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LABOUR: ACT 5/1980

THE EMPLOYMENT ACT, 1980

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An Act to consolidate the law in relation to employment and to introduce new provisions designed to improve the status of employees in Swaziland.

Date of commencement 1st November 1981.

PART I — PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Employment Act, 1980.
- (2) This Act shall come into operation on such date as the Minister may appoint by notice in the Gazette and the Minister may appoint different dates for the coming into operation of different Parts or different provisions of the Act.

Interpretation.

2. For the purposes of this Act —

“appointed day” means such day as the Minister may appoint, by order published in the Gazette, for the coming into force of this Act or any Part or provision thereof;

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

“attesting officer” means an administrative officer or Inspector or an officer designated by the Minister in writing;

“business” includes any trade, undertaking or establishment;

“calendar year” means the period commencing on the first day of January and ending on the following thirty first day of December;

“casual employee” means any employee the terms of whose engagement provides for his payment at the end of each day and who is not engaged for a longer period than twenty four hours at a time;

“chief” has the meaning ascribed thereto by the Swazi Administration Act, 1950;

“Chief Medical Officer” means the person appointed in the Public Service to be the Chief Medical Officer;

“child” means a person under age of fifteen years;

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

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

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"confinement" means labour resulting in the issue of a living child, or labour after twenty-eight weeks of pregnancy resulting in the issue of a child, living or dead;

"continuous employment" means a period of unbroken service with the same employer, including a period of unbroken service as a casual employee with the same employer; and for the purposes of this definition the following shall not constitute a break in service —

- (a) absence from work due to sickness, injury or maternity certified by a medical practitioner;
- (b) absence from work due to a trade dispute where the employee resumes his employment on the next working day following the settlement of the dispute;
- (c) absence from work due to a temporary cessation of work in the undertaking;
- (d) absence from work on leave or for any other cause approved by the employer;

and "continuously employed" shall be construed accordingly;

"contract" means in respect of Part XIII a public contract;

"contract of employment" means a contract of service, apprenticeship or traineeship whether it is express or implied and, if it is express, whether it is oral or in writing;

"contractor" means —

- (a) in respect of this Act in general, an employer working under a contract for services;
- (b) in relation to a principal a person who has contracted directly with such principal to perform any work for him;
- (c) in respect of Part XIII a contractor within the general meaning assigned to the work who has entered into a public contract;

and the term "sub-contractor" shall be construed accordingly;

"court" means a Magistrates Court;

"dispute" includes a grievance or a trade dispute and means any dispute over —

- (a) the entitlement of any person or group of persons to any benefit under an existing collective agreement, or works council agreement;
- (b) the existence or non-existence of a collective agreement or works council agreement;
- (c) the dismissal, employment, suspension from employment, re-employment or re-instatement of any person or group of persons;
- (d) the recognition or non-recognition of an organisation seeking to represent employees in the determination of their terms and conditions of employment;

- (e) the application or the interpretation of any law relating to employment; or
- (f) the terms and conditions of employment of any employee or the physical conditions under which such employee may be required to work;

"domestic employee" includes any person employed for wages in or about a private dwelling house by the owner or occupier of such house;

"employee" means any person to whom wages are paid or are payable under a contract of employment;

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

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

"foreign contract of employment" means a contract of employment made under the provisions of Part VIII;

"immediate family" means, in relation to a person such person's father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, half sister, wife, husband, common-law wife or common-law husband;

"Industrial Court" means an industrial court established by law;

"industrial undertaking" means —

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (b) undertakings in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed, including undertakings engaged in ship building or in the generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in building and civil engineering work, including constructional repair maintenance, alteration and demolition work;

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- (d) undertakings engaged in the transport of passengers or goods, including the handling of goods at docks, quays, wharves, warehouse or airports;

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

"Labour Commissioner" means the person appointed in the Public Service to be the Labour Commissioner and includes any person authorised in writing by the Labour Commissioner to act on his behalf;

"legal tender" has the meanings ascribed thereto by the Currency Order 1974;

"liquor" has the meaning assigned to "liquor" in the law relating to liquor licensing'

"maternity leave" means leave granted to an employee arising from, or in contemplating of, her confinement;

"medical practitioner" has the meaning ascribed thereto by the Medical and Dental Practitioners Act, 1970;

"midwife" has the meaning ascribed thereto by the Nurses and Midwives Act, 1965;

"Minister" means the Minister for the time being responsible for Labour;

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

"mineral" has the meaning ascribed thereto by the Mining Act, 1958;

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

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

"notice" means in respect of the termination of employment, notice of termination of employment;

"organisation" has the same meaning as in the Industrial Relations Act;

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

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

"pay day" means the day or date fixed by the employer as the day on which he shall pay his employee wages due to him;

"parent" in relation to a child or young person includes a guardian and every person who has the actual custody of the child or young person;

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

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

"prescribed" means prescribed by the Minister by Order in the Gazette;

"public authority" means the Government or a local authority or the Ngwenyama in Council;

"public officer" includes any officer of a public authority;

"public contract" means a contract involving the expenditure of funds by the Government or by any statutory body, whether corporate or unincorporate, for

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

"recruit" means the undertaking of any operation with the object of obtaining or supplying the labour of employees who do not spontaneously offer their services at the place of employment, or at an employment exchange, or at an office conducted by an employers' organisation established for the purpose of receiving applications for employment;

"redundant employee" means an employee whose contract of employment has been terminated —

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

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- (v) lack of orders or shortage of materials;
- (vi) scarcity of means of production;
- (vii) contraction in the volume of business;
- (d) because of a natural disaster if the termination is wholly or mainly attributable to the destruction of, or damage caused to, the employers place of business by fire, hurricane, earthquake or other act of God, whether or not similar to any of the foregoing causes;

"redundancy and redundancies" shall be construed in the context of "redundant employee";

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

"severance allowance" means the allowance to which an employee is entitled under section 34;

