon the application of an interested party and for good cause, directs otherwise.

148. Defunct organisations

- (1) Upon application by a member of a trade union or employers' organisation, the Registrar may, declare a trade union or an employers' organisation to be defunct if the Registrar is satisfied that it is no longer carrying on any of its activities for a period of over 2 years.
- (2) Any declaration made under this section shall include the winding up of the trade union or employers' organisation and such direction for the disposal of the trade unions' or employers' organisations' assets, as the registrar may deem just, having regard to the objects and the constitution of the trade union or the organisation or a resolution of the majority of the trade union members in good standing.
- (3) A trade union or employers' organisation subject to a declaration made under this section may appeal to the High Court.

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149. When objects of union not unlawful

The purposes of a trade union registered under this Code, which are in restraint of trade, shall not be deemed to be unlawful to render—

- (a) a member of that trade union liable to criminal prosecution for conspiracy or otherwise; or
- (b) an agreement or trust void or voidable.

150. Prohibition of actions of tort against trade union

- (1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.
- (2) Nothing in this section shall affect the liability of the officers of a trade union to be sued, except in respect of any tortious act committed by or on behalf of the union in contemplation of or in furtherance of a trade dispute.

151. Conspiracy in relation to trade disputes

- (1) An agreement by 2 or more persons to do or procure an act to be done, in contemplation or furtherance of a trade dispute, shall not be indictable as a conspiracy if such an act committed by 1 person would not be punishable as a crime.
- (2) An act done in pursuance of an agreement by 2 or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement, would be actionable.
- (3) For the purposes of this section, a “crime” means an offence punishable on indictment, or an offence which is punishable on summary conviction and for the commission of which the offender is liable under the enactment making the offence punishable to be imprisoned either absolutely or at the discretion of the Court as an alternative for some other punishment.

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- (4) Nothing in this section shall exempt from punishment a person guilty of a conspiracy for which a punishment is awarded under any other enactment.
- (5) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace, sedition or any offence against the State or the Sovereign.

152. Removal of liability for interfering with another person's business

An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that—

- (a) it induces some other person to break a contract of employment;
- (b) it is an interference with the trade, business, or employment of some other person; or
- (c) it is an interference with the right of some other person to dispose of his or her capital or his or her labour as he or she wishes.

153. Peaceful picketing

It shall be lawful for 1 or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

154. Withdrawal or cancellation of certificate of registration

- (1) A certificate of registration of a trade union shall not be withdrawn or cancelled except by the Registrar—
 - (a) at the request of the trade union to be evidenced in the manner directed by the Registrar;

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- (b) on proof to the satisfaction of the Registrar that a certificate of registration has been obtained by fraud or mistake;
 - (c) on proof to the satisfaction of the Registrar that the trade union has wilfully and after notice from the Registrar violated any of the provisions of this Code; or
 - (d) on proof to the satisfaction of the Registrar that the trade union has ceased to exist.
- (2) The Registrar shall give at least 2 months notice to a trade union before the certificate of registration of the trade union can be withdrawn or cancelled except where the trade union requests the withdrawal or cancellation.
- (3) A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of the withdrawal or cancellation, cease to enjoy the privileges of a registered trade union, and shall be dissolved and proceed to wind up its affairs, but without prejudice to any liability actually incurred by the trade union, which may be enforced against the trade union as if the withdrawal or cancellation had not taken place.
- (4) If after the withdrawal or cancellation of the certificate a trade union continues in active operation, except for the purpose of winding up its affairs, the secretary, trustee, member of the committee, or officer of the trade union remaining in office or taking an active part in its operations, is guilty of an offence and liable on summary conviction to a fine of \$10,000.00 for every day during which the trade union continues in active operation.

