

CHAPTER 366

THE EMPLOYMENT ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 366

THE EMPLOYMENT ACT

An Act to consolidate the law relating to labour and to regulate conditions of employment for employers and employees.

[1st February, 1957]

Ords. Nos.

47 of 1955

35 of 1956

10 of 1960

[R.L. Cap. 366]

Acts Nos.

82 of 1962

55 of 1963

16 of 1964

62 of 1964

2 of 1965

24 of 1966

31 of 1966

5 of 1969

17 of 1973

20 of 1975

7 of 1979

25 of 1982

13 of 1991

9 of 1996

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh366s1]1. Short title and application Ords No. 10 of 1960 s. 2; Acts Nos. 82 of 1962 s. 2; 16 of 1964 Sch.; 2 of 1965 Sch.; 24 of 1966 Sch.

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

(2) Subject to the provisions of subsection (3) of this section the provisions of this Act shall apply to and be carried into effect by departments of the of Government, district local government authorities and all persons in the employment, and also all persons in the service of the Government in Tanzania in the same manner as if they were private employers or employees, as the case may be:

Provided that this subsection shall not Second have effect in relation to the following persons—

- (a) members of the Defence Forces in their employment as such;
- (b) members of the Police Force;
- (c) members of the Prison Service; and
- (d) member of the National Service.

(3) The Minister may by Order in the Gazette exempt any public authority or class of public authorities or any person or class of persons or any contract or transaction or class of contracts or transactions from the operation of this Act or of any provisions other than section 15 and Part X or of any regulation or order made under the Act.

[PCh366s2]2. Interpretation Ord. No. 10 of 1960 s. 3; Acts Nos. 62 of 1964 Third Sch.; 1 of 1975 s. 2

In this Act, unless the context otherwise requires—

"Act" includes any rules, regulations by-laws, proclamations, orders, directions or notices made or issued under the authority of an Act;

"African" means a person whose tribe is a tribe of the United Republic of Tanzania, the Republic of Kenya, the Republic of Uganda, Zimbabwe, Zambia, Malawi, Sudan, Zaire, Ruanda, Burundi or Mozambique, and includes a Swahili;

"casual employee" means any employee the terms of whose engagement provide 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 but does not include an employee who is deemed by section 38 to be employed on monthly contract;

"child" means a person under the apparent age of fifteen years;

"clerical work" includes work performed by office messengers;

"commercial undertaking" includes—

(a) commercial establishments and offices, including establishments engaging wholly or mainly in the sale, purchase, distribution, insurance, negotiation, loan or administration of goods or services of any kind;

(b) establishments for the treatment or care of the aged, infirm, sick, destitute or mentally unfit;

(c) hotels, restaurants, boarding houses, clubs, cafes and other refreshment houses;

(d) theatres and places of public amusement;

(e) establishments for the instruction and care of children or young persons;

(f) broadcasting, postal and telecommunication services;

(g) film studios;

(h) newspaper undertaking; and

(i) any establishment similar in character to those enumerated in subparagraphs (a) to (h) above inclusive;

"contract of service" means any contract, whether in writing or oral, whether expressed or implied, to employ or to service as an employee for any period of time or number of days to be worked, or to execute any task or piece work or to perform any journey and includes a foreign contract of service;

"contract period" means the period of time or number of days or hours to be worked for which expressly or by implication a contract of service is made;

"court" means a subordinate Court;

"domestic servant" includes any person employed either wholly or partly in any of the following capacities, namely cook, house servant, waiter, butler, maid servant, valet, bar attendant, footman, chauffeur, groom, gardener, washerman or watchman;

"employ" in relation to the person employing, means to use as employer the service of any person under a contract of service;

"employee" means any person who has entered into or works under a contract of service with an employer whether by way of manual labour, clerical work, or otherwise and whether the contract is expressed or implied or is oral or in writing;

"employer" means any person, or any firm, corporation or company, public authority or body of persons who or which has entered into a contract of service to employ any person and includes any agent, foreman, manager or factor of such person, firm, corporation, company, public authority or body of persons who is placed in authority over such person employed, and where an employee has entered into a contract of service with the Government or with any

officer on behalf of the Government, any Government officer under whom such employee is working shall be deemed to be his employer:

Provided that no Government officer shall be personally liable under this Act for anything done by him as an officer of the Government in good faith;

"employment" means the performance by an employee of a contract of service;

"factory" has the meaning assigned to it in the Factories Act *;

"family" in relation to an employee or recruited person means the wife or wives and the unmarried children, if any, except adult males, of the employee or recruited person;

"foreign contract service" means a contract of service made within Tanzania and to be performed wholly or partially outside Tanzania, and any contract of service with a foreign state:

Provided that a contract of service for the employment of a domestic servant for service in the Kenya, Uganda, Malawi, Zambia or of a sailor on a vessel calling only at the parts of the United Republic of Tanzania, Kenya and Uganda shall not be deemed to be a foreign service contract of service;

"Government officer" means an officer of the Government of Tanzania;

"Guardian" includes any person lawfully having charge of a child or young person who has no parents or whose parents are unknown and any person to whose care any child or young person has been committed, even temporarily, by a person having authority over him;

"health inspector" means a health inspector in the service of the Government;

"industrial undertaking" means—

(a) mines, factories, reduction mills and other works for the winning, treatment or extraction of minerals from the earth, sea, rivers or inland waters;

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including ship building, and the generation, transformation and transmission of electricity and motive power of any kind;

(c) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, dam, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work, or other work of construction as well as the preparation for, or laying the foundations of, any such work or structure;

(d) the transport of passengers or goods by air, road, rail or inland waterway including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand;

(e) any other type of undertaking which may be prescribed;

"intoxicating liquor" has the meaning assigned to it in the Intoxicating Liquors Act *;

"Labour Advisory Board " means the Advisory Board established under section 3;

"Labour Commissioner" means any person appointed by the President to be or to act in the capacity of Labour Commissioner;

"Labour inspector" means a senior labour inspector or labour inspector in the service of the Government;

"Labour officer" includes the Deputy Labour Commissioner, an Assistant Labour Commissioner, a Senior Labour Officer and any person appointed by the President to be a labour officer;

"local authority" includes county council, municipal council, town council, local council, township authority and minor settlement authority;

"medical officer" means any medical officer in the service of Government or any other registered or licensed medical practitioner appointed by the Director of Medical Services to be a medical officer for the purposes of this Act;

"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" means all mineral substances including mineral oils;

"Minister" means the Minister responsible for labour matters;

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

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

"prescribed" means prescribed by regulations made under this Act;

"private recruiter" means—

(a) any employer who, either himself or through a person in his regular and exclusive employment, recruits for his own purposes;

(b) the authorised representative of any employer who, either himself or through a person in the regular and exclusive employment of such employer, recruits for the purposes of such employer; and

(c) any public officer who in the course of his duties recruits for the purposes of any public authority, and includes any organisation of employers which may be established for the purpose of recruiting labour for such employers;

"professional recruiter" means a person who carries on for profit the business of recruiting or of forwarding persons to places of employment;

"proper authority" means the Labour Commissioner or any other person or persons appointed by the President for the carrying into effect of this Act or any Part or provision or any regulations made under this Act;

"public authority" includes a department of Government, a local district authority; and a village authority;

"public officer" includes a Government officer, an officer of a local government authority and an officer of a village authority;

"recruit" means to obtain or supply or attempt to obtain or supply the labour of persons who do not spontaneously offer their services at the places of employment or at an office established by Government or by an employers' organisation with the approval of the Labour Commissioner for the purpose of receiving applications for employment, and "recruiter" and "recruiting" means respectively a person who undertakes operations with that object in view and any operations so undertaken;

"sanitary inspector" means a sanitary inspector in the service of the Government;

"ship" includes any vessel or boat, of any nature whatsoever, engaged in navigation, whether publicly or privately owned, but does not include a ship of war;

"task" means such amount of work as in any area is customarily performed in the trade, industry occupation or undertaking concerned in an ordinary working day;

"week" means any period of seven consecutive days;

"woman" means a female of the apparent age of eighteen years or upwards; authorised in accordance with this Act to recruit on behalf of his employer, but who does not receive any remuneration or other advantage for such recruiting in addition to his normal wage and out of pocket expenses;

"written contract" means a contract of service which, under the provisions of Part VI of this Act, is required to be made in writing;

"young person" means a person of or over the apparent age of fifteen but under the apparent age of eighteen years.

PART II

LABOUR ADVISORY BOARDS (ss 3-4)

[PCh366s3]3. Establishment of Labour Advisory Board Ord. No. 10 of 1960

(1) There shall be established a Board to be known as the Labour Advisory Board which shall consist of such public officers and representative of employers and employees and other persons as the Minister for Labour may, by notice published in the Gazette, appoint.

(2) Any appointments made under subsection (1) shall be for a duration as may be specified by the Minister and in addition to the members appointed, the Minister may appoint such person or persons as he may think fit to act for any period as a member or members of the Board.

[PCh366s4]4. Duties of Labour Advisory Board

The Labour Advisory Board shall consider and advise the Minister upon any matter concerning which advice is required under this Act and upon any other matters affecting employment as may be referred to the Board by the Minister and shall exercise and perform such other powers and duties in a manner and subject to such conditions as the Minister may, by order published in the Gazette, direct.

PART III

APPOINTMENT, POWERS AND DUTIES OF OFFICERS (ss 5-12)

[PCh366s5]5. Appointment of officers

The President may appoint a Labour Commissioner and such other officers as may be necessary for the purposes of the administration of this Act.

[PCh366s6]6. Delegation by Labour Commissioner

The Labour Commissioner may with the consent of the Minister delegate in writing to any person the exercise of any of his powers and the performance of any of his duties either in the Tanzania as a whole or in any part in relation to any matter or matter or thing provided for by this Act.

[PCh366s7]7. Labour Commissioner may call for returns

In addition to any other powers conferred upon him under the provisions of this Act the Labour Commissioner may, with the consent of the Minister by notice in writing, require any employer to furnish in writing returns and statistics, whether periodical or otherwise, as to the number of employees employed by him in any particular employment and the rates of remuneration and the conditions generally affecting such employment.

[PCh366s8]8. Institution of proceedings

The Labour Commissioner or any labour officer may institute proceedings in respect of any contravention of any of the provisions of this Act or any regulations made and may prosecute and appear in his own name in respect of such proceedings.

[PCh366s9]9. Power of officers

(1) The provisions of this section shall be in addition to and not in derogation of any other powers or duties conferred or imposed upon any person by the provisions of this Act.

(2) For the purpose of satisfying himself that the provisions of this Act are being duly observed—

(a) the Labour Commissioner, any labour officer, medical officer, health inspector, labour inspector or sanitary inspector may at all reasonable times—

(i) enter, inspect and examine any land, building, camp, wharf, vessel or vehicle, or any place, structure or article whatsoever where or about which any employee is housed or employed or there is reason to believe that any employee is housed or employed;

(ii) enter, inspect and examine any hospital or dispensary, or any latrines or other sanitary arrangements used or intended to be used by employees in any place or building or any water supply available for the use of employees, and take samples from the said water supply, and inquire and ascertain whether in any hospital, dispensary or place of employment suitable medicines and remedies are provided for the use of employees;

(iii) inspect and examine kitchens and places in which food provided for the use of employees is stored, prepared or eaten, and inspect, examine and take samples of all food, and for this purpose have the same powers as are conferred upon a sampling officer by sections 22, 37, 40 and 41 of the Food (Control of Quality) Act *;

(iv) require any employer to produce any employee employed by him and any documents or records relating to the employment of such employee;

(v) inquire from any employer or any person acting on his behalf regarding any matters connected with the carrying out of any of the provisions of this Act:

Provided that—

(a) the Labour Commissioner, officer or inspector as the case may be, shall not enter or inspect a private dwelling house without the consent of the occupier;

(b) on the occasion of a visit or inspection, the Labour Commissioner, officer or inspector, as the case may be, shall notify the employer or his representative of his presence, unless he has reasonable grounds for believing that such notification may be prejudicial to the performance of his duties; and

(c) in the case of any labour inspector or sanitary inspector, the powers conferred by subparagraphs (i), (ii), (iii), (iv) and (v) of this paragraph shall not be exercised unless the inspector—

(i) has been previously authorised in writing by the Labour Commissioner, or a labour officer, or medical officer, or health inspector to carry out such inspection or examination;

(ii) if so required by the employer, is accompanied during such inspection or examination by the employer or his representative;

(b) the Labour Commissioner, any labour officer, medical officer or health inspector may at all reasonable times—

(i) inspect and take samples of and require any additional or replacements to be made to any drugs or dressings provided for the use or benefit of employees under the provisions of any Act or contract of service, and for this purpose have the same powers as are conferred upon a sampling officer by sections 22, 37, 40 and 41 of the Food (Control of Quality) Act *;

(ii) enter upon any land or into any camp or building used by or on behalf of any recruiter or employer for the purpose of housing or feeding any recruited person in the course of the recruitment of such person or the forwarding of him to the place where he is to be employed or the returning of him to the place of his recruitment;

(iii) inspect food, and sanitary, housing, cooking and medical arrangements in the said camps and building;

(iv) inspect and take samples of water provided for consumption by employees or recruited persons and for this purpose have the same powers as are conferred upon a sampling officer by sections 22, 37, 40 and 41 of the Food (Control of Quality) Act *;

(c) the Labour Commissioner or any labour officer may—

(i) at all reasonable times request any recruiter or person engaged in recruiting or seeking to recruit any person to produce any recruited person and any document relating to the engagement or recruitment of such persons;

(ii) at all reasonable times demand of any recruiter or person engaged in recruiting or seeking to recruit any person the production of any licence or permit issued under this Act;

(iii) require all rooms, stores, places and premises in any camp or building used by or on behalf of any employer or recruiter to be kept in a clean and sanitary condition;

(iv) require any person, who in his opinion or that of a medical officer is sick and for whom the conditions prevailing at any place of employment or recruiter's camp are not conducive to the rapid recovery of his health or strength, to return to the place of his engagement, or to proceed to a hospital, and require the employer or recruiter at the earliest opportunity and at his own expense to send such person to the place of his engagement or to a hospital;

(v) if in the opinion of the Labour Commissioner or the officer concerned any land, building, camp, wharf, vessel, vehicle or any place, structure or article where or about which any employee or recruited person is living or any employee is employed or which is provided for the use of any such employee or person is insanitary or is in such condition as to be dangerous to health or unfit for occupation or use by such employee or person, the Labour Commissioner or the officer concerned may in writing direct the person for the time being responsible for the management of the same to discontinue such occupation or use from a date to be specified in such direction until such requirements of repair or reconstruction or otherwise as may be specified in the direction have been fulfilled and until the same has been certified by the Labour Commissioner or the officer concerned or any other officer to be fit for further occupation or use;

(vi) copy or make extracts from any document or records in the possession of any employer which relates to any employee;

(d) the Labour Commissioner may prohibit the engagement of further employees to be employed at any place of employment where he is satisfied that the conditions do not comply with the requirements of this Act or any regulations made under concerning the care and welfare of employees.

