

STATE OF SABAH

LABOUR ORDINANCE (Sabah Cap. 67)

To amend and consolidate the law relating to labour

[1st January, 1950]

PART I

LABOUR DEPARTMENT

CHAPTER I

Preliminary and interpretation

Short title.

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

Interpretation.

2. (1) In this Ordinance, unless the context otherwise requires—

"adopted", in reference to any child, means—

- (a) a child adopted, or whose adoption has been registered in accordance with the provisions of any written law relating to the adoption of children from time to time in force in Sabah; or
- (b) where there is no such written law, a child whom the Director has certified as having been adopted in accordance with religion, custom or usage;

"agricultural undertaking" means any work in which any employee is employed under a contract of service for the purposes of agriculture, aquaculture, horticulture, silviculture or landscaping, fisheries, livestock husbandry, the rearing, hunting or capturing of wild animals, birds, insects, reptiles, amphibians or worms or the collection of the produce of plants or trees;

"apprenticeship contract" means a written contract entered into by a person with an employer who undertakes to employ the person and train or have him trained systematically for a trade for a specified period which shall not be less than two years in the course of which the apprentice is bound to work in the employer's service;

"approved amenity or approved service" means any amenity or service—

- (a) approved by the Director under subsection (2) of section 116 on application made to him by an employer for its inclusion in a contract of service; or
- (b) provided for in any award made by the Industrial Court or in any collective agreement;

"approved incentive payment scheme" means an incentive payment scheme approved by the Director upon an application made to him in writing by an employer under and for the purposes of the interpretation of ordinary rate of pay under this section;

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

"collective agreement" has the same meaning assigned thereto as in the Industrial Relations Act 1967 [Act 177];

"confinement" means parturition resulting after at least twenty-eight weeks of pregnancy in the issue of a child or children, whether alive or dead, and shall for the purposes of this Ordinance commence and end on the actual day of birth and where two or more children are born at one confinement shall commence and end on the day of the birth of the last-born of such children, and the word "confined" shall be construed accordingly;

"constructional work" includes the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, dredge, wireless, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork or other work of construction, as well as preparation for, or the laying of, the foundations of any such work or structure, and also any earthworks both in excavation and in filling;

"contract of service" means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract;

"contractor" means any person who contracts with a principal to carry out the whole or any part of any work undertaken by the principal in the course of or for the purposes of the principal's trade or business;

"day" means—

- (a) a continuous period of twenty-four hours beginning at midnight; or
- (b) for the purposes of Chapter XIV in respect of an employee engaged in shift work or in work where the normal hours of work extend beyond midnight, a continuous period of twenty-four hours beginning at any point of time;

"dependant" means—

- (a) the husband;
- (b) the wife or wives;
- (c) a child, step-child or adopted child, who is unmarried and under the age of eighteen years;
- (d) natural or legally adoptive parents,

of an employee;

"Director" means the Director of Labour appointed by virtue of subsection (1) of section 3;

"domestic servant" means a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child's nurse, valet, footman, gardener, washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use;

"employee" means any person or class of persons—

- (a) included in any category in the Schedule to the extent specified therein; or
- (b) in respect of whom the Minister makes an order under subsection (7) of section 2A;

"employer" means any person who has entered into a contract of service to employ any other person as an employee and includes the agent, manager or factor of such first-mentioned person, and the word "employ", with its grammatical variations and cognate expressions, shall be construed accordingly;

"entertainment" includes any exhibition or performance;

"family" means the husband or the wife or wives of an employee, and his children, step children and adopted children who are unmarried and under the age of eighteen years;

"forestry undertaking" means—

- (a) any work or occupation involved in the logging, transportation, processing, storage and utilization of timber or the manufacture of timber products;

- (b) any work or activity relating to the taking of forest produce; or
- (c) any work or occupation involved in forest plantation, reforestation, silviculture and horticulture;

"guardian", in relation to a child or young person, includes any person who, in the opinion of the Court having cognizance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the charge of or control over the child or young person;

"hourly rate of pay" means the ordinary rate of pay divided by the normal hours of work;

"Industrial Court" has the same meaning assigned thereto in the Industrial Relations Act 1967;

"industrial undertaking" means—

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, published or printed or bound, adapted for sale, broken up or demolished, packed or otherwise prepared for delivery or in which materials are transformed, or minerals treated including shipbuilding, and the generation, transformation and transmission of electricity and motive power of any kind;
- (c) constructional work;
- (d) transport of passengers or goods by road, rail, water or air including the handling of goods at docks, quays, wharves, warehouses, bulking installations, airports or airstrips;
- (e) any industry, establishment or undertaking, or any other activity, service or work, which the Minister may by order declare to be an industrial undertaking;

"medical officer" means a registered medical practitioner who is employed in a medical capacity by the Federal Government or the Government of a State;

"Minister" means the Minister responsible for labour matters;

"non-resident employee" means any person who does not belong to Sabah as provided for in section 71 of the Immigration Act 1959/1963 [Act 155];

"normal hours of work" means the number of hours of work, not exceeding the limit prescribed in subsection (1) of section 104, as agreed between an employer and an employee in the contract of service to be the usual hours of work per day;