"temporary cessation of work" means a situation in which a business or part of a business has temporarily ceased or diminished, but where the employer/employee relationship subsists and where it is the intention of the employer to resume normal working as soon as possible;

"undertaking" means any industrial undertaking and any of the following establishments, businesses or undertakings whether public or private, which is wholly or mainly engaged in —

- (a) the sale, purchase, distribution, insurance, negotiation, loan or administration of goods of any kind;
- (b) the provision of an administrative service in which the persons employed are mainly engaged in clerical work;
- (c) the production, printing or publication of a newspaper;
- (d) the treatment or care of children, or aged, destitute, infirm, mentally unfit or sick persons;
- (e) the operation of a boarding house, café, club, hotel, restaurant or any other place for refreshment or public entertainment;
- (f) the operation of any broadcasting, postal or telecommunication service or the production of cinematographic films;
- (g) any other service similar to the foregoing;

but does not include —

- (i) any undertaking in which only members of the employer's immediate family are employed;
- (ii) domestic employment in or about a private dwelling house;
- (iii) any undertaking or part thereof declared by the Minister in writing to be an agricultural undertaking;

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

"week" means any period of seven consecutive days;

"wife" means a person married according to Swazi law or other law or custom recognised within Swaziland, and if under such law or custom more marriages than one validly exist at the relevant time, then the person first married under such law or custom;

"woman" means a female of the apparent age of eighteen years or upwards;

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

"young person" means a person who has attained the age of fifteen years but is under the age of eighteen years;

Contracting out.

3. Except as expressly provided by this Act any arrangement by any person to contract out of its provisions shall be null and void.

Status of collective agreements.

4. Nothing in this Act shall be construed as making a collective agreement binding on any party unless the collective agreement —

- (a) specifically and expressly so provides;
- (b) is signed by the parties thereto; and
- (c) has been registered with the Industrial Court.

Act binds Government.

5. Subject to section 6, the provisions of this Act shall apply to employment with, by, or under the Government, other than to employment in the Royal Swaziland Police Force, the Umbutfo Swaziland Defence Force and the Swaziland Prison service.

Minister may exempt.

6. (1) The Minister may, by order published in the Gazette exempt any person or public authority or class or persons or public authorities from the operation of all or any of the provisions of this Act or any regulation, order or direction made thereunder.

(2) No exemption shall be made by the Minister under this section which is incompatible with any International Labour Convention for the time being in force for Swaziland.

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PART II — ADMINISTRATION

Enforcement and Administration.

7. The Labour Commissioner shall be responsible to the Minister for the application, enforcement and administration of this Act and for such other matters relating to employment as the Minister may direct.

Powers and duties of Labour Commissioner.

8. In addition to any other powers or duties given to him under this Act or any other law, the Labour Commissioner shall —

- (a) have all the powers of an Inspector under the Act;
- (b) receive, investigate and, where requested, conciliate on any question, dispute, complaint or grievance arising out of an employer/employee relationship, whether or not it specifically falls to be dealt with under this Act;
- (c) provide information and advice to employers and employees on the application of this Act or any other law relating to employment;
- (d) prepare such reports and statistics on employment as may be required by the Minister;
- (e) advise the Government on labour matters generally and industrial relations in particular;
- (f) carry out such other duties as may be required of him by the Minister.

Powers and duties of Inspectors.

9. (1) In addition to any other powers or duties given to or imposed on Inspectors by this Act or any other law, an Inspector shall —

- (a) make periodic inspections of places of employment as directed by the Labour Commissioner;
- (b) ensure that all laws relating to conditions of employment and the protection of employees in their occupations are being fully applied; where necessary providing information and advice as to the means of complying with such laws, including a time limit by which such compliance shall be effective;
- (c) bring to the notice of the Labour Commissioner any difficulty or abuse relating to employment which is not covered by existing laws;
- (d) make studies and collect data relating to employment as may be required by the Labour Commissioner.

(2) An Inspector may —

- (a) enter, examine and inspect at any reasonable time whether by day or night, with or without previous notice —
 - (i) any premises or place in which he has cause to believe any employee or recruit may be employed or housed or which he believes to be liable to inspection;

- (ii) any hospital or dispensary, or any latrines or other sanitary arrangements used, or intended to be used by employees;
 - (iii) kitchens and places in which food for the use of employees is stored, prepared or eaten and inspect and take samples of such food;
- (b) require an employer to provide any information requested by him as to the wages, hours of work or other conditions of employment of persons employed by that employer;
- (c) carry out any examination, test or enquiry which he considers to be necessary in order to satisfy himself that all legal provisions relating to employment are being complied with and, in particular, may —
- (i) question, alone or in the presence of witnesses, any employer or employee on any matter concerning the application of any law relating to employment in so far as it affects them, or apply for information to any other person whose evidence he may consider necessary;
 - (ii) require the production of any books, registers or other documents required to be kept by this Act or any other law relating to employment and may copy or make extracts from such books, registers or other documents and, if he considers such a course necessary or expedient, remove such book, register or other document;
 - (iii) direct the posting of notices required by this Act or any other law relating to employment;
 - (iv) take or remove for purposes of analysis, samples of materials or substances used or handled by employees in the course of their employment, subject to the employer or his representative being notified of the removal of samples or substances taken or removed for analysis;
- (3) An Inspector may, when carrying out any inspection under the provisions of this section, take with him any other competent person, including a police officer, to enable him to carry out his duties under this Act.
- (4) An Inspector shall on the occasion of an inspection notify the employer or his representative of his presence, unless he considers that such notification may be prejudicial to the performance of his duties.
- (5) An Inspector shall, at the time of carrying out an inspection, identify himself to employees and an employer shall, where so requested by the Inspector or by his employees, provide facilities for such employees to communicate freely with the Inspector.
- (6) Where an Inspector removes a book, register or other document in pursuance of paragraph (c)(ii) of sub-section (2) he shall give a receipt therefor to the employer or his representative.