[PCh366s10]10. Appeal Ord. No. 10 of 1960 s. 5

(1) Where under subsection (2) of section 9, the Labour Commissioner or any labour officer gives any direction under subparagraph (v) of paragraph (e), or the Labour Commissioner makes any prohibition under paragraph (f), the person to whom any direction or prohibition is addressed, if he is of the opinion that the terms of such direction or prohibition are harsh or unreasonable, or that the requirements of the direction cannot be carried out within a reasonable time, may, after giving notice to the labour officer concerned or to the Labour Commissioner, appeal to the Minister who may uphold, rescind or vary such direction or prohibition. Any direction or prohibition so appealed from shall remain in abeyance until the appeal is determined by the Minister.

(2) Every such appeal shall reach the Minister not later than thirty days from the date on which the direction or prohibition complained of was communicated to the employer.

[PCh366s11]11. Duties of officers

(1) Subject to such exceptions as may be prescribed, Government officer—

(a) shall not have any direct or indirect interest in any undertaking under his supervision;

(b) shall not reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to his knowledge in the course of his duties; and

(c) shall treat as absolutely confidential the source of any complaint bringing to his notice a defect or breach of legal provisions and shall give no information to the employer representative that a visit of inspection was made in consequence of the receipt of such a complaint.

(2) Any Government officer who contravenes any of the provisions of subsection (1) of this section commits an offence against this Act and on conviction shall be liable to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding three months or to both and in the case of a second or subsequent offence to a fine not exceeding six months or to both.

[PCh366s12]12. Offence to delay or obstruct officer

Every person who wilfully delays or obstructs the Labour Commissioner or any labour officer, medical officer, health inspector, labour inspector or sanitary inspector while such officer or inspector is exercising any power or performing any duty conferred or imposed by this Part or who fails to comply with any direction, requirement, request demand or inquiry of such officer or inspector made or given in pursuance of any powers conferred on him by this Part or who

conceals or prevents any person from appearing before or being examined by such officer or inspector or who attempts so to conceal or prevent any person commits an offence against this Act.

PART IV

CONTRACTS OF SERVICE GENERALLY (ss 13-30)

[PCh366s13]13. Employment to be in accordance with this Act

No person shall employ any person and no person shall be employed under any contract of service except in accordance with the provisions of this Act.

[PCh366s14]14. Existing contracts to continue in force Ord. No. 10 of 1960

All contracts of service valid and in force at the commencement of this Act shall continue to be in force after such commencement and to the extent that the same are not in conflict with the provisions of this Act and shall be deemed to be made under this Act and the parties shall be subject to and entitled to the benefit of the provisions of this Act.

[PCh366s15]15. Freedom of association of employees Ord No. 10 of 1960 s. 6

(1) No employee shall be prohibited from being or becoming a member of any trade union, or other organisation, representing employees, or be subject to any penalty by reason of his membership of such trade union or organisation.

(2) Any term or condition, whether express or implied, in any contract of service (whether such contract was entered into before or after the enactment of this section) that any employee

shall not be or become a member of any trade union, or other organisation, representing employees, shall be void and of no effect.

(3) In subsections (1) and (2)–

(a) "employee" does not include–

(i) any person or class of persons prohibited under any law in force from being or becoming a member of any trade union, or

(ii) a judge or magistrate, or any member or registrar of the Court of Appeal, the High Court, District Registrar;

(b) "trade union" has the meaning assigned to it in section 2 of the Trade Unions Act

*.

[s. 14A]

[PCh366s16]16. Contracts of service, oral and written

(1) Contracts of service may be oral or written contracts.

(2) The provisions of this Part shall, apply, unless the contrary intention appears, to both oral and written contracts.

[s. 15]

[PCh366s17]17. Duty of employer to provide work Act No. 82 of 1962 s. 3

Every employer shall, unless the employee has broken his contract of service or the contract is frustrated or its performance is prevented by act of God, provide his employee with work in accordance with the contract during the period for which the contract is binding on a number of days equal to the number of working days expressly or impliedly provided for in the contract, and if the employer fails to provide work he shall pay to the employee, in respect of every day on which he shall have so failed, wages at the same rate as if the employee had performed a day's work.

[s. 16]

[PCh366s18]18. Contract expiring on journey may be prolonged

If the contract period in any contract of service expires, or if an employee seeks to terminate any contract of service wherein no agreement is expressed respecting the contract period whilst the employee is engaged in any voyage or journey the employer may, for the purpose of completing such voyage or journey, prolong the contract period as would be sufficient to enable the voyage or journey to be completed:

Provided that no such contract shall be prolonged pursuant to the provisions of this section for a longer period of time than three months without obtaining the written permission of the Labour Commissioner.

[s. 17]

[PCh366s19]19. Change of residence of employer

Subject to any express or implied agreement to the contrary, no employee shall be bound, in case the employer removes his residence or place of trade or business to a distance more than four miles from the place in which such employee performed his service, to continue to perform his service without his consent, or in the case of a child or a young person, without the consent of his parent or guardian. Such consent shall be deemed to have been given if the employee has, for the period of fourteen days, performed his service at the place to which his employer has moved without any objection from such employee or the parent or guardian of such employee.

[s. 18]

[PCh366s20]20. Employee not bound to accompany employer outside the country

No employee shall be bound to accompany his employer out of Tanzania without the consent of the employee or of the parent or guardian of such employee, being a child or young person.

[s. 19]

[PCh366s21]21. Right of employee on removal

Where, in the case of removal by an employer from his residence or place of trade or business for a distance of more than four miles or from Tanzania, an employee is not bound to accompany his employer or to continue his service and is not willing so to do, the contract of service, if not already terminated, shall be deemed to have terminated from the date of such removal, but the employer shall pay to the employee wages and other remuneration specified in the contract of service—

(a) if the minimum notice to terminate the employment as prescribed by the contract or section 36, whichever is appropriate, is given prior to such removal, and the period of such notice has not expired, as if the employee had worked for such employer up to the date on which such employer up to the date on which such period expires; or

(b) if no notice to terminate the employment is given prior to the removal, as if the employer had terminated the contract on the date of such removal by payment in lieu of notice.

[s. 20]

[PCh366s22]22. Contract of service to cease one month after death or insolvency of employer

Save as in this Act otherwise provided, the death or insolvency of the employer shall cause any contract of service to terminate after one month from the date of death or insolvency, unless the contract shall have been sooner lawfully terminated. The employee shall be entitled to all the benefits of the contract of service up to the expiration of the said month and shall be bound if required, to perform service for the widow or other person legally representing the deceased or insolvent employer in his or her capacity as such, and such widow or other person shall legally be entitled to all the rights under and bound to perform all the stipulations of the contract of service to which the said employer was entitled or which he would have been bound to perform.

[s. 21]

[PCh366s23]23. Penurious employers

When on production of a sworn statement or affidavit made before a magistrate, it is found to the satisfaction of the Labour Commissioner that an employer is unable to pay the wages of any employee in his employment the Labour Commissioner may order such employer to cease immediately employing any person and to furnish a statement showing the total amount of wages owing by him to such employee, and upon the making of any such order the contract of service of any employee referred to by the said order shall be deemed to be terminated, without prejudice to any rights of either party accrued under the contract.

[s. 22]

[PCh366s24]24. Death of employee

(1) In the case of an employee dying during the contract of service, his heirs or legal representatives shall be entitled to claim from the employer either themselves or by a District Commissioner or labour officer the full wages and other remuneration due to the employee up to the date of his death and all property of the deceased employee to which they are lawfully entitled.

(2) The employer shall as soon as practicable after the death of the employee pay or deliver to the District Commissioner of the district of employment or to the Administrator General all wages and other remuneration due to the deceased employee and all property belonging to the deceased employee for distribution in accordance with the law.

[s. 23]

[PCh366s25]25. Death of an employee where contract includes family

On the death of an employee being at the time together with his family under a contract of service the contract of service shall be terminable at the election of the employer or the wife of the deceased in accordance with the provisions of this Act.

[s. 24]

[PCh366s26]26. Wages during imprisonment or lawful custody Act No. 62 of 1964 Third Sch.

No wages shall be payable to any employee in respect of any period during which the employee is imprisoned under any law or otherwise detained in lawful custody.

[s. 25]

[PCh366s27]27. Annual leave and public holidays Acts Nos. 82 of 1962 s. 5; 62 of 1964; 1 of 1975 s. 2

(1) Subject to the provisions of this section—

(a) every employee shall, once in every calendar year, be entitled to a holiday with full pay at the expense of his employer at the rate of seven days in respect of each period of full four months' service, to be taken at such time during such calendar year as may be agreed between the parties; and

(b) an employee shall, in addition to the annual leave provided for in paragraph (a), be entitled to a day's holiday with full pay at the expense of the employer on every public holiday during his employment or, where he works for his employer on a public holiday, to a day's

holiday with full pay at the expense of the employer on some other day that would otherwise be a day of work:

Provided that where an employer pays to an employee who works on a public holiday in respect of work on such holiday at double the rate payable for work on a day that is not a public holiday, such employee shall not be entitled to a day's holiday with full pay in lieu of the public holiday.

(2) Nothing in this section shall be construed as precluding an employee and his employer from entering into an agreement providing for annual leave with full pay or holidays with full pay more favourable to the employee.

(3) The provisions of subsection (1) shall not apply to a casual employee.

[s. 25A]

[PCh366s28]28. Maternity leave Act No. 20 of 1975 s. 2

(1) A female employee in respect of whom a medical officer has given a certificate that she is expected to deliver a child will be entitled to a maternity leave of eighty-four days.

(2) The maternity leave provided for in subsection (1) may be taken all at once at any time between the commencement of the seventh month of the pregnancy and the day following the termination of pregnancy by delivery;

Provided that a female employee may, in relation to any pregnancy—

(a) avail herself only of a portion of the maternity leave entitlement before delivery and the remainder from the day of the delivery;

(b) on the recommendation in writing of a medical officer avail herself of the whole or any portion of her maternity leave entitlement before the seventh month of the pregnancy.

(3) A female employee shall not be entitled to any maternity leave under this section if she did, at any time within the three years immediately preceding the date on which the application for maternity leave is made and while in the continuous employment by the same employer, take any maternity leave under this section:

Provided that where a female employee has availed herself of the whole or part of her maternity leave entitlement in relation to any pregnancy and the pregnancy results in an abortion or the child dies within twelve months of the delivery, the female employee shall be entitled to a maternity leave in relation to the subsequent pregnancy notwithstanding that such subsequent pregnancy occurs within the period of three years.

(4) Where in any calendar year a female employee has taken maternity leave under this section she shall forfeit—

(a) her annual leave which she would, but for this paragraph have been entitled to take in that calendar year; or

(b) if she has already taken her annual leave in such calendar year, the annual leave which she would, but for this paragraph, be entitled to take in the next succeeding year.

(5) Maternity leave under subsection (1) shall be with full pay and at the expense of the employer.

(6) For the purposes of this section—

(a) it shall be immaterial whether or not the female employee who applies for maternity leave is lawfully married;

(b) where during any period a female employee has been employed by two or more employers in any of the circumstances specified or are deemed by any written law to have been specified in subsection (1) of section 8A of the Severance Allowance Act *, she shall be deemed to have been in the continuous employment of the same employer during such period;

(c) where a female employee commences her maternity leave in any calendar year and completes it in the succeeding calendar year she shall be deemed to have taken the maternity leave in the calendar year in which such leave expires.

(7) Nothing in this section shall be construed as precluding a female employee and her employer from entering into an agreement providing for maternity leave with full pay on terms not less favourable to the employee than maternity leave provided for in this section.

[s. 25B]

[PCh366s29]29. Construction of "full pay"

For the purposes of section 27 and section 28 "full pay" means the normal remuneration together with remuneration in kind, or the cash equivalent, and any cost of living allowance which may be payable from time to time, but does not include payment in respect of bonus.

[s. 25C]

[PCh366s30]30. Weekly rest day Act No. 10 of 1994 s. 2

(1) An employee shall not be required to work for his employer for more than five consecutive days without a day's rest, which shall be taken on such day as shall be agreed between the employer and employee.

(2) Where an employee is employed on a contract under which wages are calculated by reference to a period of one week or more, no deduction shall be made from his wages on account of his not working, or attending at his place of work, on the weekly rest day.

[s. 25D]

PART V

ORAL CONTRACTS OF SERVICE (ss 31-45)

[PCh366s31]31. Application

The provisions of this Part shall apply to oral contracts.

[s. 26]

[PCh366s32]32. Contracts not required to be in writing

All contracts of service, other than contracts which are required by this Act or any other law to be made in writing may be made orally.

[s. 27]

[PCh366s33]33. Commencement within one month

No oral contract shall be valid and binding unless the employment commences within one month from the date of the contract.

[s. 28]

[PCh366s34]34. Presumptions as to periods of oral contracts Acts Nos. 82 of 1962 s. 6; 62 of 1964 Third Sch.

In the absence of any agreement to contrary, an oral contract shall be deemed to be a contract for the period by reference to which wages are calculated:

Provided that where wages are calculated by reference to any period of less than a day, then in the absence of any agreement to the contrary, any such oral contract shall be deemed to be a daily contract.

[s. 29]

[PCh366s35]35. Presumptions as to new contracts Act No. 62 of 1964 Third Sch.

Each party to an oral contract for a period not exceeding one month shall, on the termination of such contract, be conclusively presumed to have entered into a new oral contract

for a further period of the same duration and subject to the same terms and conditions as those of the contract then terminated unless—

(a) notice to terminate the employment has been given by either party and the period of notice has expired; or

(b) the contract has been terminated by payment in lieu of notice; or

(c) the contract has been summarily terminated by either party for lawful cause; or

(d) the contract has been otherwise lawfully terminated under the provisions of this Act:

Provided that nothing in this section shall apply to—

(i) contracts specifically expressed to be for one period of fixed duration and not to be renewable;

(ii) daily contracts where the wages are paid daily.

[s. 30]

[PCh366s36]36. Termination by notice

(1) Either party to an oral contract (other than a contract to which the proviso to section 35 applies) may terminate the employment on the expiration of notice given to the other party of his intention to do so, and where the notice expires during the currency of a contract period, the contract shall be terminated.

(2) In the absence of any agreement providing for a period of notice of longer duration, the length of such notice shall be—

(a) subject to the provisions of paragraph (b), twenty-four hours where the contract is for a period of less than a week;

(b) fourteen days where the contract is a daily contract under which, by agreement or custom, wages are payable not at the end of the day, but at intervals not exceeding one month;

(c) thirty days where the contract is for a period of one week or more.

(3) Notice to terminate employment may be either verbal or written and may be given at any time, and the day on which the notice is given shall be included in the period of notice.

(4) Where notice is given, there shall be paid to the employee on the expiration of the notice, all wages and benefits due to him.