155. Officers, accounts and audit

- (1) A treasurer shall keep a register of members and a record of all monies received and paid by him for or on behalf of the trade union and shall—
- (a) in respect of each accounting period;
 - (b) on his resignation;

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- (c) on the expiry of his term of office; or
 - (d) whenever required to do so by the rules of the trade union,
render to the trade union a true account of all monies received and paid by him since his appointment or since he last rendered an account, whichever is the later.
- (2) The books and accounts kept under subsection (1) shall be audited by the auditor at least once a year.
 - (3) Where an officer leaves office, he shall hand over to his successor or to the trade union any funds or property of the trade union in his possession, custody or under his control, failing which the trade union may sue the officer before the High Court to recover the funds or property.
 - (4) Every secretary shall keep minutes of all meetings including branch meetings of a trade union.

156. Withholding or misapplying trade union effects

- (1) If an officer, member or other person, being or representing himself to be a member of a trade union registered under this Code, or the nominee, executor, administrator or assignee of a member thereof, or any person whatsoever—
 - (a) by false representation or imposition, obtains possession of any funds or property of that trade union; or
 - (b) having any funds or property of that trade union in his possession, wilfully withholds or fraudulently misapplies the same, or wilfully applies any part of the same to purposes other than those expressed or directed in the rules of the trade union,

the Magistrate, upon a complaint made by a person on behalf of the trade union or by the Registrar, may order that officer, member or other person to deliver up any funds or property of that trade union to the trade union or to repay the amount of money applied improperly,

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and to pay a further sum of \$7,000.00 together with costs of \$10,000.00.

- (2) If the person, against whom an order is made under subsection (1), fails to comply with the order, the Magistrate may order that person to be imprisoned for a period of 3 months.
- (3) Despite subsection (1)—
 - (a) a trade union is not prevented from proceeding by indictment against a party; and
 - (b) a person shall not be proceeded against by indictment if a conviction was previously obtained against that person for the same offence under the provisions of this Code.

157. Regulations

The Governor acting on the advice of Cabinet may make regulations for—

- (a) the registration of a trade union;
- (b) the forms to be used;
- (c) the seal to be used for registration;
- (d) the inspection of documents kept by the Registrar;
- (e) the fees to be paid;
- (f) carrying this Code into effect.

158. Rules of registered unions

A trade union shall deliver to a person on demand a copy of its rules on payment of a sum not exceeding \$100.00.

159. Registered office of union

- (1) A trade union registered under this Code shall have a registered office to which all communications and notices may be addressed.
- (2) A trade union shall give notice of the situation of the registered office, and of any change, to the Registrar,

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and until that notice is given the trade union shall not be deemed to have complied with this provision.

- (3) Where a trade union is in operation for 7 days without giving notice of its registered office, the trade union and each officer of that trade union is liable to a penalty of \$100.00 for every day during which the contravention continues.

160. Membership of minors

- (1) A person under the age of 18, but above the age of 16 may be a member of a trade union subject to its rules and the Code, and he or she enjoy all the rights of a member, execute all instruments and give all acquittances necessary to be executed or given under the rules.
- (2) Despite subsection (1), a person under the age of 18, but above the age of 16 shall not be a member of the committee of management, trustee or treasurer of a trade union.

161. Improper election practices

- (1) A person shall not attempt to influence the outcome of an election for any office in an organisation by fraud, threat, bribery or other improper means.
- (2) Upon an application to the High Court by a member of a trade union or employers' organisation, or by the Registrar, claiming upon reasonable grounds a violation of subsection (1), the Court may—
 - (a) declare that elections void;
 - (b) determine a date for the holding of fresh elections;
 - (c) make provision for the filling of the offices concerned, pending the outcome of the fresh elections; and

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162. Deposit and safeguard of funds

- (1) All funds received by or on behalf of a trade union or an employers' organisation shall be deposited to the trade union or employers' organisation's bank account.
- (2) Every expenditure of funds by or on behalf of a trade union or employers' organisation shall be evidenced by a written receipt or voucher, which shall be kept with the trade union or employers' organisation's accounts.
- (3) The treasurer or the officer responsible for the custody of the trade union or employers' organisation's funds and property, including its records, shall hand over such funds and property to the trade union or employers' organisation when he or she leaves office, or earlier if directed by the governing body of trade union or employers' the organisation.
- (4) Upon the application by a member or officer of the trade union or employers' organisation to the High Court, the Court may make such order as it deems necessary to secure compliance with this section.