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Certificates of appointment..

10. Every Inspector shall be given a certificate of appointment in the prescribed form and, when visiting any premises in the execution of his duty shall, if so required by an employer or his representative, produce the certificate as proof of his identity.

Duties and obligations of Inspectors..

11. (1) An Inspector shall not have any direct or indirect financial or similar interest in any undertaking liable to inspection by him.

(2) An Inspector shall not, either during or after his employment in the public service, reveal any industrial or commercial secret or any manufacturing or management process which may come to his knowledge in the course of his duties.

(3) Except where the informant or complainant gives permission to the contrary for the purposes of investigation or prosecution, an Inspector shall treat as confidential the source of any information or complaint concerning a breach of the provisions of this Act or any other law, even where such information or complaint is the reason for an inspection, visit or enquiry.

Annual reports to be published..

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

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

- (a) laws and regulations relevant to the work of the Labour Department;
- (b) staff of the Labour Department;
- (c) statistics of workplaces liable to inspection and the number of persons employed therein;
- (d) statistics of inspection visits;
- (e) statistics of offences against this Act or any other law relating to employment and penalties imposed;
- (f) statistics of industrial accidents;
- (g) statistics of occupational diseases.

Supply of information.

13. (1) For the purposes of compiling the report required by section 12 the Labour Commissioner may require employers in writing, to supply information to him specifying the form and manner in which the information shall be supplied and the time within which such information is to be submitted.

(2) Information supplied to the Labour Commissioner under this section shall not be published except —

- (a) as part of the general statistical information contained in the annual report compiled under the provisions of section 12;
- (b) with the previous written consent of the person who supplied the information; or
- (c) for the purposes of a prosecution under this Act or any other law relating to employment.

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

Delegation of powers.

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

(2) The Labour Commissioner may exercise a power or perform a duty notwithstanding that he has delegated the exercise or performance thereof to some other person and may cancel or suspend any such delegation.

Offences under this Part.

15. (1) Except as provided for in this Act, no person shall disclose, publish, communicate or otherwise make use of any information supplied by an employer under this Part and any person who knowingly acts in contravention of this subsection shall be guilty of an offence and shall be liable on conviction to a fine of two hundred and fifty Emalangeni or to imprisonment for three months.

(2) Any person who wilfully acts in contravention of subsections (2) or (3) of section 11 is guilty of an offence and shall be liable on conviction therefor to a fine of not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both. (Amended A.5/1997.)

(3) Any person who —

- (a) wilfully obstructs, hinders or delays an Inspector in the exercise of any of the powers conferred on him by this Act;
- (b) without reasonable cause, fails to comply with any lawful direction given or made by an Inspector under this Act;
- (c) fails to produce any book, register or other document which he is required to produce under this Act;
- (d) conceals, or attempts to conceal, any employee who is required to appear before or be examined by an Inspector or who otherwise prevents, or attempts to prevent any such employee from so appearing or being examined;
- (e) wilfully or without lawful cause refuses or neglects to supply within the specified time, information required by the Labour Commissioner under section 13;

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- (f) wilfully supplies or causes to be supplied to the Labour Commissioner or an Inspector any false information;
- (g) refuses to answer any question lawfully put by the Labour Commissioner or an Inspector for the purposes of this Act;
- (h) hinders or obstructs the Labour Commissioner or Inspector in the exercise of any of the powers conferred on him by law;

shall be guilty of an offence and shall be liable on conviction to a fine of two hundred and fifty Emalangeni or no imprisonment for three months.

Persons not required to supply incriminating information.

16. Notwithstanding any provision of this Act relating to the questioning of any person or to supply of information, no person shall be required to answer any question or supply any information tending to incriminate him.

Instituting of proceedings.

17. The Labour Commissioner or an Inspector may institute proceedings in the name of the Labour Commissioner against any person for any contravention of, or offence committed under this Act and may appear in and conduct any such proceedings.

PART III — LABOUR ADVISORY BOARD

Establishment of Labour Advisory Board.

18. (1) There is hereby established a Labour Advisory Board (hereinafter referred to as "the Board).

(2) The Board shall consist of the following persons:

- (a) a Chairman who shall be the Labour Commissioner;
- (b) a Deputy Chairman who shall be the Deputy Labour Commissioner;
- (c) not more than six members representative of the interests of employees to be appointed by the Minister after consultation with organisations of employees;
- (d) not more than six members representative of the interests of employers to be appointed by the Minister after consultation with organisations of employers.

(3) There shall be a Secretary to the Board who shall be appointed by the Labour Commissioner.

(4) The members of the Board shall be appointed by the Minister for such period, not exceeding three years, and on such terms and conditions as he may determine and a member of the Board whose term of office expires shall be eligible for re-appointment.

(5) The Minister may terminate the appointment of a member on account of —

- (a) the member's physical or mental incapacity;
- (b) the member's absence from three consecutive meetings of the Board;
- (c) a recommendation by a majority of the Board's members representing the interests of employees that one of their number should be replaced;

(d) a recommendation by a majority of the Board's members representing the interests of employers that one of their number should be replaced.

(6) A member of the Board may at any time resign his membership by giving one month's notice in writing to the Minister.

(7) Where the Minister terminates the appointment of a member of the Board in terms of subsection (5), or a member resigns, the Minister shall appoint a replacement in accordance with subsections (2) and (4).

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

Duties of the Board.

19. The Board shall consider and advise the Minister upon any matter affecting employment and labour referred to the Board by the Minister and without prejudice to the generality of this requirement, such matters shall include —

- (a) proposals for any new legislation to employment;
- (b) amendments to this Act or any other law relating to employment;
- (c) proposed action in regard to —
 - (i) agenda items or texts to be discussed by the International Labour Conference;
 - (ii) the submission of International Labour Conventions or Recommendations to the Government;
 - (iii) recommendations and unratified International Labour Conventions;
 - (iv) questions arising out of reports submitted under Article 22 of the Constitution of the International Labour Organisation;
 - (v) the denunciation of ratified International Labour Conventions.