[s. 31]

[PCh366s37]37. Termination by payment Act No. 62 of 1964 Third Sch.

Either party to an oral contract of service may terminate the same—

(a) in the case of a contract which may be terminated without notice, by payment to the other party of a sum equal to all wages and other benefits that would have been due to the employee if he had continued to work until the end of the contract period;

(b) in any other case, by payment to the other party of a sum equal to all wages and other benefits that would have been due to the employee at the termination of the employment had notice to terminate the same been given on the date of payment.

[s. 32]

[PCh366s38]38. Certain contracts to take effect as monthly contracts Acts Nos. 82 of 1962; 1 of 1975

(1) Notwithstanding the provisions of section 34, or of any agreement or custom to the contrary, where after the 1st January, 1963 any person enters into a contract of service to work for an employer for a stated number of days out of a greater number of days and, under the terms of the contract the employer is liable to pay wages only in respect of the days on which such employee has in fact worked, the contract shall be deemed to be a monthly contract at a monthly wage equal to the daily wage multiplied by twenty six.

(2) Notwithstanding the provisions of section 34, or of any agreement or custom to the contrary, where any employee has been employed on daily contract by the same employer for not less than two hundred and eighty days during any period of twelve consecutive months, the employee shall be deemed to have been employed during such period of twelve months on monthly contract at a monthly wage equal to the daily wage payable to him on the last of such days during which he was so employed multiplied by twenty-six.

(3) For the avoidance of doubts, it is declared that nothing in this section shall apply to an oral contract entered into for a period of a day (whether or not the wages are payable, by custom

or agreement, at intervals not exceeding a month) or for any greater period, where the wages are calculated by reference to the whole contract period.

[s. 33]

[PCh366s39]39. Contracts for task and piece work to take effect as monthly contracts Act No. 62 of 1964 Third Sch.

(1) Subject to the provisions of this section, but notwithstanding any agreement or customs to the contrary, where, after the commencement of Part V of the Security of Employment Act *, any person purports to enter into a contract of service under which a task or piece work is to be executed, or a contract executed, or a journey to be performed, for an agreed remuneration, such contract shall have effect as if it were, and shall for all purposes be deemed to be, a contract of service for the performance of work of the kind envisaged in such first-mentioned contract of service or a period of time which, in the absence of any agreement between the parties for a lesser period, shall be deemed to be a month.

(2) Nothing in subsection (1) shall be construed as precluding the calculation of wages under any contract of service (including a contract deemed by that subsection to be a contract for a period of time) according to piece rates or work performed and, subject to any agreement to the contrary, in the case of a contract of service under which a task or piece work is to be executed for an agreed remuneration and which takes effect in accordance with that subsection, wages shall be so calculated.

(3) Nothing in this section shall be construed as affecting the contract of service of any casual employee.

[s. 34]

[PCh366s40]40. Record of oral contracts

(1) Every employer shall prepare and maintain, or cause to be prepared or maintained, a record of contract for every employee employed by him under an oral contract of service, other than a casual employee.

(2) A record of contract shall contain the following particulars—

- (a) the name, age and sex of the employee and details of his domicile (i.e. his village, area and region);
- (b) the name, address and occupation of the employer;
- (c) the work to be performed by the employee;
- (d) the type of contract (e.g. daily, weekly, fortnightly, monthly);
- (e) the place of work;
- (f) the number of hours normally worked per day, week, fortnight or month, as the case may be;
- (g) the rate of wages and whether calculated on time, task or piece rates;

- (h) any other recompense provided for the employee (e.g. a commission, or a share in profits);
- (i) details of payments in kind (e.g. rations, housing, water);
- (j) the intervals of payment and, if it is other than the place of work, the place of payment;
- (k) the full names, addresses and relationships of the employee's next-of-kin;
- (l) any Trade Union membership number of the employee;
- (m) any National Provident Fund membership number of the employee;
- (n) any additional terms of the contract;
- (o) the date on which the employment commenced;
- (p) the date and signatures of the employer and employee, or the employee's thumb print witnessed by a person acceptable to an illiterate employee and who has explained the terms of the contract to him:

Provided that it shall not be necessary to include in any such record and conditions arising from custom, usage or law, or any benefits or rights so conferred on employees, and the provisions of subsection (5) of this section shall not apply in relation to such conditions, rights or benefits.

(3) Every record of contract shall be prepared in duplicate and one copy shall be given to the employee at the time of his engagement (or, in the case of employees engaged before the

commencement of Part V of the Security of Employment Act *, within one month of such commencement) and one copy retained by the employer; and each copy shall be amended by the employer in the event of any change in the particulars required to be recorded.

(4) An employer who fails—

(a) to prepare or cause to be prepared such record: or

(b) to issue a copy of an appropriate record to the employee concerned,

shall be guilty of an offence against this Act and shall be liable upon conviction to a fine not exceeding two thousand shillings.

(5) Where any dispute arises as to the terms and conditions of an oral contract other than a contract for the employment of a casual employee, and the employer fails to produce a record of such contract made in accordance with the provisions of this section, the statement of the employee as to the nature of the terms and conditions shall be receivable as evidence of such terms and conditions unless the employer satisfies the court to the contrary.

[s. 35]

[PCh366s41]41. Wages, when due Ord. No. 10 of 1960 s. 9; Act No. 82 of 1962 s. 9

The times when wages shall be deemed to be due and payable from an employer to an employee shall be—

(a) in the case of an employee employed on a task, as provided for in section 39 of this Act;

(b) in the case of an employee employed on piece work, as provided for in section 39 of this Act;

(c) in the case of an employee employed to perform a journey, on the completion of the journey;

(d) in the case of an employee employed 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:

Provided that where any such contract is terminated and no new contract is entered into or presumed or deemed to have been entered into prior to the time at which wages are due and payable under this paragraph, wages shall be due and payable at the time when such contract is terminated;

(e) in the case of an employee employed under any oral contract not falling within any of the preceding paragraphs of this section, at the end of the contract period (as determined by section 34 of this Act, or, if the contract period is a period greater than one month, at intervals not exceeding one month.

[s. 36]

[PCh366s42]42. Summary dismissal

An employer shall not dismiss an employee summarily except in the following circumstances—

(a) where an employee is guilty of misconduct, whether in the course of his duties or not, inconsistent with the fulfilment of the express or implied conditions of his contract of service;

(b) for wilful disobedience to lawful orders given by the employer;

(c) for lack of skill which the employee expressly or by implication warrants himself to possess;

(d) for habitual or substantial neglect of his duties;

(e) for absence from work without the permission of the employer or without other reasonable excuse:

Provided that nothing in this section shall prohibit or restrict the summary dismissal of an employee to whom Part III of the Security of Employment Act *, applies in any case in which he may be dismissed summarily in accordance with that Part, nor shall this section be construed as rendering lawful the summary dismissal of such an employee except in accordance with the provisions of that Part.

[s. 37]

[PCh366s43]43. Right to wages on dismissal for lawful cause

Where an employee is summarily dismissed for lawful cause, he shall be paid on dismissal the wages due to him up to the date of the occurrence which was the cause of his dismissal.

[s. 38]

[PCh366s44]44. Quantum meruit

Subject to the provisions of this Act, and to the terms, express or implied of the contract of service, upon the termination of any oral contract the employee shall be paid wages upon a quantum meruit in respect of the performance by him in whole or in part of the contract.

[s. 39]

[PCh366s45]45. Repealed

[Repealed by Act No. 10 of 1960 s. 10.]

[s. 40]

PART VI

WRITTEN CONTRACTS (ss 46-67)

[PCh366s46]46. Application and interpretation

(1) The provisions of this part shall apply only to written contracts.

(2) In this Part, unless the context otherwise requires—

"contract" means a written contract;

"Convention" means the Contracts of Employment Convention.

[s. 41]

[PCh366s47]47. Certain contracts to be in writing Acts Nos. 82 of 1962 s. 10; 5 and 10 of 1969 s. 2

(1) When a contract of service of an employee—

(a) is made for a period of or exceeding six months or a number of working days of equivalent to six months; or

(b) stipulates conditions of employment which differ materially from those customary in the district of employment for similar work; or

(c) is a foreign contract of service,

the contract shall be made in writing.

(2) The employee shall indicate his consent to the contract either by signing the same or by affixing the impression of his thumb or finger.

(3) If a contract which is required by subsection (1) of this section to be made in writing has not been made in writing it shall not be enforceable except during the period of one month from the making of it

Provided that where a note or memorandum in writing is made setting out the terms of the contract and a party to the contract has indicated his consent prior to the expiry of the period for which the contract was made, the contract shall be enforceable under the provisions of this section against that party notwithstanding the expiration of the period of one month from the making of it and the note or memorandum may be presented for attestation by an attesting officer.

(4) If the omission to make the contract in writing was due to the wilful act or the negligence of the employer, the employee shall be entitled to make a report to a labour officer and the provisions of Part XII of this Act shall apply.

[s. 42]

[PCh366s48]48. Family not bound by contract

(1) No written contract shall be deemed to be binding on the family of an employee unless it contains as express provision to that effect.

(2) The employer shall be responsible for the performance of any contract made by any person acting on his behalf.

[s. 43]

[PCh366s49]49. Form and contents of contract

Every written contract shall be in such form and shall contain all such particulars necessary to define the rights and obligations of the parties as may be prescribed.

[s. 44]

[PCh366s50]50. Attestation of contracts Ord. No. 35 of 1956 s. 4

(1) Every written contract shall be presented for attestation to an administrative officer, labour officer or other officer of the Labour Department authorised for the purpose by the Labour Commissioner (in this Part referred to as the "attesting officer").

(2) Before attesting any contract the attesting officer shall—

(a) ascertain that the employee has freely consented to the contract, and that his consent has not been obtained by coercion or undue influence, or as the result of misrepresentation or mistake; and

(b) satisfy himself that—

(i) the contract is in legal form;

(ii) the terms of the contract are in accordance with the requirements of this Act;

(iii) the employee has fully understood the terms of the contract before signing it or otherwise indicating his assent;

(iv) the provisions relating to medical examination which are contained in this Part have been complied with; and

(v) the employee declares himself not bound by any previous engagement; and

(c) where the contract contains provisions for wages to be deposited, on their payment being deferred, satisfy himself that the sanction of the Labour Commissioner has been obtained in accordance with the provisions of this Part; and

(d) where the contract is a foreign contract of service to be performed wholly or partially outside Tanzania and contains provisions for the deduction from wages of a sum of money as a contribution towards either or both of the cost of the employee's transport to the place

of employment and the cost of clothing and equipment supplied to the employee by the employer at the commencement of the contract, satisfy himself that the sanction of the Labour Commissioner has been obtained in accordance with the provisions of this Part.

(3) An attesting officer may refuse to attest any contract in respect of which he is not satisfied in regard to any of the matters specified in subsection (2) of this section; and any contract which an attesting officer has refused to attest shall have no further validity.

(4) A contract which has not been attested shall not be enforceable except during the period of one month from the making of it but each of the parties shall be entitled to have it presented for attestation at any time prior to the expiry of the period for which it was made.

(5) If the omission to present the contract for attestation was due to the wilful act or the negligence of the employer, the employee shall be entitled to make a report of a labour officer, and the provisions of Part XII of this Act shall apply.

(6) Three copies of every contract attested under this Act shall be attested along with the original. One copy shall be delivered to the employer, one to the employee, or in the case of a batch of employees to one of their number and one to the administrative officer or labour officer of the district of employment. The original of every attested contract shall be deposited with and preserved by the attesting officer.

(7) There shall be paid to an attesting officer by the employer or recruiter, in respect of each written contract attested by him such fee as may be prescribed.

[PCh366s51]51. Deposit of of wages deferment of payment and deductions Ord. No. 10 of 1960 s. 12

(1) The Labour Commissioner may in his discretion give sanction to—

(a) the wages due to an employee being deposited in accordance with regulations made under this Act until the completion of the contract, or in the case of a foreign contract of service to be performed wholly or partially outside Tanzania until the return to Tanzania of the employee after completion of the contract; and

(b) the deferment of the payment of wages due to any employee until the completion of the contract, or in the case of a foreign contract of service to be performed wholly or partially outside Tanzania until the return to Tanzania of the employee after completion of the contract:

Provided that not more than one-half of the total of the wages for the contract period, excluding the value of rations, shall be so deposited or deferred; and

(c) in the case of a foreign contract of service to be performed wholly or partially outside Tanzania, the deduction from wages of an amount specified in the contract as a contribution towards either or both of the cost of the employee's transport to the place of employment and the cost of clothing and equipment supplied to the employee by the employer at the commencement of the contract.

(2) The Labour Commissioner may require an employer authorised to deposit the wages of an employee or to defer their payment, either to lodge a sum of money by way of security, or

to enter into a bond in a form prescribed under this Act, or to the like effect, for the due payment of the wages so deposited or deferred.

(3) When any employee, part of whose wages has been deposited or deferred, leaves the employment of his employer, whether on the completion or earlier determination of the contract or otherwise, the amount of the wages deposited or deferred shall be paid to the employee at such place and in such manner as the Labour Commissioner shall determine.

[s. 46]

[PCh366s52]52. Medical examination Ord. No. 35 of 1956 s. 5; Act No. 5 of 1962 s. 2

(1) Every employee who enters into a contract shall be examined by a medical officer.

(2) Wherever it is practicable the employee shall be medically examined and a certificate issued before the attestation of the contract.

(3) Where it has not been possible for the employee to be medically examined before the attestation of the contract, the attesting officer shall endorse the contract to that effect and the employee shall be examined at the earliest possible opportunity.

(4) Any employee who has been rejected after such examination as is mentioned as physically unfit for the work contemplated by the proposed contract shall be returned to the place of engagement at the expense of the employer should the employee wish to return.

(5) If any employer or recruiter shall not within a reasonable time return any employee to the place of engagement as required by subsection 4, any administrative or labour officer may

return such employee to the place of engagement and any expenses incurred shall be recoverable as a civil debt from the employer

(6) There shall be paid to a medical officer by the employer, in respect of each employee examined by him under the provisions of this section such fee as may be prescribed.

[s. 47]

[PCh366s53]53. Contracts by children and young persons

(1) A child shall not be capable of entering into a contract.

(2) A young person shall not be capable of entering into a contract except for employment in an occupation approved by an administrative officer or labour officer as not being injurious to the moral or physical development of non-adults.

(3) The provisions of this section shall apply notwithstanding anything contained in Part VIII of this Act.

[s. 48]

[PCh366s54]54. Operation of contracts for a number of tickets Act No. 82 of 1962 s. 11

(1) Where, in any contract made after the 1st January, 1963 an employee is engaged to complete a ticket or number of tickets in the service of an employer, the contract shall be construed as if the employee is engaged for a specific period equal to the sum of the number of days to be worked on all the tickets, at a monthly wage payable at the end of each month and equal to the daily wage multiplied by twenty-six.

(2) For the purposes of this section, a person is engaged to complete a ticket if the contract provides that he shall work a stated number of days out of a greater number of days and that the employer shall be liable to pay wages only in respect of the days on which such employee has actually worked.