163. Application for certification

A trade union claiming to have as its members in good standing a majority of the employees of an employer in a bargaining unit may, subject to the provisions of this Part, make an application to the Labour Commissioner to be certified as the exclusive bargaining agent of the employees in the unit.

164. Application procedure

- (1) A trade union claiming to have as its members in good standing a majority of the employees in a bargaining unit may, subject to the provisions of this Part, submit an application to the Labour Commissioner to be certified as the exclusive bargaining agent of the employees in the unit.
- (2) A trade union which was certified as the bargaining agent immediately before the commencement of this

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Code shall be deemed to be certified as the bargaining agent.

- (3) Where no collective agreement is in force and no trade union has been certified under this Part as the bargaining agent, an application may be made at any time.
- (4) Where no collective agreement is in force but a bargaining agent has been certified under this Part for the bargaining unit, an application may be made after the expiry of 12 months from the date of certification of the bargaining agent.
- (5) Where a collective agreement is in force the application may be made during the last 3 months of the term of the collective agreement or any renewal of it.

165. Certification particulars

- (1) The application shall be in writing and shall include—
 - (a) a description of the proposed bargaining unit; and
 - (b) facts upon which the trade union relies to demonstrate that the majority of employees in the bargaining unit wish to have the trade union certified as their exclusive bargaining agent.
- (2) The trade union shall serve a copy of the application on the employer.
- (3) The application shall be determined as soon as possible, but not later than 6 months from the date of receipt by the Labour Commissioner in accordance with the provisions of this Part.

166. Appropriateness of bargaining unit

- (1) The Labour Commissioner shall on an application for certification first determine the bargaining unit it considers appropriate as the exclusive bargaining agent and in so doing shall have regard to—
 - (a) the community of interest among the employees in the proposed bargaining unit;

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- (b) the nature and scope of the duties of the employees in the proposed unit;
 - (c) the views of the employer and the trade unions concerned as to the appropriateness of the bargaining unit; and
 - (d) the historical development of collective bargaining in the employer's undertaking.
- (2) After making a determination under subsection (1) and before certification of the trade union, the Labour Commissioner may include additional employees in or exclude employees from the bargaining unit.

167. Employer recognition or notice

- (1) An employer, within 14 days of receiving notice of the application for certification by a trade union, may—
- (a) indicate its agreement to recognise the trade union as the bargaining agent for that bargaining unit; or
 - (b) indicate its objection to the trade union being recognised as the bargaining agent for that bargaining unit.
- (2) A notice from an employer under subsection (1) shall be made in writing to the Labour Commissioner and where there is an objection under subsection (1)(b), shall specify the reasons for the objection.

168. Certification following employer recognition

- (1) Where only one trade union has applied for certification, and the employer has indicated in writing his or her agreement to recognise the trade union as the exclusive bargaining agent and it appears to the satisfaction of the Labour Commissioner that the other conditions of this Code have been fulfilled, the Labour Commissioner may carry out a membership survey to determine the extent of support which the union enjoys among the employees in the appropriate bargaining unit on the date the application was made.

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- (2) Where it appears to the Labour Commissioner from the results of the survey that the union is supported on the date of the application by more than 50% of the bargaining unit, the Labour Commissioner shall certify the union as the exclusive bargaining agent for that unit.
- (3) The Minister, in consultation with the Labour Commissioner, shall make regulations governing the organisation and conduct of the survey.

169. The majority trade union determined by poll

- (1) Where 2 or more trade unions have applied for certification in relation to the same bargaining unit, or where only 1 trade union has applied and the employer has contested certification, the Labour Commissioner shall carry out a poll among employees in the exclusive bargaining unit and shall certify as the recognised bargaining agent for the unit the trade union which is shown by the poll to have the greatest support among the employees.
- (2) Despite subsection (1), a trade union shall not be certified unless it has received more than 50% of the votes of the employees in the bargaining unit.
- (3) Where the results of the poll show a tie, a second poll shall be carried out within 7 days, unless extended for good cause in accordance with the regulations.