Quorum and meetings of the Board.

20. (1) A quorum for the Board shall be —

- (a) the Chairman or Deputy Chairman of the Board;
- (b) two of the members representing employees' interests;
- (c) two of the members representing employers' interests.

(2) The Board shall have the power to co-opt other persons as members for any particular purpose approved by the Minister, such persons shall have all the rights and privileges accorded to appointed members of the Board for the period of their co-option.

(3) Subject to this section, the Board shall regulate its own procedure.

PART IV — CONTRACTS OF EMPLOYMENT

Application.

21. (1) This Part of the Act shall apply in respect of every contract of employment made within Swaziland and to be performed wholly within Swaziland.

(ISSUE 2)

(2) Any person, of or above the age of fifteen years, may enter into a contract of employment other than a foreign contract of employment.

Written particulars to be provided.

22. (1) Every employer shall, subject to the provisions of subsection (2) —

- (a) within two calendar months of the appointed day, give each employee in his employment a completed copy of the form at the Second Schedule;
- (b) give each employee taken into his employment after the appointed day, a completed copy of the form at the Second Schedule within six weeks of the beginning of that employment.

(2) Nothing in this section shall apply in respect of a domestic employee or an employee —

- (a) who normally works or is expected to work less than twenty-one hours per week;
- (b) who has contracted to work for his employer for a fixed period of six weeks or less and is not re-engaged at the end of that period;
- (c) who is a member of the employer's immediate family;
- (d) whose terms of service are governed by a collective agreement, a copy of which has been lodged with the Labour Commissioner and a further copy of which is held readily available by the employer for perusal by the employer at his place of employment.

Employer and employee to sign form.

23. (1) The signatures of both the employer and the employee duly witnessed, shall be affixed to the copy of the form at the Second Schedule given to the employee under the terms of section 22.

(2) Where an employee refuses to sign the form, the employer shall so inform the Labour Commissioner in writing, whereupon the Labour Commissioner shall arrange for an Inspector to interview the employee and explain the document and the requirements of this section to him.

(3) If the Inspector is satisfied that the details set out in the form are correct, he shall require both the employer and the employee to sign the employee's copy of the form and witness their signature thereto.

(4) Where for any reason the employee continues to refuse to sign the form, the Inspector shall endorse the form to that effect, thereafter handing it to the employee and certifying in writing to the employer that he has done so.

Minister may vary form.

24. The Minister may, after consultation with the Labour Advisory Board, amend the form in the Second Schedule.

Form not to be deemed written contract.

25. In any proceedings arising out of the provisions of this Act, a copy of the form in the Second Schedule signed by both the employer and the employee, shall be accepted as *prima facie* evidence of the matters contained therein at the time it was signed, but nothing in this Act shall deem the form to be a written contract of employment.

Changes in terms of employment.

26. (1) Where the terms of employment specified in the copy of the form in the Second Schedule given to the employee under section 22 are changed, the employer shall notify the employee in writing specifying the changes which are being made and subject to the following subsections, the changed terms set out in the notification shall be deemed to be effective and to be part of the terms of service of that employee.

(2) Where, in the employee's opinion, the changes notified to him under subsection (1) would result in less favourable terms and conditions of employment than those previously enjoyed by him, the employee may, within fourteen days of such notification, request his employer, in writing, (sending a copy of the request to the Labour Commissioner), to submit to the Labour Commissioner a copy of the form given to him, under Section 22, together with the notification provided under subsection (1) and the employer shall comply with the request within three days of it being received by him.

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

(4) Any person dissatisfied with any decision made by the Labour Commissioner under subsection (3) may apply in writing for a review to the Labour Commissioner, who using the powers accorded to him under Part II, shall endeavour to settle the matter. Where he is unable to do so within fourteen days of the receipt of the application being made to him he shall refer the matter to the Industrial Court which may make an order.

Contracts not to conflict with law.

27. No contract of employment shall provide for any employee any less favourable condition than is required by any law. Any condition in a contract of employment which does not conform with this Act or any other law shall be null and void and the contract shall be interpreted as if for that condition there were substituted the appropriate condition required by law.

Existing contracts to continue in force.

28. All contracts of employment valid and in force at the commencement of this Act shall continue to be in force after such commencement, and to the extent that they are not in conflict with this Act shall be deemed to be made thereunder and the parties thereto shall be subject to and entitled to the benefits of the provisions of this Act.

(ISSUE 2)

No discrimination on grounds of sex etc..

29. No employer shall, in any contract of employment between himself and an employee discriminate against any person or between employees on grounds of race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status.

Offences under this Part.

30. Any employer who —

- (a) fails or refuses to provide an employee with a completed copy of the form in the Second Schedule as required by section 22;
- (b) fails or refuses to notify the employee in writing of changes in his conditions of employment as required by section 26;
- (c) fails or refuses to submit to the Labour Commissioner any document as required by section 26; or
- (d) discriminates against any person contrary to section 29,

shall be guilty of an offence and liable on conviction to a fine of not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART V — TERMINATION OF CONTRACTS OF EMPLOYMENT

Application.

31. This Part of the Act shall apply to every contract of employment made within Swaziland and to be performed wholly within Swaziland.

Probationary period.

32. (1) During any period of probationary employment as stipulated either in the form to be given to an employee under section 22, or in a collective agreement governing his terms and conditions of employment, either party may terminate the contract of employment between them without notice.

(2) No probationary period shall, except in the case of employees engaged on supervisory, technical or confidential work, extend beyond three months.

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

Periods of notice by employer and employee.