[s. 48A]

[PCh366s55]55. Period of service

(1) The maximum period of service that may be stipulated in any contract for the employment of an employee not involving a long and expensive journey by land, air or water shall be one year if the employee is not accompanied by his family:

Provided that this period may be extended to two years if the employee is accompanied by his family.

(2) If the employment of any employee involves a long and expensive journey by land, air or water the maximum period may be extended to two years, or if the employee is accompanied by his family, to three years.

[s. 49]

[PCh366s56]56. Transfer to other employer

(1) The transfer of any contract from one employer to another shall be subject to the consent of the employee and the endorsement of the transfer upon the contract by an attesting officer.

(2) Before endorsing the transfer upon the contract, such officer shall ascertain that the employee has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake.

[s. 50]

[PCh366s57]57. Termination of contract by expiry of the term of service or by death Act No. 62 of 1964 Third Sch.

(1) Subject to the provisions of section 58, a contract shall be terminated—

(a) by the expiry of the term for which it was made; or

(b) by the death of the employee before the expiry of the term for which it was made;

or

(c) in the case of an employee to whom Part III of the Security of Employment Act * applies, if it is summarily terminated in accordance with the provisions of that Part of that Act:

Provided that, in addition to the provisions of that section a written contract shall not be summarily terminated without the consent of a labour officer and shall be subject to such conditions relating to the payment of wages earned, any deposited wages due to the employee and the employee's right to the repatriation of himself and his family, as the labour officer may direct.

(2) The termination of a contract by the death of the employee shall be without prejudice to the legal claims of his heirs or personal representatives.

[s. 51]

[PCh366s58]58. Termination of contract in other circumstances Act No. 62 of 1964 Third Sch.

(1) If the employer is unable to fulfil the contract or owing to sickness or accident the employee is unable to fulfil the contract, the contract may be determined with the consent of an administrative officer or labour officer subject to conditions guarding the right of the employee to any wages earned, deposited wages due to him, any compensation due to him in respect of accident or disease and his right to repatriation.

(2) A contract may be determined by agreement between the parties with the consent of an administrative officer or labour officer, subject to conditions safeguarding the employee from the loss of his right to repatriation, unless the agreement for the termination of the contract otherwise provides; and such officer shall satisfy himself–

(a) that the employee has freely consented to the agreement and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and

(b) that all monetary liabilities between the parties have been settled.

(3) A contract may be determined on the application of either party to a court.

(4) Nothing in subsection (1) or (3) of this section shall preclude an employee from making a reference to a Conciliation Board established under the Security of Employment Act * claiming statutory compensation under that Act, or shall confer on an administrative officer,

labour officer or a court any jurisdiction to determine the liability of an employer to pay, or the entitlement of an employee to receive such statutory compensation.

[s. 52]

[PCh366s59]59. Repatriation

(1) Every employee who is a party to a contract and who has been brought to the place of employment by the employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of the employer to his place of engagement in the following cases—

- (a) on the expiry of the period of service stipulated in the contract;
- (b) on the termination of the contract by reason of the inability of the employer to fulfil the contract;
- (c) on the termination of the contract by reason of the inability of the employee to fulfil the contract owing to sickness or accident;
- (d) on the termination of the contract by agreement between the parties, unless the agreement otherwise provides;
- (e) on the termination of the contract by order of a court in pursuance of its powers under Part XII of this Act on the application of either of the parties, unless the court otherwise decides.

(2) Where the family of the employee has been brought to the place of employment by the employer or by any person acting on behalf of the employer, the family shall be repatriated at the expense of the employer whenever the employee is repatriated or in the event of his death.

(3) The expenses of repatriation shall include—

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

(4) The employer shall not be liable for subsistence expenses or rations in respect of any period during which the repatriation of the employee has been delayed—

- (a) by the employee's own choice; or
- (b) for reasons of force majeure, unless the employer has been able during the said period, to use the services of the employee at the rate of wages stipulated in the contract.

(5) If the employer fails to fulfil his obligations in respect of repatriation, the said obligations shall be discharged by or under the directions of the Labour Commissioner, and any sum so expended may be recovered from the employer by civil suit.

(6) Any employer who fails without reasonable excuse to comply with any of the provisions of this section relating to the repatriation or payment of expenses of repatriation of any employee or the family of any employee commits an offence against this Act.

[PCh366s60]60. Exemption from obligation to repatriate

An administrative officer or labour officer may exempt the employer from liability for repatriation expenses in the following cases—

(a) when such officer is satisfied—

(i) that the employee, by a declaration in writing or otherwise, has signified that he does not wish to exercise his right to repatriation; and

(ii) that the employee has been settled at his request or with his consent at or near the place of employment;

(b) when such officer is satisfied that the employee, by his own choice, has failed to exercise his right to repatriation before the expiry of six months from the date of termination of the contract.

(c) when the contract has been terminated by order of a court in consequence of a fault of the employee;

(d) when the contract has been terminated otherwise than by reason inability of the employee to fulfil the contract owing to sickness or accident and such officer is satisfied—

(i) that in fixing the rate of wages, proper allowance has been made for the payment of repatriation expenses by the employee; and

(ii) that suitable arrangements have been made by means of a system of deposited wages or otherwise to ensure that the employee has the funds necessary for the payment of such expenses.

[s. 54]

[PCh366s61]61. Employer to provide transport on repatriation

(1) The employer shall whenever possible provide transport for employees who are being repatriated.

(2) An administrative officer or labour officer shall take all necessary measures to ensure and may give such directions to the employer or to any person acting on behalf of the employer as will ensure—

(a) that the vehicles or vessels used for transport of employees are suitable for such transport, are in good sanitary condition and are not overcrowded;

(b) that when it is necessary to break the journey for the night, suitable accommodation is provided for the employees;

(c) that when the employees have to make long journeys on foot, the length of the daily journey is compatible with the maintenance of their health and strength; and

(d) that in the case of long journeys, all necessary arrangements are made for medical assistance and for the welfare of the employees.

(3) When the employees have to make long journeys in groups they shall be convoyed by a person who is fit to assume responsibility for their welfare during the journey.

(4) Any person who fails without reasonable excuse to comply with the provisions of this section or with any directions of an administrative officer or labour officer lawfully given under the provisions of this section commits an offence against this Act.

[s. 55]

[PCh366s62]62. Period of service on re-engagement

(1) The maximum period of service that may be stipulated in any re-engagement contract made on the expiry of a contract shall be twelve months, or if the employment involves a long and expensive journey by land, air or water, two years:

Provided that in a re-engagement contract with an employee who is accompanied by his wife and children the said maximum period shall be two years, or if the employment involves a long and expensive journey by land, air or water, three years.

(2) Where the period of service to be stipulated in any re-engagement contract, together with the period already served under the expired contract, involves the separation of any employee from his family for more than twelve months, the employee shall not begin the service stipulated in the re-engagement contract until he has had the opportunity to return home at the employer's expense:

Provided that an administrative officer or labour officer may grant exemption from this provision whenever its application is impracticable or undesirable.

(3) Except as provided in subsections (1) and (2) of this section all the provisions of the preceding sections of this Part shall apply to re-engagement contracts:

Provided that an administrative officer or labour officer may at his discretion exempt such contracts from the provisions of section 52 relating to medical examination.

[s. 56]

[PCh366s63]63. Summary of the Act to be brought to notice of employees

(1) The Labour Commissioner shall, where necessary, cause concise summaries of this Act to be printed in English and in a language known to the employees and shall make such summaries available to the employers and employees concerned.

(2) Where necessary the employer may be directed by the Labour Commissioner to post such summaries in a language known to the employees in conspicuous places.

[s. 57]

[PCh366s64]64. Foreign contracts of service and contracts made abroad

(1) When a contract made within Tanzania relates to employment in another Country (in this section referred to as the "country of employment") and is a "foreign contract of service" as defined in section 2 then the provisions of this Part shall apply in the following manner, that is to say—

(a) the attestation of the contract required by section 50 shall take place before an attesting officer before the employee leaves Tanzania;

(b) the provisions of subsection (6) of section 50 shall apply as if the copy of the contract required to be delivered to the administrative officer or labour officer of the district of employment were required to be sent to the Government of the country of employment for transmission to the appropriate officer in that country.

(c) the medical examination required by section 52 shall take place at latest at the time and place of the departure of the employee from the country;

(d) a person whose apparent age is less than either sixteen years or the minimum age of capacity for entering into contracts prescribed by the law of the country of employment, if such minimum age is higher than sixteen years, shall not be capable of entering into such a contract;

(e) the period of service stipulated in the contract shall not exceed either three years in the case of an employee accompanied by his family, or in other cases, two years or the maximum period prescribed by the law of the country of employment if such maximum period is less than three years, or two years, as the case may be;

(f) the conditions under which the contract is subject to termination shall be determined by the law of the country of employment;

(g) the Labour Commissioner shall co-operate with the appropriate authority of the country of employment to ensure that application of subsection (2) of section 61 is complied with;

(h) the period of service stipulated in any re-engagement contract shall not exceed the maximum period allowed by this Act, or the maximum period allowed by the law of the country of employment, if the latter maximum period be less than the former.

(2) When a contract made within another country (in this section referred to as "the country of origin") relates to employment in Tanzania, the provisions of this Act shall apply in the following manner, that is to say:

(a) the endorsement of a transfer as required by section 56 shall be made by an attesting officer of Tanzania;

(b) the conditions under which the contract is subject to termination shall be determined by the provisions of this Act;

(c) if the employer fails to fulfil his obligations in respect of repatriation, the said obligations shall be discharged by the Labour Commissioner of Tanzania, who may recover the amount so expended by civil suit;

(d) the authority which may exempt the employer from liability for repatriation expenses shall be the Labour Commissioner of Tanzania;

(e) the Labour Commissioner of Tanzania shall co-operate with the appropriate authority of the country of origin to ensure that application of subsection (2) of section 61 is complied with.

(3) When the Convention is not in force for both the country of origin and the country of employment, the provisions set forth in subsections (1) and (2) of this section shall apply subject to the following provisions–

(a) when the Convention is not in force for Tanzania of employment the attesting officer of Tanzania shall not attest the contract unless he is satisfied that the employee will be entitled in the country of employment, either by virtue of the law of that country or by virtue of the terms of the contract, to the rights and protection specified in sections 56 to 62 (both inclusive) of this Act;

(b) when the Convention is not in force in the country of origin–

(i) the attestation of the contract required by section 50 shall take place before an attesting officer of Tanzania as soon as is practicable after the employee enters Tanzania;

(ii) the provisions of subsection (6) of section 50 shall apply; and

(iii) the medical examination required by section 52 shall take place as soon as is practicable after the employee enters Tanzania,

unless the attesting officer of the Tanzania is satisfied that the matters specified in subparagraphs (i), (ii) and (iii) of this paragraph have in fact been dealt with in accordance with the terms of the Convention by the appropriate authority of the country of origin.

(4) The Government shall, whenever necessary or desirable, enter into agreements with the Governments of other countries for the purpose of regulating matters of common concern arising in connection with the application of the provisions of the Convention, and may in any

such agreement derogate from the provisions of subsections (1) and (2) of this section in respect of contracts made in one country party to the agreement for employment in another such country.

[s. 58]

[PCh366s65]65. Security by employer Ord. No. 35 of 1956 s. 6

(1) When the employer in a foreign contract of service does not reside or carry on business within Tanzania and in any other case where the administrative officer or labour officer attesting the contract, whether a foreign contract of service or not, considers it desirable, the employer or his agent shall give security by bond in the form prescribed or to the like effect with one or more sureties to be approved of by the administrative officer or labour officer attesting the contract and resident within the jurisdiction, conditional for the due performance of the contract, in such sums as the administrative officer or labour officer, subject to the provisions of subsection (2) may consider reasonable.

(2) In the case of a contract for service in Tanzania where the employer resides in Tanzania, the amount of a bond, if demanded, shall not exceed one hundred shillings for each employee employed.

(3) A bond entered into for the purposes of this section shall be enforceable by any administrative officer or labour officer according to its purpose without any assignment, and shall be binding as a deed without being sealed.

(4) Any money recovered under the bond shall be applied by the administrative officer or labour officer in or towards satisfaction of the claims of the employees employed under the

contract in such proportions as the administrative officer or labour officer in his absolute discretion shall think just. Any balance remaining after satisfaction of such claims shall be returned to the employer.

[s. 59]

[PCh366s66]66. Penalty for inducing persons to proceed abroad under informal contract
Ord. No. 35 of 1956 s. 7; Acts Nos. 3 of 1991 Sch.; 9 of 1996 Sch.

Whoever—

(a) induces or attempts to induce any person whose nationality is Tanzanian to proceed beyond Tanzania with a view to being employed or continuing his employment outside Tanzania without a foreign contract of service and otherwise than in accordance with the provisions of this Part;

(b) knowingly aids in the engagement or transfer of any such person so induced by forwarding or conveying him or by advancing money or by any other means whatsoever,
commits an offence against this Act and be liable upon conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three years or to both.

[s. 60]

[PCh366s67]67. Continued employment under oral contract

For the avoidance of doubts it is declared that nothing in the foregoing provisions of this Part shall be construed as prohibiting or restricting an employee who has completed a written

contract of service, other than a foreign contract of service, from continuing in the service of his employer under an oral contract of service.

[s. 60A]

PART VII

PROTECTION OF WAGES (ss 68-81)

[PCh366s68]68. Wages to be paid in legal tender Acts Nos. 10 of 1960 s. 13; 62 of 1964 3rd Sch.

(1) In all contracts of service the wages of the employee shall be payable in currency which is legal tender at the place where the wages are paid and not otherwise, and if in any such contract the whole or any part of such wages is made payable in any other manner such contract shall be illegal, null and void.

(2) Wherever possible wages shall be paid on work days, and at or near the place of employment.

(3) Every employee shall be entitled to recover in a court so much of his wages exclusive of sums lawfully deducted in accordance with the provisions of this Act as shall not actually have been paid to him in legal tender.

(4) Any employer who contravenes any of the provisions of subsection (1) of this section commits an offence against this Act or any other written law.

[s. 61]

[PCh366s69]69. Agreement as to place and manner of spending wages illegal

(1) No employer shall impose in any contract of service any terms as to the place in which, or the manner in which, or the person with whom, any wages paid to the employee are to be expended and every contract between an employer and employee containing such terms shall be illegal, null and void.

(2) Any employer who contravenes any of the provisions of subsection (1) of this section commits an offence against this Act.