170. Employer duties regarding conduct of poll

In relation to the conducting of the poll, every employer shall—

- (a) take all necessary steps to ensure that his or her employees who are eligible to vote in a poll are given the opportunity to do so; and
- (b) permit each employee to be absent from work for the purpose of voting, for a reasonable period of time not to exceed 2 hours, without pay deduction.

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171. Restrictions in conduct of poll

When a poll is being conducted, no person or organisation shall—

- (a) seek, in any premises in which the poll is being held or within 100 yards of those premises, to influence an employee to vote or refrain from voting for a trade union;
- (b) wilfully obstruct a person from voting or carrying out any functions imposed on that person under this Code.

172. Employee duties in conduct of poll

In relation to the conducting of the poll, no employee shall—

- (a) receive, or agree to receive any money, loan, reward, office or place of employment for voting or agreeing to vote or for refraining or agreeing to refrain from voting for a trade union; or
- (b) accept or take any food or drink or provision from any person where the intent is to induce the employee to vote or refrain from voting or to reward the employee for having voted or refrained from voting.

173. Granting or refusing certification

The Labour Commissioner shall in writing within a reasonable period of time not to exceed 6 months of the receipt of an application for certification of a bargaining agent—

- (a) certify the trade union as the exclusive bargaining agent for the bargaining unit;
- (b) refuse to certify the trade union on the grounds that it has not satisfied the requirement that a majority of employees in the proposed unit wish to have the trade union certified as their exclusive bargaining agent; or

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- (c) refuse to certify the trade union on the grounds that the bargaining unit identified by the trade union is not appropriate.

174. Compulsory recognition and duty to negotiate in good faith

- (1) Where a trade union has been certified as the exclusive bargaining agent for a bargaining unit in accordance with this Part, the employer shall recognise the union, and the union and the employer shall meet and engage in bargaining.
- (2) Where certification is granted pursuant to this Part, a trade union, employer or employers' organisation shall not fail or refuse to bargain collectively in good faith and shall make every reasonable effort to conclude a collective agreement.
- (3) A person affected by a violation of subsections (1) and (2) may apply to the High Court and the High Court may make any order it deems necessary to ensure compliance with this section.
- (4) A trade union which fails to comply with the provisions of subsections (1) and (2) shall be guilty of an offense and liable on summary conviction to a fine of \$3,000.00.
- (5) An employer or employers' organisation who fails to comply with the provisions of subsections (1) and (2) shall be guilty of an offense and liable on summary conviction to a fine of \$3,000.00 for every day the breach continues.

175. Duty of fair representation

- (1) Where a trade union has been certified as the exclusive bargaining agent for a bargaining unit, it shall be the duty of that trade union to provide full and proper representation of the interest of all its members in the bargaining unit with respect to their rights under the collective agreement whether or not they are fully paid-up members of the trade union.

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- (2) Any member of the trade union in the bargaining unit may apply to the High Court for an order directing the trade union to cease a violation of subsection (1) and to comply with the provisions of this section.

176. Closing of business

- (1) An employer who decides to close an undertaking must give the Labour Commissioner and the trade union, where that trade union has been certified, or has made application of certification—
- (a) reasonable notice of its intention;
 - (b) the reason for its decision to close; and
 - (c) the number and categories of workers to be affected.
- (2) An employer who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$10,000.00.
- (3) In any prosecution under subsection (2) the onus shall be on the employer to prove that he or she complied with subsection (1).

177. Effect of certification as the recognised majority union

Where a trade union is certified under this Code as the exclusive bargaining agent for the employees in the bargaining unit—

- (a) the trade union shall replace any other trade union that before the certification was the bargaining agent for the employees in the bargaining unit and, shall have exclusive authority to bargain collectively on behalf of the employees in the bargaining unit and to bind them by a collective agreement;
- (b) if another trade union had previously been certified or was deemed to have been certified in respect of employees in the bargaining unit, the certification of the last mentioned trade union shall be deemed to be revoked in respect of such employees; and

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- (c) the certified trade union is substituted as a party to any collective agreement applicable to any employees in the bargaining unit in the place of the trade union named in the collective agreement.