33. (1) Subject to section 32, the minimum notice of termination of employment an employer may give an employee who has completed his probationary period of employment, and who has been continuously employed by that employer for more than one month shall be —

- (a) if the period of continuous employment is less than three months, one week;
- (b) if the period of continuous employment is between three months and twelve months, two days for each completed month of continuous employment up to and including the twelfth month;
- (c) if the period of continuous employment is more than twelve months, one month and an additional four days for each completed year of continuous employment after the first year of such employment.

(Amended A.4/1985.)

(2) Notwithstanding any other provision of this section, where an employee has completed his probationary period of employment and is employed on a contract of employment which provides for him to be paid his wages at monthly or fortnightly intervals, the minimum period of notice of termination of employment to be given to that employee shall not be less than one month or a fortnight as the case may be.

(3) The minimum period of notice to be given by an employee who has been continuously employed by the same employer for a period of three months or more shall be one week, or such longer period as may be specified in the form at the Second Schedule to be given to the employee under section 22 or in a collective agreement covering the terms and conditions of employment of the employee. (Amended A.4/1985.)

(4) The period of notice to be given under subsection (2) or (3) shall begin on the working day following that on which it is served by either party.

(5) Nothing in this section shall prevent either party terminating a contract of employment by paying to the other party, in lieu of notice, an amount equal to the basic wages which would have been earned by the employee during the period of notice.

(6) During the period of notice served by an employer on an employee under this section, the employee shall be entitled, without reduction in his wages, to be absent from his work for the purpose of seeking other employment for twelve hours each week, the timing of which shall be agreed between the employee and the employer and which, in pursuance of such agreement, may be taken in one or more complete days during the period of notice.

(7) Nothing in this section shall prejudice the right of the employer to dismiss an employee summarily for just cause and any employee who is dismissed for just cause shall be paid the wages due to him up to and including the date of such dismissal.

(8) An employee shall not be dismissed without notice unless the reasons for his dismissal are such as to warrant the immediate cessation of the employer/employee relationship and where the employer cannot be expected to take any other course.

Payment of all benefits before selling business.

33bis. (1) An employer shall not —

- (a) sell his business to another person; or
- (b) allow a take over of the business by another person,

unless he first pays all the benefits accruing and or due for payment to the employees at the time of such sale or take over.

(ISSUE 2)

(2) Notwithstanding subsection (1) if the person who is buying the business or taking it over, makes a written guarantee which is understood by and acceptable to each employee that all benefits accruing at the termination of his previous employment shall be paid by him within 30 days and by mutual agreement agreed in writing and approved by the Commissioner of Labour, subsection (1) shall not apply.

(3) An employer who fails to comply with subsection (1) shall, upon conviction, be liable to a fine not exceeding six thousand Emalangeni or to imprisonment not exceeding two years or both.

(Added A.5/1997.)

Severance allowance.

34. (1) Subject to subsections (2), and (3) if the services of an employee are terminated by his employer other than under paragraphs (a) to (f) of section 36 the employee shall be paid, as part of the benefits accruing under his contract of service, a severance allowance amounting to ten working days' wages for each completed year in excess of one year that he has been continuously employed by that employer. (Amended A.11/1981; A.4/1985.)

(2) In calculating the amount of the severance allowance to which the employee is entitled under subsection (1) any employment by him with the employer concerned prior to the 1st day of January, 1968 shall be disregarded.

(3) If any employer operates or participates in, and makes any contribution to, any gratuity, pension or provident fund (other than the Swaziland National Provident Fund established by the Swaziland National Provident Fund Order, 1974) which is operated for the benefit of his employees, the employer on termination of employment of an employee, shall be entitled to repayment from the gratuity, pension or provident fund equal to the employer's total contribution to that gratuity, pension or provident fund in respect of the employee to whom a severance allowance is to be paid under this section.

(4) The amount of the repayment under subsection (3) shall not exceed the total amount of the severance allowance paid by the employer under subsection (1).

(5) For the purpose of this section, the term "wages" shall mean the wages payable to the employee at the time his services were terminated.

(6) (Repealed A.11/1981.)

Employee's services not to be unfairly terminated.

35. (1) This section shall not apply to —

- (a) an employee who has not completed the period or probationary employment provided for in section 32;
- (b) an employee whose contract of employment requires him to work less than twenty-one hours each week;
- (c) an employee who is a member of the immediate family of the employer;
- (d) an employee engaged for a fixed term and whose term of engagement has expired.

(2) No employer shall terminate the services of an employee unfairly.

(3) The termination of an employee's services shall be deemed to be unfair if it takes place for any one or more of the following reasons —

- (a) the employee's membership of an organisation or participation in an organisation's activities outside working hours or, with the consent of the employer, within working hours;
- (b) because the employee is seeking office as, or is acting or has acted in the capacity of an employee's representative;
- (c) the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of any law or the breach of the terms and conditions of employment under which the employee is employed;
- (d) the race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status of the employee;
- (e) where the employee is certified by a medical practitioner as being incapable of carrying out his normal duties because of a medical condition brought about by work he has carried out for his present employer except where the employer proves that he has no suitable alternative employment to offer that employee;
- (f) because of the employee's absence from duty due to sickness certified by a medical practitioner for a period not exceeding six months, or to accident or injury arising out of his employment, except where the employer proves that, in all the circumstances of the case, it was necessary for him permanently to replace the employee at the time his services are terminated.

Fair reasons for the termination of an employee's services.