[s. 62]

[PCh366s70]70. Deductions Ord. No. 10 of 1960 s. 40

(1) Except where otherwise expressly permitted by the provisions of this Act or any other written law, no employer shall make any deduction or make any agreement or contract with any employee for any deduction from the wages to be paid by the employer to the employee, or for any payment to the employer by the employee:

Provided that—

(a) nothing in this subsection shall be construed as prohibiting or restricting any deduction made in respect of wages deposited or deferred with the sanction of the Labour Commissioner under the provisions of section 51; and

(b) nothing in this subsection shall be construed as prohibiting, in the case of a foreign contract of service to be performed wholly or partially outside the Tanzania the deduction from wages of an amount sanctioned by the Labour Commissioner under the provisions of

section 51 as a contribution towards either or both of the cost of the employee's transport to the place of employment and the cost of clothing and equipment supplied to the employee by the employer at the commencement of the contract; such amount having been agreed to by the parties in the terms of the foreign contract of service.

(2) Any employer who contravenes any of the provisions of subsection (1) of this section commits an offence against this Act.

[s. 63]

[PCh366s71]71. Deduction from wages for tax, contribution to provident funds, loss, damage, etc., authorised Ord. No. 20 of 1960 s. 15

(1) Notwithstanding any other provision of this Act—

(a) an employer may, with the consent of the employee, deduct from the wages of such employee any amount due by him—

(i) in respect of any tax or rate imposed by written law;

or

(ii) as a contribution of any provident or pension fund or scheme established and maintained in accordance with regulations made under this Act to which such employee has agreed to contribute,

and shall on behalf of such employee, pay the amount so deducted to the person empowered to collect such tax or rate or entrusted with the management of such fund or scheme;

(b) an employer may make deductions from the wages of an employee in respect of loss or damage caused by the default or neglect of such employee to any tools, materials or other property of an employer, up to such maximum amounts, and in accordance with such terms and conditions as may be prescribed;

(c) an employer may, with the consent of the employee, deduct from the wages of such employee any amount—

(i) due to him by way of rental for quarters provided by the employer and occupied by the employee:

Provided that no such deduction may be made where, by any customs, quarters are provided free of charge in addition to wages;

(ii) where the deduction is, provided for under the provisions of any collective agreement made between any organisation of employees of which the employee is a member and the employer or an organisation of employers of which the employer is a member;

(d) an employer may deduct from the wages of an employee any amount payable by the employee to the employer under any award or negotiated settlement (within the meaning of the Industrial Court of Tanzania Act *) which is binding on the employer and employee under the provisions of that Act.

(2) Notwithstanding any other provisions of this Act to the contrary, where—

(a) an employer makes a loan to an employee; and

(b) the total amount of the loan has been paid by the employer to the employee in cash or by cheque; and

(c) a memorandum of the transaction has been made and signed by or on behalf of both employer and employee providing for the repayment of the loan by one or more instalments, the employer may deduct from the wages due to the employee such instalments at such times as are set out in the memorandum:

Provided that where regulations are made providing for the maximum amount of any loans or instalments or for the terms and conditions upon which such loans may be paid or recovered, no loan or instalment may be recovered in excess of such maximum amounts nor may such loan or instalments be recovered upon terms more onerous to the employee than those provided for in such regulations.

[s. 64]

[PCh366s72]72. Remuneration other than wages

Nothing in this Act shall render illegal any agreement or contract with an employee for giving to him food, a dwelling place, or other allowances or privileges, in addition to money wages, as a remuneration for his services, but so that no employer shall give to a worker any intoxicating liquor by way of such remuneration.

[s. 65]

[PCh366s73]73. Wages not to be paid in any shop store or canteen Ord. No. 10 of 1960 s.

16

(1) An employer shall not make any payment of wages due to any employee in any shop, store, canteen, hotel or other similar establishment nor depute the owner or manager of, or any person employed in, any shop, store, canteen, hotel or other similar establishment to pay wages due by him to his employee:

Provided that nothing in this section shall prohibit the payment in any shop, store or canteen of any wages due to any employee employed therein.

(2) Any employer who contravenes any of the provisions of subsection (1) of this section commits an offence against this Act, and shall be liable upon conviction to a fine not exceeding two thousand shillings.

[s. 66]

[PCh366s74]74. Authority of employer to open shop

(1) Nothing in this Part shall prevent an employer otherwise lawfully entitled to do so from establishing a shop for the sale of provisions generally to his employees, but no employee shall be compelled by any contract, agreement or order, written or oral, to purchase provisions at that shop.

(2) Any employer who compels or seeks to compel any employee by any contract, agreement or order, written or oral, to purchase provisions at any shop established for the sale of provisions to employees commits an offence against this Act.

[s. 67]

[PCh366s75]75. Advance of wages

(1) No person shall give or promise to any other person any advance of wages or any valuable consideration upon a condition, expressed or implied, that such other person or any dependant of his shall enter upon any employment. Any breach of the provisions of this subsection constitutes an offence against this Act.

(2) The amount of wages which may be advanced to an employee at the time of his engagement and the method of its repayment shall be such as may be prescribed.

[s. 68]

[PCh366s76]76. Interest on advances prohibited

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

(2) Any employer who contravenes any of the provisions of subsection (1) of this section commits an offence against this Act.

[s. 69]

[PCh366s77]77. Security from employer

The Labour Commissioner shall be empowered to require any employer with whom has been deposited by his employees any sums of money for safe keeping—

- (a) to deposit a sum of money by way of security; or
- (b) to enter into a bond in the form prescribed for the due refund to the employees concerned of any moneys so deposited; or
- (c) to place such moneys in a separate banking account which shall not be utilised for any purpose other than refunding amounts so deposited at the employee's request.

[s. 70]

[PCh366s78]78. Priority of wages and severance allowance Act No. 5 of 1969 s. 3

(1) Where any sum of money is paid into court in execution of a decree and the court is satisfied that the person entitled to receive such sum or any part, or the judgment debtor against whom the execution has been levied, is a person against whom a decree passed by any court in Tanzania for—

- (a) wages due to his employee;
- (b) any sum due from him under section 52 or section 59;
- (c) any sum due from him to an employee under the provisions of the Severance Allowance Act,

remains unsatisfied, the court shall, notwithstanding the provisions of any provisions of any written law to the contrary, and subject to the provisions of subsection (3), first apply the money so received towards the satisfaction of the decree or decrees specified in paragraphs (a), (b) and (c).

(2) The provisions of subsection (1) shall apply notwithstanding that no application has been made for the execution of a decree specified in paragraphs (a), (b) or (c).

(3) The provisions of subsection (1) shall apply in respect of a decree for an employee's wages only to the extent of a sum equal to four months' wages of such employee:

Provided that nothing in this subsection shall be deemed to prevent the employee from recovering any balance due on such decree by ordinary process of law.

(4) Where any sum of money is paid in accordance with the provisions of this section for the satisfaction of a decree subsisting against the person entitled to receive such payment, the payment made in satisfaction of such decree shall be deemed to be payment made to the person so entitled.

(5) The Chief Justice may make Rules of Court to give effect to, and for the better carrying out of the purposes of the provisions of this section, and may, for that purpose, modify any provisions of the Civil Procedure Code *.

[s. 71]

[PCh366s79]79. Books to be kept by employers

(1) Every employer shall keep such records, books and accounts in respect of employees employed by him as may be prescribed and every employer shall, at all reasonable hours, afford every facility to a labour officer for the examination of such records, books and accounts.

(2) Any employer who fails to comply with any of the provisions of subsection (1) of this section commits an offence against this Act.

[s. 72]

[PCh366s80]80. Exemption of employer on conviction of actual offender

(1) Where an employer is charged with an offence under any of the provisions of this Part, he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he has used due diligence to enforce the provisions of this Part and that such other person has committed the offence in question without his knowledge, consent or connivance, such other person shall be summarily convicted of such offence and the employer shall be exempt from any penalty.

(2) Where it is made to appear to the satisfaction of a labour officer at the time of discovering the offence that the employer has used due diligence to enforce the provisions of this Part, and also by that person whom the offence has been committed, then the labour officer shall proceed against the person whom he believes to be the actual offender in the first instance without first proceeding against the employer.

[s. 73]

[PCh366s81]81. Power of court to order payment to employee

(1) Where any employer or other person has been found guilty of an offence under the provisions of this Part, the court may order such employer or person to pay such sum as is found by the court to be due to such employee by way of remuneration or otherwise and to be such as would have been paid to him if the provisions of this Part had been complied with.

(2) The power given by this section for the recovery of sums due from an employer to an employee shall be in addition to and not in derogation of any right of an employee to recover such sums by any other proceedings under this Act or other written law:

Provided that no person shall be liable to pay twice in respect of the same cause of action.

[s. 74]

PART VIII

WOMEN, YOUNG PERSONS AND CHILDREN (ss 82-103)

[PCh366s82]82. Application

Save as otherwise provided in this Act or any other written law, the provisions of this Part shall be in addition to and not in derogation of any other provisions of this Act or of any other written law in force regulating the relations between employer and employee.

[s. 75]

[PCh366s83]83. Power of the Minister to exempt certain occupations from the provisions of this Part

If, having regard to the nature of the work involved in any occupation which forms part of an industrial undertaking, the Minister considers that such occupation should be excluded from the provisions of this Part relating to industrial undertaking he may declare, by the order, that employment in such occupation shall be deemed not to be employment in an industrial undertaking for the purposes of this Part.

[s. 76]

[PCh366s84]84. Prohibition of employment of children under the prescribed age Act No. 5 of 1969 s. 4

(1) No child under the prescribed age shall be employed in any capacity.

(2) Any person who employs any child under the prescribed age shall be guilty of an offence against this Part of this Act.

(3) For the purposes of this section "prescribed age" means the apparent age of twelve years or such age between twelve years and fifteen years as the Minister may by Order published in the Gazette declare to be the prescribed age for the purposes of this section.

(4) Nothing in the Part or in any other provision of this Act or in any written law shall be construed as permitting employment of a child under the prescribed age.

[s. 77]

[PCh366s85]85. Employment of children

(1) A child shall be employed only—

(a) upon a daily wage and on a day to day basis; and

(b) upon the terms that he returns each night to the place of residence of his parent or guardian.

(2) Any person who employs a child in contravention of any of the provisions of subsection (1) of this section commits an offence against this Part of this Act.

[s. 78]

[PCh366s86]86. Restriction on employment of children and young persons

(1) No child or young person shall be employed in any employment which is injurious to health, dangerous, or otherwise unsuitable.

(2) No person shall, after being notified in writing by the proper authority that the kind of work upon which a child or young person is employed is injurious to his health, dangerous, or otherwise unsuitable, continue so to employ him; and such notification may be made generally or in any particular case.

(3) Where any employment is discontinued under the provisions of subsection (2) of this section such discontinuance shall be without prejudice to the child or young person to be paid such wages as he may have earned up to the date of such discontinuance under the terms of the contract of service.

(4) Any person who employs any child or young person in any employment which is injurious to health, dangerous, or otherwise unsuitable, or who continues to employ any young

person in any work as to which he has been notified by the proper authority that it is injurious to health, dangerous, or otherwise unsuitable, commits an offence against this Part of this Act.

[s. 79]

[PCh366s87]87. Children and young persons not to be employed against the wishes of parent or guardian

(1) No employer shall continue to employ any child or young person after receiving notice, either orally or in writing, from the parent, guardian or relative that the child or young person is employed against the wishes of such parent or guardian:

Provided that nothing in this section shall apply to a young person employed under the terms of a written contract entered into with the approval of the proper authority.

(2) Any employer who continues to employ any child or young person after receiving such notice as in subsection (1) commits an offence against this Part of this Act.

[s. 80]

[PCh366s88]88. Restriction on employment of children in industrial undertaking

(1) No child shall be employed in any industrial undertaking.

(2) The provisions of subsection (1) of this section shall not apply to work done by children in technical schools or similar institutions where the work is licensed and approved by the Commissioner of Education.

(3) Any person who employs a child in contravention of the provision of subsection (1) of this section commits an offence against this Part of this Act.

[s. 81]

[PCh366s89]89. Restriction on employment of children in attendance on machinery

(1) No child shall be employed in any undertaking attendance on or in the vicinity of any machinery, or in any open cast workings, or in any subsurface workings which are entered by means of a shaft or adit.

(2) Any person who employs a child in contravention of any of the provisions of subsection (1) of this section commits an offence against this Part of this Act.

[s. 82]

[PCh366s90]90. Restriction on employment of women and young persons on night work
Act No. 5 of 1969

(1) Subject to the provisions of section 91 no woman shall be employed between the hours of 10 p.m. and 6 a.m. and no young person shall be employed between the hours of 6 p.m. and 6 a.m., in any industrial undertaking except—

(a) male young persons over the apparent age of sixteen years employed in one of the following industrial undertakings on work which by reason of the nature of the work is required to be carried on continuously day and night, namely—

(i) manufacture of iron and steel; processes in which reverberatory or regenerative furnaces are used and galvanizing of sheet metal or wire (except the pickling process);

(ii) glass works;

(iii) manufacture of paper;

(iv) manufacture of raw sugar;

(v) mining, reduction, extraction or preparation work;

(b) women, or male young persons over the apparent age of sixteen years employed in cases of emergency which could not have been controlled or foreseen, which interfere with the normal working of the industrial undertaking and which are not of a periodical nature;

(c) women, in cases where the work is connected with raw materials or materials in the course of treatment and which are subject to rapid deterioration, and work during such hours is necessary to preserve any such materials from certain loss;

(d) women holding responsible positions of management not normally engaged in manual work.

(2) Any person who employs a woman or young person in contravention of any of the provisions of subsection (1) of this section shall commit an offence against this Part of this Act.

[s. 83]

[PCh366s91]91. Emergencies

In case of any serious emergency, when the public interest demands, the Labour Commissioner may, by notice in the Gazette suspend the operation of section 90 in so far as it affects women and male young persons over the apparent age of sixteen years.

[s. 84]

[PCh366s92]92. Employers of children and young persons to keep registers

(1) Every employer of young persons in an industrial undertaking, or of children employed in an occupation which forms part of an industrial undertaking, and which has been deemed under the provisions of any order made under section 83 not to be employed in an industrial undertaking for the purposes of this Part, shall keep a register of all such children and young persons in his employment and shall include in such register particulars of their ages or apparent ages, the date of commencement and termination of their employment, the conditions and nature of their employment and such other particulars as may be prescribed, and shall produce the register for inspection when required by the proper authority.

(2) Any employer who fails to keep a register as required by subsection (1) of this section or keeps a register which in any respect fails to conform with the requirements of the said subsection or who fails or refuses to produce such a register when required to do so under the said subsection commit an offence against this Act, and shall be liable upon conviction to a fine not exceeding two thousand shillings.

[s. 85]

[PCh366s93]93. Restriction on employment of women in mines

(1) No female shall be employed on underground work in any mine except in the following circumstances—

- (a) a woman holding a position of management who does not perform manual work;
- (b) a woman engaged in health or welfare service;
- (c) a woman who in the course of her studies spends a period of training in the underground parts of a mine; or
- (d) a woman who may for any other reason occasionally have to enter the underground parts of a mine for the purpose of non-manual occupation.

(2) Any person who employs a female in contravention of the provisions of subsection (1) of this section commits an offence against this Part of this Act.