178. New collective agreement

- (1) Where a trade union is substituted as a party to a collective agreement, the union so substituted may submit to the employer proposals for the revision of the collective agreement or for a new collective agreement and the parties shall bring into effect the revised or new collective agreement within 90 days of the date on which the substitution of the trade union took place.
- (2) Despite subsection (1), the original collective agreement shall remain in force until a new agreement is signed.

179. Revocation of exclusive bargaining rights

- (1) Any time after 1 year from the certification of a trade union, any employee in that bargaining unit may apply to the Labour Commissioner for the withdrawal of the certification on the basis that the majority of employees in the bargaining unit no longer wish to have that trade union as their exclusive bargaining agent.
- (2) An application under subsection (1) shall be accompanied by evidence that a majority of employees in the bargaining unit do not wish to have the trade union as their exclusive bargaining agent.
- (3) Within 90 days of receiving an application under subsection (1), the Labour Commissioner shall conduct a poll of the employees in the bargaining unit by secret ballot.
- (4) After a poll under subsection (3), the Labour Commissioner shall grant the application and cancel the certification of the trade union if more than 50% of the employees in the bargaining unit cast ballots against having the trade union represent them as their exclusive bargaining agent.

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- (5) If the certification of a trade union is cancelled under subsection (4), the Labour Commissioner may make any appropriate order, including the terms of cancellation, and may decide on the validity and duration of any existing collective agreement covering the bargaining unit.
- (6) If the certification of a trade union is cancelled under subsection (4), no trade union shall apply for certification as bargaining agent for the employees in the bargaining unit until a period of 6 months has elapsed from the date of the cancellation.
- (7) If the application for cancellation of the certification is refused, no one may bring a further application for decertification until a period of 12 months has elapsed from the date of the refusal.

180. Right of appeal

- (1) If certification of a trade union as exclusive bargaining agent is refused, withdrawn, terminated or modified by the Labour Commissioner, either the trade union or the employer may apply to the High Court for determination.
- (2) In making a determination under subsection (1), the High Court shall endeavour in its decision to promote over time a system of orderly and effective collective bargaining.

181. Right to choose representative

Nothing in this Part prevents an employee from being assisted by a representative of his or her choice, including an officer of a trade union which has not been registered or certified under this Code, in an individual grievance or disciplinary matter.

182. Access to employer's premises

- (1) No employer shall deny to an officer or authorised representative of a trade union certified under this Code

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access to the employer's premises as is reasonable and necessary for the lawful activities of the trade union.

- (2) In granting the access required by subsection (1), an employer may impose restrictions as to time and place which are reasonable and necessary to avoid undue disruption of operations and in the interest of safety.

183. Collective agreements

- (1) A collective agreement shall—
- (a) be in writing and signed by the parties to the agreement;
 - (b) contain the date on which it is to become effective;
 - (c) contain effective procedures for the avoidance of disputes and settlement of rights, interests and disputes which procedures may include a reference of any dispute to conciliation, mediation or arbitration;
 - (d) contain provisions for the settlement of all differences arising out of the interpretation, application and administration of the agreement;
 - (e) provide for such other matters as may be agreed between the parties to the agreement;
 - (f) be lodged with the Minister or his or her designate.
- (2) Nothing in this section shall affect the validity of a collective agreement which is valid and existing immediately before the commencement of this Code and that agreement shall remain in force until it expires or is replaced by another collective agreement.

184. Enforceability of collective agreements

- (1) A collective agreement is binding on the parties to it and on every employee who is a member of the signatory trade union or a member of the bargaining unit for which that trade union has been certified.
- (2) The terms of the collective agreement are deemed to be incorporated into the employment contract of each

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employee who is a member of the signatory trade union or a member of the bargaining unit for which that trade union has been certified.