36. It shall be fair for an employer to terminate the services of an employee for any of the following reasons —

- (a) because the conduct or work performance of the employee has, after written warning, been such that the employer cannot reasonably be expected to continue to employ him;
- (b) because the employee is guilty of a dishonest act, violence, threats or ill treatment towards his employer, or towards any member of the employer's family or any other employee of the undertaking in which he is employed;
- (c) because the employee wilfully causes damage to the buildings, machinery, tools, raw materials or other objects connected with the undertaking in which he is employed;
- (d) because the employee, either by imprudence or carelessness, endangers the safety of the undertaking or any person employed or resident therein;
- (e) because the employee has wilfully revealed manufacturing secrets or matters of a confidential nature to another person which is, or is likely to be, detrimental to his employer;

(ISSUE 2)

- (f) because the employee has absented himself from work for more than a total of three working days in any period of thirty days without either the permission of the employer or a certificate signed by a medical practitioner certifying that he was unfit for work on those occasions;
- (g) because the employee refuses either to adopt safety measures or follow the instructions of his employer in regard to the prevention of accidents or disease;
- (h) because the employee has been committed to prison and thus prevented from fulfilling his obligations under his contract of employment;
- (i) because the employer is unable to continue in employment without contravening this Act or any other law;
- (j) because the employee is redundant; (Renumbered A.4/1985.)
- (k) because the employee has attained the age which in the undertaking in which he was employed is the normal retiring age for employees holding the position that he held;
- (l) for any other reason which entails for the employer or the undertaking similar detrimental consequences to those set out in this section. (Renumbered A.4/1985.)

Termination of services due to employer's conduct.

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

Certificate of employment.

38. Any employee whose services are terminated shall be entitled to receive on request, at the time of such termination, a certificate from his employer specifying the dates of his engagement and termination and the nature of the work on which he has been employed.

Suspension of employee.

39. (1) An employer may suspend an employee from his or her employment without pay where the employee is —

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

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

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

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

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

(Replaced A.5/1997.)

Employer to give notice of redundancies.

40. (1) For the purposes of this section the term "employee" shall be deemed not to include any employee —

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

(2) Where an employer contemplates terminating the contracts of employment of five or more of his employees for reasons of redundancy, he shall give not less than one month's notice thereof in writing to the Labour Commissioner and to the organisation (if any) with which he is a party to a collective agreement and such notice shall include the following information —

- (a) the number of employees likely to become redundant;
- (b) the occupations and remuneration of the employees affected;
- (c) the reasons for the redundancies; and
- (d) the date when the redundancies are likely to take effect.
- (e) the latest financial statements and audited accounts of the undertaking;
(Added A.5/1997.)
- (f) what other opinions have been looked into to avert or minimize the redundancy.
(Added A.5/1997.)

Remedies against unfair termination of services.

41. (1) Where an employee alleges that his services have been unfairly terminated, or that the conduct of his employer towards him has been such that he can no longer be expected to continue in his employment, the employee may file a complaint with the Labour Commissioner, whereupon the Labour Commissioner, using the powers accorded to him in Part II shall seek to settle the complaint by such means as may appear to be suitable to the circumstances of the case.

(2) Where the Labour Commissioner succeeds in achieving a settlement of the complaint, the terms of the settlement shall be recorded in writing, signed by the employer and by the employee and witnessed by the Labour Commissioner: one copy of the settlement shall be given to the employer, one copy shall be given to the employee and the original shall be retained by the Labour Commissioner.

(ISSUE 2)

(3) If the Labour Commissioner is unable to achieve a settlement of the complaint within twenty-one days of it being filed with him, the complaint shall be treated as an unresolved dispute and the Labour Commissioner shall forthwith submit a full report thereon to the Industrial Court which will then proceed to deal with the matter in accordance with the Industrial Relations Act.

Burden of proof.

42. (1) In the presentation of any complaint under this Part the employee shall be required to prove that at the time his service were terminated that he was an employee to whom section 35 applied.

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

- (a) that the reason for the termination was one permitted by section 36; and
- (b) that, taking into account all the circumstances of the case, it was reasonable to terminate the service of the employee.

Repatriation of employees.

43. (1) Where an employee has been brought to the place of employment by the employer, or by a person acting on his behalf, and the employee's contract of employment is terminated by the employer for any cause, the employer shall be liable for the expenses of repatriating the employee by reasonable means to the place from which he was brought.

(2) The expenses of repatriation shall include —

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

Offences under this Part.

44. Any employer who —

- (a) except where section 33(8) applies, fails or refuses to give an employee whose services are being terminated the minimum period of notice required by section 33;
- (b) fails or refuses to allow an employee whose services are being terminated to be absent from work for the purpose of seeking other employment as required by section 33(6);
- (c) terminates the contracts of employment of five or more of his employees for reasons of redundancy without giving prior notice thereof as required by section 40; or
- (d) fails to pay the expenses of repatriating an employee as required by section 43;
- (e) fails to pay severance allowance as required by section 34; (Added A.4/1985.)

shall be guilty of an offence and liable on conviction therefor to a fine of not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART VI — PROTECTION OF WAGES

Agreement of Co-operation.

45. Nothing in this Part shall be held to apply to any body of persons working on an agreement of co-operation.

Wages to be paid in legal tender.

46. (1) Subject to subsection (2) and to section 48 all wages due to an employee under his contract of employment shall be paid to him in legal tender and not otherwise and if any such contract contains a provision whereby the whole or any part of such wages is made payable in any other manner, that provision shall be illegal.

(2) Notwithstanding subsection (1) the wages of an employee under his contract of employment may with the consent of that employee, be paid to him by cheque drawn on a bank, or by postal order or money order.

Wages when due.

47. (1) The times when wages shall be deemed to be due from an employer to an employee shall be as follows —

- (a) in the case of an employee employed daily, weekly, fortnightly or monthly, at the expiry of the day, week, fortnight or month, as the case may be;
- (b) in the case of an employee employed for a period in excess of one month, at intervals not exceeding one month;
- (c) in the case of an employee under a daily contract where, by agreement or custom, wages are not paid daily but are paid at intervals not exceeding one month, in accordance with such agreement or custom;
- (d) in the case of an employee whose wages are calculated on the basis of piece work, at intervals of not more than one month, an amount which relates to the proportion of the piece work he has completed either during the time from which he commenced employment, or from the date on which he was last paid wages, as the case may be.