[s. 86]

[PCh366s94]94. Maternity protection

(1) Except in cases in which only members of the same family are employed in such undertaking, a female employee in any industrial or commercial undertaking—

- (a) shall not be required to work during the period of six weeks following her confinement;
- (b) shall have the right to leave her work if she produces a medical certificate issued by a registered or licensed medical practitioner that her confinement will probably take place within six weeks;

(c) shall in any case if she is nursing her child be allowed half an hour twice a day during her working hours for this purpose.

(2) Any employer who knowingly contravenes any of the provisions of subsection (1) of this section in relation to any female in his employment commits an offence against this Part of this Act.

[s. 87]

[PCh366s95]95. Restriction on employment of young persons in mines

(1) No young person shall be employed underground in any mine unless a certificate that he is fit for such work has been given, signed by a medical officer or by a medical practitioner approved by the Director of Medical Services.

(2) Any person who employs a young person in contravention of the provisions of subsection (1) of this section commits an offence against this Part of this Act.

[s. 88]

[PCh366s96]96.-99. inclusive. Repealed

[Repealed by Act No. 31 of 1966 Second Sch.]

[ss. 89-91A]

[PCh366s100]100. Offences by parents and guardians

Any parent or guardian of a child or young person who permits such child or young person to be employed in contravention of any of the provisions of this Part commits an offence against this Part of this Act.

[s. 92]

[PCh366s101]101. Presumption of age

If in the case of a charge for an offence under this Act it is alleged by the person conducting the prosecution that the person in respect of whom the offence was committed was under such apparent age as is specified in respect of the alleged offence, the magistrate shall, after such inquiry as he shall consider necessary and after hearing any evidence that may be tendered by either party to the proceedings, determine the age of the said person, and such determination shall be final.

[s. 93]

[PCh366s102]102. General penalty for offences against this Part

Any person who commits an offence against this Part of this Act for which no penalty is expressly provided shall be liable upon conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding three months or to both, and in the case of a second or subsequent offence to a fine not exceeding four thousand shillings or to imprisonment for a term not exceeding six months or to both.

[s. 94]

[PCh366s103]103. Regulations

(1) The Minister after considering the advice of the Labour Advisory Board may make regulations for the better carrying out of the purposes of this Part, and without prejudice to the generality of the foregoing, for any of the following purposes—

- (a) the registration and identification of women, children and young persons;
- (b) prescribing the records and registers to be kept and the returns to be made by the employer of women, children and young persons;
- (c) further restricting the employment of women, children and young persons in specified occupations;
- (d) prescribing further conditions upon which women, children and young persons may be engaged or employed;
- (e) making further provisions for the care, safety and welfare of women, children and young persons in employment and their conditions of employment;
- (f) prohibiting, restricting, controlling or regulating the employment of women, children and young persons in commercial undertaking;
- (g) providing for all matters relating to maternity protection for women;
- (h) prescribing anything which is to be or may be prescribed under this Part.

(2) Any regulations made under subsection (1) may impose conditions, require acts or things to be performed or done to the satisfaction of the Labour Commissioner or an

administrative officer, medical officer, labour officer or mines officer, empower the Labour Commissioner or any such officer to issue orders, notices or directions either orally or in writing, requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled, and provide for appeal against any such order, notice or direction.

(3) In addition to making such provisions as in subsections (1) and (2), regulations made under this section may fix such penalties for the breach, non-compliance with or non-fulfilment of any regulation or any condition imposed or order, notice or direction issued under any such regulation not exceeding a fine of two thousand shillings and in the case of a third or subsequent offence against the same provision not exceeding a fine of two thousand shillings or imprisonment for a term not exceeding three months.

(4) All regulations made under this section shall have the same force and effect as if they had been enacted in this Act and shall be laid before the National Assembly.

[s. 95]

PART IX

CARE AND WELFARE (ss 104-113)

[PCh366s104]104. Application

The provisions of this Part shall apply only to Tanzanian employees, and the expression "employee" where used in this Part, means any Tanzanian employee:

Provided that the Minister may by Order published in the Gazette declare that any provision of this Part shall not extend to any Tanzanian employees, or class of employees.

[s. 96]

[PCh366s105]105. Housing

(1) Subject to the provisions of this section, every employer shall—

(a) cause his employees to be housed in such manner as may be prescribed;

(b) provide for his employees and members of their families living with them such sanitary arrangements both at the place where they are housed and at the place where they are required to work, of such description and scale as may be prescribed.

(2) The provisions of paragraph (a) and (in so far as they relate to the provision of sanitary arrangements at the place where employees are housed) of paragraph (b) of subsection (1) shall apply only in the case of employees who are employed at such a distance from their homes or normal places of residence that it would be impracticable for them to return at the end of the day's work or to obtain suitable alternative accommodation.

(3) An employer who fails to comply with the provisions of subsection (1) of this section commits an offence against this Act.

[s. 97]

[PCh366s106]106. Employers to establish housing fund Act No. 25 of 1982 s. 11

(1) Every employer shall establish a housing fund for his employee. and every employer who derives a profit from the business of his organisation shall contribute to the housing fund so established a sum equal to twenty per centum of the profit realised in each financial year, after deducting taxes depreciation costs and contribution to the Fund.

(2) The housing Fund established and contributed to by an employer pursuant to this section shall be used for the construction of houses for the accommodation of his employees.

(3) The housing Fund shall be under the general supervision of the Union branch, the Workers' Council and the Board or Management Committee of the organisation concerned.

(4) A Labour officer may require any information from any employer relating to the maintenance and utilisation for the purpose of exercising any of the powers conferred on him by section 9.

[s. 97A]

[PCh366s107]107. Feeding of employees Ord. No. 10 of 1960 s. 18

(1) During the period of service of any employee attested on a written contract, the employer shall, unless exempted in writing by the Labour Commissioner or the proper authority, at his own expense supply such employee and, in the case of an employee employed for a period of service exceeding two years, members of his family living with him with daily rations of sound and wholesome food in accordance with such description and scales as may be prescribed:

Provided that—

(a) in fixing the rates of wages payable under the contract due allowance may be made for the value of the rations issued;

(b) the employer shall not be bound to provide rations in respect of any day on which the employee is absent from work unless the employee is necessarily absent for reasons of sickness or injury.

(2) In any contract of service other than a written contract the employer shall not be obliged to provide a free issue of rations to the employee except that—

(a) the employer may at the request of the employee provide him with such items of the prescribed rations scale as the employee may desire, in which case a sum not exceeding the value of the rations issued may be deducted from the cash wage fixed by the contract;

(b) if the Labour Commissioner is satisfied that in any specified area, or at any particular place of employment, foodstuffs of adequate variety and quantity are not available for purchase by an employee, he may by order in writing require all or any employers in such area or the employer concerned to issue rations on the prescribed scale.

(3) Notwithstanding the provisions of paragraphs (a) and (b) of subsection (2), the employer shall always provide daily at his own expense rations of sound and wholesome food in accordance with such descriptions and scale as may be prescribed to those of his employees who are receiving medical treatment (as in-patients) at the place of employment which is of such a nature as to preclude them from engaging in their duties.

(4) Any employer who fails to comply with any of the provisions of subsections (1), (2) or (3) of this section or of an order issued thereunder commits an offence against this Act.

[s. 98]

[PCh366s108]108. Supply of water

(1) Every employer shall at his own expense provide for his employees and members of their families living with them on the employer's property an adequate and easily accessible supply of wholesome water for drinking, washing and other domestic purposes to the satisfaction of the proper authority and shall take all such measures as are necessary and practicable and as the proper authority may by notice in writing require to maintain such supply, and to protect it from pollution.

(2) Any employer who fails to comply with any of the provisions of subsection (1) of this section or of any notice issued under that subsection, commits an offence against this Act and shall be liable upon conviction to a fine not exceeding two thousand shillings.

[s. 99]

[PCh366s109]109. Provision of medicine and medical treatment

(1) Every employer shall at his own expense provide for his employees and members of their families living with them medical aid in accordance with such scale as may be prescribed:

Provided that in so far as the provision of such medical aid for the members of the employee's family is concerned this obligation shall only extend to cases where the employee and

his family are resident on the employer's property with the knowledge and consent of the employer.

(2) Any employer who fails to comply with any of the provisions of subsection (1) of this section commits an offence against this Act:

Provided that an employer shall not be liable under this section in any case where any illness or incapacity is occasioned by the neglect or fault of the employee or the members of his family or where the employee or the members of his family refuse or fail to make use of the medical aid provided by the employer.

[s. 100]

[PCh366s110]110. Care of employees on journey

(1) Every employer shall when necessary provide for his employees when on a journey such articles of equipment as reasonably necessary.

(2) Any employer who fails to comply with the provisions of subsection (1) of this section commits an offence against this Act and shall be liable upon conviction to a fine not exceeding two thousand shillings.

[s. 101]

[PCh366s111]111. Burial of deceased employees and dependants

(1) Every employer shall provide decent interment for any employee resident at a place of employment and for any member of his family living with him dying during a period of employment, unless a relative or friend undertakes such duty.

(2) Any employer who fails to comply with any of the provisions of subsection (1) of this section commits an offence against this Act and shall be liable upon conviction to a fine not exceeding two thousand shillings.

[s. 102]

[PCh366s112]112. Return of employees to place of engagement Act No. 82 of 1962 s. 13

(1) Whenever an employee shall have been brought to the place of employment by the employer or by any person acting on his behalf the employer shall at the termination of the contract of service pay the expenses of repatriating the employee by reasonable means to the place from which he was brought, if the employee so desires:

Provided that an employer shall not incur liability under this section in respect of any employee who has not completed a period of service of at least three months' duration unless the proper authority shall so order or, in respect of an employee who at the completion of a written contract of service has waived his right to repatriation under Part V of the Act.

(2) The proper authority may exempt the employer from his liability to pay the expenses of repatriation under subsection (1) of this section if the contract of service has been terminated otherwise than by reason of the inability of the employee to fulfil the contract owing to sickness or accident and the proper authority is satisfied—

(a) that in fixing the rate of wages proper allowance has been made for the payment of repatriation expenses by the employee; and

(b) that suitable arrangements have been made by means of a system of deposited wages or otherwise to ensure that the employee has the funds necessary for the payment of such expenses.

(3) The expenses of repatriation shall include—

(a) the cost of travelling and subsistence expenses or rations to the place of engagement;

(b) subsistence expenses during the period, if any, between the date of termination of the contract and the date of repatriation.

(4) Any employer who fails to comply with any of the provisions of subsection (1) of this section or any order made by the proper authority commits an offence against this Act.

[s. 103]

[PCh366s113]113. Regulations

(1) The Minister after considering the advice of the Labour-Advisory Board may make regulations for the better carrying into effect of the provisions of this Part and without prejudice to the generality of the foregoing for any of the following purposes—

(a) providing for and prescribing the description and scale of housing accommodation and sanitary arrangements to be provided by employers for employees;

(b) providing for the feeding of employees in cases where food is to be supplied by an employer under or at the termination of any contract of service and prescribing the description and scale of rations to be supplied;

(c) providing for all matters relating to the supply of water by employers to employees;

(d) providing for and prescribing the description and scale of medicines, medical attention, accommodation, equipment, staff and treatment to be provided by employers for employees;

(e) providing for all matters relating to the return of employees from the place of employment to the place of engagement;

(f) provided for the disinfection, disinfestation and rat-proofing of buildings;

(g) prescribing anything which is to be or may be prescribed under this Part.

(2) Any regulations under subsection (1) may impose conditions, require acts or things to be performed or done to the satisfaction of the Labour Commissioner or an administrative officer, medical officer, labour officer or mines officer, empower the Labour Commissioner or any such officer to issue orders, notices or directions, either orally or in writing, requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon, within or before which such acts or things shall be performed or

done or such conditions shall be fulfilled, and provide for appeal against any such order, notice or direction.

(3) In addition to making such provision as in subsections (1) and (2) the regulations made under this section may fix such penalties for the breach, non-compliance with or non-fulfilment of any regulation or any condition imposed or order, notice or direction issued under any such regulation not exceeding a fine of two thousand shillings and in the case of a third or subsequent offence against the same provision not exceeding a fine of two thousand shilling or imprisonment for a term not exceeding three months or both.

(4) All regulations made under this section shall have the same force and effect as if they had been enacted in this Act and shall be laid before the National Assembly.

[s. 104]

PART X

RECRUITMENT (ss 114-129)

[PCh366s114]114. Prohibition of the business of recruitment of persons for work Acts Nos. 5 of 1969 s. 6; 7 of 1979 s. 2

(1) No person shall himself or through agents, whether in his own name or in any other name, carry on for profit, gain or reward or attempt to carry on for profit gain or reward the business of recruiting or of forwarding persons to places of employment.

(2) Any person who, for himself or for any other person, carries on for profit, gain or reward or attempts to carry on for profit, gain or reward the business of recruiting or of forwarding persons to places of employment shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding twelve months or to both that fine and imprisonment.

[s. 105]

[PCh366s115]115. Minister may regulate recruitment of persons for work Act No. 7 of 1979
s. 2

(1) The Minister may make make regulations consistent with the purposes and provisions of this Act for the control of recruitment of persons for work and without prejudice to the generality of this subsection, the Minister may, by regulations–

(a) exempt from all or any of the provisions of those regulations any employer or category of employers or the recruitment by or on behalf of any employer or category of employers;

(b) prescribing such measures as may be necessary to ensure that persons recruited for work shall be under suitable conditions at the place of employment;

(c) prescribing the records to be kept and the returns to be rendered by employers in connection with recruitment operations;

(d) prescribing the housing accommodation, feeding, medical and other arrangements to be made available to persons recruited for work and their families at the place of employment;

(e) regulating the employment of persons recruited for work in any specified industry, business or undertaking;

(f) prescribing anything which is necessary or desirable generally for the better carrying out of the purposes and provisions of this Part.

(2) Regulations made under subsection (1) may impose conditions, require acts or things to be performed or done to the satisfaction of the Labour Commissioner, a labour officer, medical officer or any other specified public officer; empower the Labour Commissioner, a labour officer medical officer or any other specified public officer to issue orders, notices or directions either verbally or in writing requiring acts or things to be performed or done, or prohibiting acts or things from being performed or done, and prescribed periods within which the acts or things shall be performed or done or the conditions shall be fulfilled, and provide for appeal against any order, notice or direction so issued.

(3) All regulations made under this section shall be published in the Gazette and shall have the same force and effect as if they had been enacted in this Act.

[s. 106]

[PCh366s116]116.-129. Repealed

[Repealed by Act No. 5 of 1969 s. 6.]