- (3) Any party referred to in subsection (1) may apply to the High Court to enforce the provisions of a collective agreement.

185. Successor rights and obligations

- (1) If a business or a part of it is sold, leased, transferred, or otherwise disposed of—
- (a) the purchaser, lessee or transferee is bound by all the proceedings under this Code that were commenced before the date of the disposition and the proceedings shall continue as if no change had occurred; and
 - (b) a collective agreement which is in force, continues to bind the purchaser, lessee, or transferee to the same extent as if it had been signed by the purchaser, lessee or transferee.
- (2) Where a dispute arises regarding the applicability of this section, an affected party may apply to the High Court for a determination of the matter in accordance with this Code.

PART 13
MISCELLANEOUS

186. Conflict between the Code and other law

To the extent that there may be conflict or inconsistency between any provision of the Code and any other enactment relative to labour matters, the provision of the Code shall prevail.

187. Repeal and savings

- (1) The following enactments are repealed—
- (a) the Employment Act (Cap. 15:03);
 - (b) the Labour Act (Cap. 15:17);

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- (c) the Trade Union Act (Cap. 15:20);
 - (d) the Employment of Young Children Prohibition Act (Cap. 15.03);
 - (e) the Employment of Women, Young Persons and Children Act (Cap. 15.03);
 - (f) the Protection of Wages Act (Cap. 15.03);
 - (g) sections 21-23 of the Immigration Act (Cap. 13.01).
- (2) Despite the repeal of the enactments mentioned in subsection (1), any requirement performed, table of fees, licenses or certificates issued, notice, decision, determination, direction or approval given, application or appointment made, or thing done, under any of the repealed enactments, shall, if in force on the date immediately prior to the coming into force of this Code, continue in force, or in the case of a license or certificate, continue in force until the date of expiry of such license or certificate as set out in such license or certificate, and shall, so far as it could have been made, issued, given or done under this Code have effect as if made, issued, given or done under the corresponding provisions of this Code.

SCHEDULE

(Section 143)

The constitution of every trade union and employers' organisation shall include the following information—

- 1) the name of the trade union or organisation;
- 2) the objects of the trade union or organisation;
- 3) the qualifications for membership;
- 4) provision for the office-bearers in the trade union or organisation among whom shall be the president or chairperson, a secretary or general secretary and treasurer;

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- 5) provision for periodic elections to all offices and for the appointment of a temporary replacement if an office-holder becomes disqualified or incapacitated from holding office;
- 6) provision for a general meeting open to all members, at least once every 2 years;
- 7) a provision that any member or delegate may propose a resolution at a general meeting;
- 8) the fees and other subscriptions payable, and the maximum period of arrears permitted before a member loses his or her good standing;
- 9) the grounds on which an officer or member may be suspended or expelled from office or from membership, each ground being specified;
- 10) the procedure for suspension or expulsion from office or from membership, including provision that the affected officer or member be fully informed in writing of the allegations against him or her, that he or she shall have a reasonable opportunity to answer those allegations and shall have the right of appeal;
- 11) provision for the keeping of full and accurate records by the treasurer or other appropriate officer, for the annual audit of those accounts by an auditor appointed by the trade union or organisation who shall not be a member of that trade union or organisation, and for the availability to all members on request of full, audited annual statements of account;
- 12) provision for the banking and investment of the trade union's or organisation's funds;
- 13) provision for the paying out of the trade union's or organisation's funds, including the authority to sign cheques;
- 14) the conditions under which a member may become entitled to any financial benefit provided by the organisation;
- 15) provision for the amending of the rules;

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- 16) the duration of its financial year;
- 17) the inspection of the register of members and other books of the trade union or organisation by its members;
- 18) the manner of amalgamating with other trade unions or organisations;
- 19) the manner of dissolving the trade union or organisation.

Teresina Bodkin

SPEAKER

Passed the Legislative Assembly this 18th day of December, 2012.

Judith Baker

CLERK OF THE LEGISLATIVE ASSEMBLY