(2) Where a contract of the kind mentioned in paragraph (c) of subsection (1) is terminated and no new contract is entered into or presumed to be entered into prior to the time at which wages are due under this section, wages shall be due at the time the contract is terminated.

Remuneration other than wages.

48. An employer may, in pursuance of a written agreement with an employee, pay to that employee, in addition to monetary wages, allowances in kind which shall —

- (a) be of personal benefit to the employee and his family;
- (b) be of a fair and reasonable value appropriate to the monetary value placed on the allowance by the employer;
- (c) not be in the form of noxious drugs or intoxicating liquor.

(ISSUE 2)

Wages not to be paid on certain premises.

49. No employer shall pay wages to an employee at or within any retail shop or place for the sale of any liquor, or any office or place belonging thereto, except where the employer is the resident owner or occupier of such retail shop, office or place and he pays wages to an employee employed by him in such retail shop, office or place.

Times and places of payment.

50. (1) Wages shall be paid at or near the work place during working hours.

(2) An employer may, upon written authorisation by an employee, pay the wages due to that employee, or such part thereof as is so authorised to be paid, to the person named in the authorisation.

(3) The days on which wages are to be paid to employees shall be fixed in advance by the employer and notified to the employee at the beginning of the contract of employment.

(4) Where in pursuance of his contract of employment, an employee is entitled, in addition to the wages payable to him, to a share of the profits of the undertaking in which he is employed, a settlement of accounts relating to such share shall be made between the employer and the employee at least once a year.

Sale of goods or services by employer to employees.

51. (1) An employer otherwise lawfully entitled to do so may sell goods or services to his employees, but no contractual provision requiring an employee to buy any goods or services from his employer or any other person shall be valid, and no employer shall compel or attempt to compel an employee or any dependant of an employee to buy any goods or services from the employer or (except for goods or services bought on behalf of the employer) from any other person.

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

Special provision for service charges.

52. (1) In any undertaking wherein a percentage is added to the customer's bill in the form of a service charge, such service charge shall be distributed to the employees in the undertaking in a manner to be agreed between the employer and the employees or in accordance with the provisions of a collective agreement to which the employees are a party.

(2) The employer shall, as and when required by the Labour Commissioner, produce evidence as to the total amount of the service charges levied during any given period and the manner and form in which that amount was distributed to employees.

Agreements as to place and manner of spending wages illegal.

53. No employer shall include in any contract of employment between himself and an employee any condition, restriction or requirement as to the manner in which, or the person with whom, and wages paid to the employee are to be expended and any such condition, restriction or requirement shall be illegal.

Priority of wages.

54. (1) Every employee shall be entitled to recover in a Magistrates Court any wages, exclusive of any sums lawfully deducted therefrom, as have not been actually paid to him in accordance with this Act.

(2) Notwithstanding any other law for the time being in force in Swaziland, whenever any attachment has been issued against the property of any employer in execution of any judgment against him, the proceeds realised in pursuance of such execution shall not be paid by any court to the plaintiff until any judgment obtained against such employer in respect of any employees' wages has been satisfied to the extent of a sum not exceeding four months wages of that employee.

Interest on advances prohibited.

55. No employer shall make any deduction by way of discount, interest or similar charge on account of any advance of wages made to an employee in anticipation of the regular period of payment of such wages.

Authorised deductions from wages.

56. (1) An employer may deduct from the wages due to an employee —

- (a) any amount due by the employee in respect of any tax or rate which the employer is required to deduct from the wages of an employee under any law;
- (b) any amount due by the employer in respect of a contribution to the Swaziland National Provident Fund;
- (c) the actual or estimated cost to the employer of any materials, clothing (other than protective clothing required to be supplied by the employer under any law or under the provisions of a collective agreement), tools and implements supplied by him to the employee at the latter's written request and which are to be used by the employee in his occupation;
- (d) any money advanced to the employee by the employer, whether paid directly to the employee or to another person at the employee's written request, in anticipation of the regular period of payment of his wages;
- (e) any amount paid to the employee in error as wages in excess of the amount due to him.

(2) Any employer may, with the written authority of an employee, deduct from the wages payable to that employee, such amount as is stipulated in the authority as being the amount due from the employee as his membership fee or contribution to an organisation of which the employee is a member.

(3) An employee may assign a part of the wages due to him under his contract of employment.

(4) The total amount which may be —

- (a) deducted from the wages of an employee under paragraphs (c) and (e) of subsection (1) or under subsection (2);
- (b) assigned by an employee under subsection (3);
- (c) attached under any law,

shall not in any pay period, exceed one third of the wages due to the employee in respect of that pay period.

(ISSUE 2)

Further restrictions on deductions.

57. (1) No employer shall make any deduction from the wages due to an employee, or make any agreement or arrangement for any payment to him by the employee for, or in respect of alleged bad or negligent work by the employee.

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

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

(4) The amount of any deductions made under this section together with those permitted under section 56(4) shall not exceed one half of the employee's wages for any period in which the deductions are made.

Deduction for obtaining employment prohibited.

58. No deduction shall be made from the wages due to any employee either in the form of retention by the employer or for payment to a third party for the purpose of obtaining or retaining employment.

Illegal advances to be irrecoverable.

59. All advances made otherwise than in accordance with this Act shall be unlawful and irrecoverable in any court whether by way of counter claim, set off or otherwise.

Saving as to judgment debts.

60. During the period of his contract of employment, an employee receiving an advance of wages shall not, by reason only of such advance, be deemed to have or to have had means and ability to pay any sum due from him under any judgment of a court.

Employers to issue details of wage payments.

61. (1) Every employer shall, at the time of paying wages to an employee, (other than a domestic employee) provide that employee with the following written details (hereinafter referred to as a wage slip) in respect of the wage period to which the wages relate —

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

(2) The acceptance of wages or a wage slip by an employee without protest or reservation, shall not prejudice his right to recover all or any part of wages due to him.