[ss. 107-120]

PART XI

FORCED LABOUR (ss 130-138)

[PCh366s130]130. Interpretation Ord. No. 10 of 1960 ss. 14 and 21

In this Part—

"Conventions" means the Forced Labour Convention, 1930, and the Abolition of Forced Labour Convention, 1957;

"forced labour" means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily, but does not include—

(a) any work or service exacted by virtue of any compulsory military service law for work of a purely military character;

(b) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that such work or service is carried out under the supervision and control of a public authority, and that the said person is not hired to or placed at the disposal of private persons;

(c) any work or service exacted in case of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals or insect pests or plant diseases or pests, and in general any circumstances which might endanger the existence or well-being of the whole or part of the population;

(d) minor communal service of a kind which are to be performed by the members of a community in the direct interest of such community (not being for purposes of economic development) and which are therefore civic obligations normally incumbent upon the members of such community and more particularly and without prejudice to the generality of the foregoing services for—

(i) the maintenance of buildings used for communal purposes, including markets and schools but excluding shrines and places of worship;

(ii) sanitation;

(iii) emergency measures for the prevention of disease or the spread of disease, the transportation of the sick to hospitals or dispensaries and the transportation of the dead;

(iv) the maintenance and water clearing of local roads and paths;

(v) the repairing of village fences;

(vi) the maintenance of water supplies;

(vii) the provision and maintenance of local cemeteries;

(viii) The prevention of the spread of tsetse fly:

Provided that before the exaction of such minor communal services consultation shall have been had with the inhabitants of the place, town or village concerned or their direct representatives in regard to the need for such services.

(e) any work to be performed by a person allotted or occupying land in accordance with customary law, or cultivating land so occupied, in order to comply with any lawful requirement of a local authority as to the cultivation of such land or any part:

Provided that the crops accruing from such cultivation shall be the property of the cultivator.

[s. 121]

[PCh366s131]131. Exaction of forced labour prohibited

Except where such labour is exacted or imposed by or with the authority of the Minister or his delegates as provided in this Part, and is exacted or imposed in accordance with the provisions of this Part, any person who exacts or imposes forced labour or causes or permits forced labour to be exacted or imposed for his benefit or for the benefit of any other person commits an offence against this Act and shall be liable upon conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year.

[s. 122]

[PCh366s132]132. No forced labour for private persons

(1) No forced labour shall be imposed or permitted for the benefit of private persons.

(2) No concession granted to a private person shall involve any form of forced labour for the production or collection of products which such private person utilises or in which he trades.

[s. 123]

[PCh366s133]133. Penalty for official constraint

Any public officer who puts any constraint upon the population under his charge or upon any individual members of such population, to work for any private individual, company or association commits an offence against this Act and shall be liable on conviction to a fine not exceeding two thousand shillings or to imprisonment for a term not exceeding one year.

[s. 124]

[PCh366s134]134. Minister's consent necessary for forced labour Ord. No. 10 of 1960 s. 22

(1) Except as provided in section 135, and notwithstanding the provisions of any other written law to the contrary, no person or authority may exercise any power in any other law contained to impose forced labour except with the prior consent of the Minister to the particular exercise of the power; and before giving his consent to the exercise of such power to any person or authority or before himself imposing forced labour by virtue of this section, the Minister shall satisfy himself, in the case of forced labour imposed under any other law, that the conditions precedent to the exercise of the power have been complied with, and in all cases (whether such labour is imposed by any other law or by virtue of this section)–

(a) that the work to be done or the service to be rendered is of important direct interest to the community called upon to do the work or render the service;

(b) that the work or service is of present or imminent necessity, is not for the purpose of economic or other development, and is for the purpose of–

(i) maintaining any works or service used or enjoyed by the community called upon to do the work or render the service; or

(ii) facilitating the movement of officials of government when on duty or for the transport of government stores or urgent communications or for the urgent transport of sick or injured persons;

(c) that it has been impossible to obtain voluntary labour for carrying out the work or rendering the service by the offer of rates of wages and conditions of labour not less favourable than those prevailing in the area concerned for similar work or service; and

(d) that the work or service will not lay too heavy a burden on the community concerned, having regard to the labour available and its capacity to undertake the work.

(2) Subject to the provisions of subsection (1) of this section, the Minister may authorise the exercise of the power to impose forced labour in any other law contained, and may himself impose forced labour by virtue of the provisions of this section subject to such conditions as he may think fit.

[s. 125]

[PCh366s135]135. Minister may delegate powers to impose forced labour

The Minister may delegate to any Regional Commissioner his authority to authorise the imposition of forced labour under any other law and his authority to impose forced labour under section 134 in accordance with the provisions of this Part and with such limitations and subject to such conditions as he may think fit:

Provided that the exercise of such delegated powers shall be subject to the following limitations in addition to those contained in section 134—

(a) such forced labour, unless it is imposed solely for the purpose of facilitating the movement of officials of Government when on duty or for the transport of Government stores or urgent communications or for the urgent transport of sick or injured persons, shall not involve the removal of the employees from their place of habitual residence;

(b) where a Regional Commissioner authorises a person or authority to impose forced labour under any other law or himself imposes forced labour under this and section 134, for the execution of public work, he shall satisfy himself—

(i) that the work or service will not lay too heavy a burden upon the community concerned having regard to the labour available and its capacity to undertake work;

(ii) that the work or service will not entail the removal of the employees from their place of habitual residence; and

(iii) that the execution of the work or the rendering of the service will be directed in accordance with the exigencies of religion, social life and agriculture.

[s. 126]

[PCh366s136]136. Penalty for refusing labour lawfully demanded Acts Nos. 62 of 1964 Sch.; 13 of 1991 Sch.

Any person from whom labour or service of any kind is lawfully demanded under any of the provisions of this Part or under the provisions of any other law giving power to impose forced

labour, the exercise of which has been authorised by the Minister or his delegate under the provisions of this Part, who refuses without reasonable cause to render such labour or perform such service commits an offence against this Act and shall be liable upon conviction to a fine not exceeding twenty-five thousand shillings or for imprisonment for a term of three years or both.

[s. 127]

[PCh366s137]137. Wages and compensation

(1) Forced labour shall be remunerated in cash at rates not less than those prevailing for similar kinds of work either in the area in which the labour is employed or in the area in which the labour is recruited, whichever may be the higher.

(2) The provisions of any other Act in force, relating to the payment of compensation to employees or other persons or to the dependants of such employees or other persons in respect of accidents arising out of and in the course of employment or in any other manner in which such compensation is payable under the provisions of any of such other Act, shall apply to persons from whom forced labour is exacted under the provisions of this Part, or under powers contained in any other law the exercise of which has been authorised under the provisions of this Part, as if—

(a) such labour were not forced labour and such persons were under a contract of employment; or

(b) the relationship between the persons from whom forced labour is exacted and the person exacting such labour were that required by the provisions of any other Act.

(3) For the purposes of subsection (2) the word "Dependant" shall have the meaning assigned to it in the Worker's Compensation Act *.

(4) Nothing in this section shall apply to statutory compensation within the meaning ascribed to that expression in Part IV of the Security of Employment Act *.

[s. 128]

[PCh366s138]138. Regulations Ord. No. 10 of 1960 s. 23

(1) The Minister after considering the advice of the Labour Advisory Board, may—

(a) make regulations not inconsistent with the provisions of this Part for the purpose of giving effect to any of the provisions of the Conventions and without prejudice to the generality of the foregoing power he may by regulation provide for—

(i) the age limits and exemptions applicable to liability for forced labour and the proportion of the resident adult able-bodied males who may be taken at any time for work or service under the provisions of this Part;

(ii) the fitness of persons to be taken for work or service under the provisions of this Part, and their care, treatment and welfare;

(iii) the form of returns of labour or service exacted under the provisions of this Part;

(iv) the maximum periods, hours and conditions of work, and the remuneration of forced labour;

(v) the exaction of minor communal services or other works in accordance with the provisions of this Part;

(vi) the hearing of complaints relative to the conditions of forced labour;

(vii) prescribing anything which is to be or may be prescribed under this Part;

(b) in subparagraphs (i), (ii), (iii) and (v) of paragraph (a) of this subsection the expression "provisions of this Part" shall be deemed to include the provisions of any other written law giving power to impose forced labour the exercise of which has been authorised under the provisions of this Part.

(2) The provisions of subsection (1) aforesaid may impose conditions, require acts or things to be performed or done to the satisfaction of the Labour Commissioner or an administrative officer, medical officer, labour officer or mines officer, empower the Labour Commissioner or any such officer to issue orders, notices or directions, either orally or in writing, requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon within or before which such acts or things shall be performed or done or such conditions shall be fulfilled, and provide for appeal against any such order, notice, or direction.

(3) In addition to making such provision as in subsections (1) and (2), regulations made under this section may fix such penalties for the breach, non-compliance with or non-fulfilment of any regulation or any condition imposed or order, notice or direction issued under any such regulation not exceeding a fine of two thousand shillings and in the case of a third or subsequent

offence against the same provision not exceeding three months or both such fine and imprisonment.

(4) All regulations made under this section shall have the same force and effect as if they had been enacted in this Act and shall be laid before the National Assembly.

[s. 129]

PART XII

REMEDIES, JURISDICTION AND PROCEDURE OF COURTS (ss 139-158)

[PCh366s139]139. Disputes to be referred to labour officer

Whenever an employer or employee neglect or refuse to fulfil the terms of any contract of service, or whenever any question, difference or dispute shall arise as to the rights or liabilities of either party to a contract of service, or touching any misconduct neglect or ill-treatment of or by such party, the party aggrieved may report the matter to a labour officer who shall thereupon take such steps as may seem to him to be expedient to effect a settlement between the parties.

[s. 130]

[PCh366s140]140. Procedure where offence disclosed Act No. 5 of 1969 s. 7

Where, upon receipt of a report under section 139 or otherwise, a labour officer is of the opinion that an offence under the provisions of this Act has been committed by an employer, employee or any other person, he may himself take such steps as may be necessary by making the

facts known to the police or otherwise to bring the employer, employee or such other person before the court.

[s. 131]

[PCh366s141]141. Labour officer to report disputes to court Act No. 5 of 1969 s. 7

Where, on receipt of a report under section 139, a labour officer does not act in accordance with the provisions of section 140 and is unable to effect a settlement between the parties, he may, at the request of either party or on his own motion, submit a written report to a magistrate setting out the facts of the case.

[s. 132]

[PCh366s142]142. Jurisdiction of magistrate Act No. 55 of 1963 6th Sch.

(1) Every District Magistrate (whether or not he is a civil magistrate) shall have jurisdiction, notwithstanding anything to the contrary contained in any Act or written law respecting the jurisdiction of such magistrate, in all cases or matters arising between employers and their employees and with reference to their relative rights and duties or to any matter or thing or offence for which provision is made in this Act.

(2) Every magistrate shall have jurisdiction in any such case or matter brought before him by, against or in respect of any person being at the time within the area of jurisdiction of his court, whether or not such case or matter arose within or outside Tanzania or such area of jurisdiction, and whether or not any person by, against or in respect of whom the complaint is brought has his usual residence outside such area of jurisdiction.

(3) Notwithstanding anything in the foregoing provisions of this section if it should appear that any case or matter can be more conveniently tried or determined in another court or by another magistrate, a magistrate may refer the case or matter for determination to such other court or magistrate.

[s. 133]

[PCh366s143]143. Proceedings subsequent to report to magistrate Act No. 5 of 1969 s. 8

(1) On the receipt of a report under section 141 the magistrate shall, where the facts appear to him to be such as may found a civil suit, issue such process as he may think fit to cause the parties or either of them and the witnesses to attend before him.

(2) Upon the attendance of the parties the magistrate shall proceed to try the issues disclosed in the report as if the proceedings before him were a civil suit, without requiring the parties or any party to file any pleading.

(3) The provisions of the Civil Procedure Code *, shall, in so far as they may be applicable, apply to proceedings under this section:

Provided that the magistrate shall hear and determine such proceedings according to substantial justice without undue regard to technicalities of procedure.

[s. 134]

[PCh366s144]144. Magistrate may convert criminal case to a civil case

(1) A magistrate may in any criminal case for an offence under this Act, if it shall appear to him that the subject matter of the charge could more properly or conveniently be dealt with in a civil suit, order, at any time before judgment is delivered by him, that the remedy, if any for the matters complained of shall be by a civil suit and not by way of criminal charge.

(2) Where a magistrate makes an order under subsection (1), may, if in his opinion the issues in the proceedings before him are satisfactorily defined, proceed to determine such issues as if such proceedings were a suit, without requiring any party or parties to file any pleading and may give judgment, which judgment shall be of the same force and effect as a judgment given in a civil suit and may be executed or otherwise enforced accordingly.

(3) The provisions of the Civil Procedure Code *, shall in so far as they may be applicable, apply to all proceedings heard by way of a civil suit in accordance with this section:

Provided that the magistrate shall hear and determine such proceedings according to substantial justice without undue regard to technicalities of procedure.

[s. 134A]

[PCh366s145]145. Arrest of absconding defendant

If at any time after the laying of a criminal charge under this Part it appears to the court, by information on oath, that the party charged is about to abscond, the court may cause him to be arrested and detained in custody unless he finds security to appear and answer the charge and to abide by the decision of the court.

[s. 135]

[PCh366s146]146. Entry of dock by defendant

No person against whom a criminal charge is made under this Act who, is not immediately before the hearing of such charge in actual custody, shall be compelled to enter the dock or place usually assigned for prisoners under trial in the court or be otherwise treated as under arrest during the hearing of such charge:

Provided that if, in the opinion of the court before which the charge is heard, it shall be necessary in order to secure the attendance of such employer or employee that he should be placed in custody, it shall be lawful for such court to cause such person to be arrested and detained in custody.

[s. 136]

[PCh366s147]147. Husband and wife competent witnesses

In any trial for an offence against any of the provisions of this Act the employer or employee, as the case may be, and his or her wife or husband shall be competent to give evidence.

[s. 137]

[PCh366s148]148. Joinder in cases of non-payment of wages Act No. 5 of 1969 s. 9

(1) Notwithstanding anything to the contrary contained in any other written law in force in Tanzania in any proceedings against an employer in respect of wages due to more than one of his employees the magistrate may permit one plaint or one charge sheet to be made or filed by a

labour officer or by one of such employees on behalf of all such employees and the claims or charges to be proved by such labour officer or by such employee accordingly:

Provided that the plaint or charge sheet shall have annexed a schedule setting forth the names of such employees, their addresses and descriptions and the details of wages due to each of such employees.

(2) All claims shall rank equally between themselves, and shall be paid in full, unless the amount recovered from the employer be less than the total amount of the claims with costs, in which case, after payment of the costs, all such claims shall abate in equal proportions among themselves and be paid accordingly. Costs given against the employees shall be paid by such employees or by any of them in such proportions as the court shall direct.

(3) The provisions of section 214 of the Criminal Procedure Act * shall not apply to any proceedings instituted under this Act for the non-payment of wages to any employee.

(4) For the purposes of this section "plaint" shall include a report made under section 141.

[s. 138]

[PCh366s149]149. Criminal and civil procedure

(1) Subject to the provisions of this Act and of any rules of court made under the Act in any proceedings under this Part for an offence against this Act the provisions of the law in force relating to procedure of subordinate courts in criminal cases including those governing proceedings by way of appeal, revision or case stated or for the levying of money ordered to be paid, shall apply.

(2) Subject to the provisions of this Act and of any rules of court made under the Act in any proceedings under this Part by way of civil suit, any magistrate having jurisdiction shall adopt as far as possible for all or any purposes of the proceedings and at any stage, or for the levying of money ordered to be paid thereunder, all or any of the provisions of the law in force relating to the procedure of subordinate courts in civil cases.

(3) In any civil proceedings under this Part the court may dispense with the presence before it to give evidence of any party or witness in such proceeding if the court is of opinion that such proceedings can be properly heard and determined without the presence of such party or witness and for that purpose the court may receive in evidence the sworn statement of any such party or witness:

Provided that the court may at any stage of such proceedings require such party or witness to attend before it to give evidence.

[s. 139]

[PCh366s150]150. Summary procedure

In any proceedings for an offence against this Act punishable with imprisonment for term not exceeding three months or a fine not exceeding one thousand shillings, the court may in its discretion, whether requested by the prosecutor or not, deal with the case under section 195 of the Criminal Procedure Act *.

[s. 140]

[PCh366s151]151. Proceedings on appeal Act No. 5 of 1969 s. 10

(1) Notwithstanding the provisions of any other written law the Labour Commissioner or any officer duly authorised by him in writing in that behalf shall have the right to appear and be heard in any appeal before the High Court arising out of any criminal or civil proceedings under this Act and may represent any party to such appeal where he satisfies the court that he has been duly authorised by such party to so represent him.

(2) Subject to the provisions of this Act and of any rule of court made under the Act in any criminal proceedings under this Act by way of appeal, revision or otherwise to or in the High Court, the provisions of the law in force relating to proceedings of the High Court in criminal cases shall apply, and in any civil proceedings by way of appeal or otherwise to or in the High Court, the provisions of the law in force relating to proceedings of the High Court in civil matters shall apply.

[s. 141]

[PCh366s152]152. Power to feed during hearing

(1) Where, in any proceedings under this Act the magistrate is satisfied that any person who is a party to such proceedings or a necessary witness has not the means or is otherwise unable to maintain himself pending the determination of the proceedings, the magistrate may cause such person to be supplied with a subsistence allowance by the government, at such rates as the magistrate may consider just:

Provided that—

(a) the rates of subsistence allowance paid under this section shall not exceed the rates of subsistence allowance paid to witnesses in a criminal case;

(b) where such proceedings are proceedings of a criminal nature and the accused is convicted of the offence with which he is charged the magistrate may order the accused to pay to the government the amount of subsistence allowance paid to any person in accordance with the provisions of this section and such amount may be recovered from the accused as if it were costs ordered to be paid by an accused under the Criminal Procedure Act *;

(c) where such proceedings are proceedings of a civil nature the magistrate may, in his discretion, either order the party against whom the judgment is entered to pay the amount of subsistence allowance paid in accordance with this section or may apportion such amount between the parties to the proceedings in such manner as he may think just, and such amount shall be recoverable by the government from the party ordered to pay the sum as if such order were a decree entered in favour of the government.

(2) The provisions of this section shall be in addition to and not in derogation of the provisions of any written law providing for payment of subsistence allowance to witnesses:

Provided that where any witness is paid subsistence allowance in accordance with this section he shall not be entitled to any additional subsistence allowance under any other written law.

[s. 142]

[PCh366s153]153. Fees and costs of proceedings under this Act

No fees or costs shall be payable in respect of any proceedings under the provisions of this Act before any court or magistrate:

Provided that—

(a) if a conviction shall be had or judgment given against any employer, the court may in its discretion order the general costs of the proceedings to be paid by the employer;

(b) if any proceedings shall appear to the court to be frivolous or vexatious, the court may in its discretion order the party initiating such proceedings to defray the general costs, and in default of payment the said party shall be liable to imprisonment for such period not exceeding one month as may be ordered by the court:

Provided further that such general costs may be imposed upon the occasion of the trial and without any action or proceedings for the recovery.

[s. 143]

[PCh366s154]154. Power of subordinate courts

In any civil proceedings under this Part in connection with a contract of service a court may, in addition to any jurisdiction it might have exercised if this Act had not been enacted, exercise all or any of the following powers, that is to say—

(a) the court may adjust and set-off one against the other all such claims on the part either of the employer or of the employee arising out of or incidental to the relation between them as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are

for wages, damages, compensation, or otherwise, and it may direct the payment of such sum as it finds due by one party to the other party.

(b) the court may direct fulfilment of the contract and in any case where damages or compensation are or might be awarded for any breach of contract, negligence or unlawful act or omission, may in place of the whole or part of the damages or compensation awarded direct the party committing such breach to find security to the satisfaction of the court for the due performance of so much of the contract as remains unperformed, and if the party neglects or refuses to find security, the court may commit him to prison until he finds it, but the term of imprisonment shall not exceed three months;

(c) the court may rescind the contract upon such terms as to the apportionment of wages or other sums due under the Act and as to the payment of wages, damages, compensation or other sums due as the court thinks fit.

[s. 144]

[PCh366s155]155. Compensation for loss of employer's property

Where any property of the employer is lost or damaged by means of any negligent or unlawful act or omission of his employee, it shall be lawful for the court, should it think fit, to fix the amount of compensation for such loss or damage, and make such order as to the payment either at once or by instalments out of wages to be yet earned or otherwise, as shall seem reasonable and just:

Provided that no instalment ordered to be paid out of wages shall exceed one-third of the employee's monthly wages if the instalments are ordered to be paid monthly, or one-third of the employee's weekly wages if the instalments are ordered to be paid weekly.

[s. 145]

[PCh366s156]156. Payment of fine or sum to party or person

When a court imposes any fine or enforces payment of any sum the court may direct that such fine or sum when recovered, or part of it as it thinks fit, shall be applied to compensate any employer, employee or other person for any wrong done or damage sustained by him by reason of the act or thing in respect of which the fine or sum was imposed or recovered or by reason of the non-performance of the contract of service.

[s. 146]

[PCh366s157]157. Cancellation of contract

In any proceedings under this Act between an employer and an employee or against an employer or an employee in relation to any contract of service, the magistrate may if he thinks fit order the cancellation of a contract of service between the employer and the employee.

[s. 147]

[PCh366s158]158. Recovery of amounts due to Government Act No. 5 of 1969 s. 12

Where, in any proceedings under this Act, an order is made for the payment by any party to such proceedings of any amount to the government, such amount may be recovered on behalf of the government at the instance of the Labour Commissioner.

[s. 147A]

PART XIII

OFFENCES (ss 159-165)

[PCh366s159]159. Child not to be punished

No child shall be liable to undergo any sentence of fine or imprisonment under the provisions of this Part.

[s. 148]

[PCh366s160]160. Offences by employers

An employer commits an offence against this Act if he is found guilty of any of the following acts or omissions, that is to say—

(a) if he fails to pay the wages due to any employee, unless he has reasonable and probable cause for thinking that such wages are not due;

(b) if before or after the termination of the contract of service, upon demand made and without lawful cause, he refuses to deliver or permit to be taken away any property belonging to any employee lawfully remaining or being upon such employer's land or in the employer's

possession without reasonable and probable reason for believing that the property was lawfully detained.

[s. 149]

[PCh366s161]161. Offences by employees Ord. No. 10 of 1960 s. 24

Any employee who owes money to the employer in respect of any wages or benefits in kind received in advance and leaves the service of his employer with intent not to return under circumstances from which it appears that he intended to defraud his employer commits an offence against this Act.

[s. 150]

[PCh366s162]162. Penalty for keeping and harbouring employees

Any person—

(a) inducing or attempting to induce any employee to leave the service of his employer under circumstances that amount to a breach of the contract under which the employee is employed or of any of the provisions of this Act; or

(b) knowingly engaging or employing any employee who has unlawfully left the services of any employer; or

(c) who, without the permission of the employer, enters upon the premises of such employer with intent to induce or attempt to induce any employee to leave the service of such

employer whether before or after the completion of the said employee's contract with such employer,

commits an offence against this Act.

[s. 151]

[PCh366s163]163. False pretences

Any person who, with a view to obtaining employment under this Act, makes any statement oral or in writing which is false to his knowledge commits an offence against this Act.

[s. 152]

[PCh366s164]164. Furnishing false information

If any person furnishes for the purposes of this Act or any regulations made under the Act any information lawfully required of him by such Act or regulations which he knows to be false in any material particular, he shall be guilty of an offence against this Act and shall be liable on conviction to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding six months or to both.

[s. 153]

[PCh366s165]165. General penalty

Any person who commits an offence against this Act for which no penalty is expressly provided shall be liable upon conviction to a fine not exceeding two thousand shillings, and in the case of a second or subsequent offence against the same provision of this Act to a fine not

exceeding three thousand shillings or to imprisonment for a term not exceeding three months or to both.

[s. 154]

PART XIV

GENERAL PROVISIONS (ss 166-172)

[PCh366s166]166. Saving of proceedings under other laws

Nothing in this Act shall prevent any employer or employee from being proceeded against according to law for any offence punishable under any other written law in force in Tanzania:

Provided that no person shall be punished twice for the same offence.

[s. 155]

[PCh366s167]167. Saving as to contracts of service made abroad

(1) Nothing in this Act shall prevent any employer or employee from enforcing his respective rights and remedies for any breach or non-performance of any lawful contract of service made outside Tanzania, but the respective rights of such parties under such contract as well against each other as against third parties invading such rights may be enforced in the same manner as other contracts arising thereout may be enforced as if this Act had not been made:

Provided that—

(a) whenever any such contract has been executed in conformity with this Act it shall be enforced in the same manner as a contract entered into under this Act; and

(b) no written contract the tenure and execution of which are not in conformity with Part V shall be enforced as against an employee who is unable to read and understand writing.

(2) For the purposes of this section any such contract shall be deemed executed in conformity with Part VI which is signed by the names or marks of the contracting parties and bears an attestation to the like effect as is contained in the form of foreign contract of service prescribed under this Act by—

[s. 156]

[PCh366s168]168. Saving as to contracts under Act relating to shipping

This Act shall not apply to any contract governed by any International law relating to shipping or affect the rights and remedies of the parties under the Act.

[s. 157]

[PCh366s169]169. Regulations Ord. No. 35 of 1956 s. 10; Acts Nos. 82 of 1962 s. 15; 62 of 1964 Third Sch.; 17 of 1973 ss. 11 and 12; G.N. No. 478 of 1962

(1) The Minister after considering the advice of the Labour Advisory Board may make regulations for the better carrying out of the purposes and provisions of this Act, and, without prejudice to the generality of the foregoing, for any of the following purposes—

(a) providing for the particulars to be contained in written contracts of service, and for the manner of execution, attestation and registration thereof and for all other matters relating to their making, enforcement, transfer and cancellation;

(b) providing for further particulars to be recorded in a record of oral contract, for the manner of registration and for all other matters relating to the making and cancellation of records;

(c) providing for the amount of wages which may be paid in advance to employees, and the conditions under which such advances of wages may be made;

(d) prescribing the hours of work of women, young persons and children;

(e) prohibiting or regulating the employment of persons suffering from any infectious disease or any other prescribed physical disability;

(f) prescribing the books, records, accounts and other documents to be kept and the returns to be rendered by employers, recruiters and other persons in respect of employees;

(g) prescribing the documents to be given to employees by their employers;

(h) providing for the application of any sums due to the estates of deceased employees;

(i) restricting and regulating the loads and weights to be carried by women, young persons and children;

(j) providing for the marking of weights or packages transported by vessels;

(k) requiring—

(i) the owner or occupier of any land who enters into a contract with any person which involves the employment of Tanzanian employees by such person to do work upon such land;

(ii) any person who enters into a contract with the owner or occupier of any land which involves the employment of Tanzanian employees by such person to do work upon such land,

to furnish such information to that person within such time as may in each case be specified;

(l) regulating the engagement and the embarkation of employees to be employed under a foreign contract of service;

(m) providing for the establishment and administration of free public employment exchanges;

(n) prohibiting, restricting or regulating the importation from outside and movement within the country of Tanzanian employees;

(o) providing for the holding of tests in respect of any trade or occupation and for the grant of certificates of efficiency to any person who voluntarily enters for and passes any such test;

(p) providing for the giving of security by employers or other persons and all matters relating thereto;

(q) providing for the cases in which, and the terms and conditions upon which wages may or shall be deposited or deducted and the amount of such deposited or deducted wages;

(r) prescribing the maximum amounts of loans and instalments and the terms and conditions upon which loans may be made by employers to employees and upon which loans and instalments may be recovered;

(s) prescribing any forms to be used under this Act;

(t) prescribing any fees to be payable under this Act;

(u) prescribing all other matters which are authorised by this Act to be prescribed;

(2) The regulations as in subsection (1) may impose conditions, requiring acts or things to be performed or done to the satisfaction of the Labour Commissioner or an administrative officer, medical officer, labour officer or mines officer empower the Labour Commissioner or any such officer to issue orders either orally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and prescribe periods or dates upon within or before which such acts or things shall be performed or done or such conditions, shall be fulfilled, and provide for appeal against any such order, notice or direction.

(3) In addition to making such provisions as provided for under subsections (1) and (2), regulations made under this section may fix such penalties for the breach, non-compliance with or non-fulfilment of any regulation or any condition imposed or order, notice or direction issued under any such regulation not exceeding a fine of two thousand shillings and in the case of a

third or subsequent offence against the same provision not exceeding a fine of two thousand shilling or imprisonment for a term not exceeding three months or both.

(4) All regulations made under this section shall have the same force and effect as if they had been enacted in this Act and shall be laid before the National Assembly.

[s. 158]

[PCh366s170]170. Application of regulations

Any regulation made under this Act may apply to Tanzania generally or may be limited in its application to any region, district or area of Tanzania or to any trade, undertaking or employment or to any person or classes of persons as the Minister may order or in any such regulation appoint:

Provided that where the Minister by order under this section or in any regulation has applied any regulation to any region, district or area of Tanzania or to any trade, undertaking or employment or to any person or class of persons, he may by a subsequent order or regulation extend its application to Tanzania generally or otherwise or restrict its application.

[s. 159]

[PCh366s171]171. Rules of Court

The High Court may make rules of court for regulating any proceedings in the High Court and subordinate courts and appeals to the High Court under the provisions of this Act.

[s. 160]

[PCh366s172]172. Repeal of R.L. Caps 78, 79, 80, 82 and 171, and saving

(1) [Repeals R.L Caps. 78, 79, 80, 82 and 171.]

(2) Notwithstanding anything contained in subsection (1) of this section, any rule, regulation, proclamation, order, direction, notice or other instrument or document made or issued under the authority of any of the Ordinances, except in so far as the same may be inconsistent with the provisions of this Act or as may be by necessary intendment otherwise provided, shall remain in force until such time as the same shall have expired or have been revoked, replaced or cancelled under the provisions of this Act.

[s. 161]