(3) Where in pursuance of his contract of employment an employee is entitled to a commission or share of the profits of the undertaking in which he is employed, the employee shall, at the time such commission or share is paid to him, be provided with full details as to the method of calculation of the commission and the total amount of profit of the undertaking in respect of the period to which the payment relates.

Security for the payment of wages.

62. (1) Whenever the Labour Commissioner is, in pursuance of a report under Part VII of this Act or otherwise, of the opinion that an employer has begun or is about to begin operating in Swaziland, the Labour Commissioner shall scrutinise the report or reports, if any, filed by the employer and shall make such other enquiries, as he may deem necessary to ascertain whether it is desirable to require the employer to deposit a security for the payment of wages to his employees.

(2) If, as a result of the scrutiny or enquiries made by him under subsection (1), the Labour Commissioner considers it necessary for an employer to deposit a security for the payment of wages to his employees, the Labour Commissioner may, in writing, order the employer to deposit with him such sum of money or other form of security as may be acceptable to him up to a maximum of, or equivalent to one month's wages for all persons employed by the employer in Swaziland.

(3) An employer against whom an order is made by the Labour Commissioner under subsection (2) shall comply immediately with such order within three working days after the order is made, or within such longer period as the order may allow.

(4) In the event of non-compliance by an employer with an order made against him under subsection (2) the employer shall cease forthwith to employ any employees other than those employed primarily in a managerial capacity, and shall pay to each such terminated employee an amount equal to the amount the employer would be required to pay to that employee in lieu of notice if the employee were being terminated for redundancy.

(5) An employer aggrieved by an order made against him by the Labour Commissioner under this section may apply to the Industrial Court for the rescission of the said order, and the Court may upon such application order such rescission if the Court is satisfied that the Labour Commissioner did not have reasonable grounds for making the order.

(6) The making of an application to the Industrial Court under subsection (5) shall not postpone the employer's obligation under subsection (3) to comply with the order, but shall postpone, until the Court has made its decision upon the application, any obligation which the employer would otherwise incur under subsection (4).

Exclusions.

63. The Minister may, after consultation with the Labour Advisory Board, by order published in the Gazette, exclude from any or all of the provisions of this Part, any employee or category of employee who —

- (a) is not employed in manual labour; or
- (b) is a domestic employee

and whose circumstances and conditions of employment are such that the application of such provisions to them is inappropriate.

Offences and Penalties.

64. An employer who —

- (a) fails to pay wages to an employee when those wages are due or payable;
- (b) pays wages to an employee in a form, manner or place which is contrary to the provisions of this Part;
- (c) makes any deduction from the wages of an employee or receives any payment from an employee contrary to the provisions of this Part;
- (d) fails to provide an employee with the details of wages due to him as required by section 61;
- (e) pays an employee's wages, in whole or in part, in the form of liquor or noxious drugs;
- (f) fails to distribute a service charge as required by section 52; or
- (g) fails to comply with an order made by the Labour Commissioner under section 62 (3),

shall be guilty of an offence and shall be liable on conviction to a fine of not exceeding two thousand five hundred Emalangeni or imprisonment not exceeding three years or both and for a second or subsequent conviction to a fine not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART VII — REGISTRATION OF EMPLOYERS

Interpretation.

65. For the purposes of this Part, the expression —

“employee” shall not include a domestic employee;

“Fund” means the Swaziland National Provident Fund established by the Swaziland National Provident Fund Order 1974.

Delivery of Documents from the Fund.

66. (1) The Chief Executive Officer of the Swaziland National Provident Fund shall, on the date this Part comes into effect, deliver to the Labour Commissioner a true copy of every document of registration received from a contributing employer to the Fund, and shall thereafter deliver forthwith to the Labour Commissioner a true copy of every document or registration as a contribution employer to the Fund received by the Chief Executive Officer.

(2) The Chief Executive Officer of the Fund shall, on the date this Part comes into effect, deliver to the Labour Commissioner a true copy of the most recent monthly return in respect of employees which has then been received by the Chief Executive Officer from each employer who is, on the said date, registered as a contributing employer to the Fund and shall thereafter deliver forthwith to the Labour Commissioner a true copy of each monthly return in respect of employees that is received by the Chief Executive Officer.

Non-contribution employers to deliver documents.

67. Any person who employs five or more employees who has not registered as a contributing employer to the fund or whose registration as a contributing employer to the Fund has been terminated for any reason, or who for any reason is not required to register himself as a contributing employer to the Fund, shall within ten days after the coming into effect of this Part, or within ten days after beginning to employ five or more employees, deliver to the Labour Commissioner a document containing every particular which is required to be included in an application for registration as a contributing employer to the Fund.

Labour Commissioner to maintain registry.

68. The Labour Commissioner shall keep each document received by him under section 66 or section 67 in a registry of employers maintained in such manner as to facilitate the administration and enforcement of every Act, Order or other statutory instrument with respect to which the Industrial Court, the Labour Commissioner or any inspector has any administrative or enforcement function.

PART VIII — FOREIGN CONTRACTS OF EMPLOYMENT

Application of Part.

69. This Part of the Act shall apply in respect of every foreign contract of employment that is to say, a contract of employment made within Swaziland and to be performed substantially outside Swaziland.

Particulars in foreign contracts and requirements as to attestation.

70. (1) Every foreign contract of employment shall be signed by the parties thereto, shall be attested by an attesting officer and shall consist of —

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

(2) The particulars to be contained in the contract shall include —

- (a) The name of the employer or group of employers, and, if practicable, the name of the undertaking and the place of employment;
- (b) the name of the employee, his place of origin, address and all particulars necessary for his identification;
- (c) the nature of the employment;
- (d) the duration of the employment and method of calculation thereof;
- (e) the rate of wages and the method of calculating such wages;
- (f) the manner and intervals of payment of wages;

(ISSUE 2)