"ordinary rate of pay" means wages whether calculated by the month, the week, the day, the hour, or by piece rate, or otherwise, which an employee is entitled to receive under the terms of his contract of service for the normal hours of work for one day, but does not include any payment made under an approved incentive payment scheme or any payment for work done on a rest day or on any gazetted public holiday granted by the employer under the contract of service or any day substituted for the gazetted public holiday;

"overtime" means the number of hours of work carried out in excess of the normal hours of work per day, and includes, if any work is carried out after the spread over period of ten hours, the whole period beginning from the time that such spread over period ends up to the time that the employee ceases work for the day;

"part-time employee" means a person included in the Schedule whose average hours of work as agreed between him and his employer do not exceed seventy per centum of the normal hours of work of a full-time employee employed in a similar capacity in the same enterprise whether the normal hours of work are calculated with reference to a day, a week, or any other period as may be specified by rules under Chapter XVIB;

"place of employment" means any place where work is carried on for an employer by an employee;

"principal" means any person who in the course of or for the purposes of his trade or business contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by that person;

"recruit" means to procure, engage, hire or supply or undertake to procure, engage, hire or supply employees for the purpose of being employed by the recruiter or by any other person, where such employee does not spontaneously offer his services at the place of employment or at a public employment office or at an office conducted by an employers' organisation and supervised by the Government;

"registered medical practitioner" means a medical practitioner registered under the Medical Act 1971 [Act 50];

"repatriation" means, in the case of a non-resident employee, the return of an employee to his country or State of origin, and in the case of a resident employee recruited from Sabah, to a place he specifies to his employer at the time of commencement of employment to be his home town, and "repatriated" shall be construed accordingly;

"shift work" means work which by reason of its nature requires to be carried on continuously or continually, as the case may be, by two or more shifts;

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

"subcontractor" means any person who contracts with a contractor for the execution by or under that person of the whole or any part of any work undertaken by the contractor for his principal, and includes any person who contracts with a subcontractor to carry out the whole or any part of any work undertaken by the subcontractor for a contractor;

"subcontractor for labour" means any person who contracts with a contractor or subcontractor to supply the labour required for the execution of the whole or any part of any work which a contractor or subcontractor has contracted to carry out for a principal or contractor, as the case may be;

"underground work" means any undertaking in which operations are conducted for the purpose of extracting any substance from below the surface of the earth, the ingress to and egress from which is by means of shafts, adits or natural caves;

"wage period" means the period in respect of which wages earned by an employee are payable;

"wages" means basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service but does not include—

- (a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;
- (b) any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme, or any other fund or scheme established for the benefit or welfare of the employee;
- (c) any travelling allowance or the value of any travelling concession;
- (d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;
- (e) any gratuity payable on discharge or retirement; or
- (f) any annual bonus or any part of any annual bonus;

"week" means a continuous period of seven days;

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

"young person" means a person who has ceased to be a child but has not attained the age of eighteen years.

(2) For the purposes of Chapter XI, a person is deemed to be taking part in an entertainment when such person is employed in or connected with such entertainment whether as a performer, stagehand or musician.

(3) Where an employee is employed on—

(a) a monthly rate of pay, the ordinary rate of pay per day shall be calculated according to the following formula:

$$\frac{\text{monthly rate of pay}}{26};$$

(b) a weekly rate of pay, the ordinary rate of pay per day shall be calculated according to the following formula: ;

$$\frac{\text{weekly rate of pay}}{6};$$

(c) a daily rate of pay or on piece rates, the ordinary rate of pay shall be calculated by dividing the total wages earned by such employee during the preceding wage period (excluding any payment made under an approved incentive payment scheme or for work done on any rest day, any gazetted public holiday granted by the employer under the contract of service or any day substituted for the gazetted public holiday) by the actual number of days the employee had worked during that wage period (excluding any rest day, any gazetted public holiday or any paid holiday substituted for the gazetted public holiday).

(4) For the purposes of payment of sick leave under section 104E, the calculation of the ordinary rate of pay of an employee employed on a daily rate of pay or on piece rate under paragraph (c) of subsection (3) shall take account only of the basic pay the employee receives or the rate per piece he is paid for work done in a day under the contract of service.

(5) An employer may adopt any method or formula other than the method or formula in subsection (3) for calculating the ordinary rate of pay of an employee; but the

adoption of any other method or formula shall not result in a rate which is less than any of the rates calculated using the method or formula in that subsection.

(6) The Minister may by order amend the Schedule.

(7) The Minister may by order declare such provisions of this Ordinance and any other written law as may be specified in the order to be applicable to any person or class of persons employed, engaged or contracted with to carry out work in any occupation in any agricultural, forestry or industrial undertaking, constructional work, trade, business or place of work, and upon the coming into force of any such order—

- (a) any person or class of persons specified in the order shall be deemed to be an employee or employees;
- (b) the person employing, engaging or contracting with every such person or class of persons shall be deemed to be an employer;
- (c) the employer and the employee shall be deemed to have entered into a contract of service with one another;
- (d) the place where such employee carries on work for his employer shall be deemed to be a place of employment; and
- (e) the remuneration of such employee shall be deemed to be wages,

for the purposes of such specified provisions of this Ordinance and any other written law.

(8) The Minister may make rules in respect of the terms and conditions upon which the person or class of persons specified pursuant to subsection (7) may be employed.

(9) Notwithstanding the provisions of this Ordinance, the Minister may make rules—

- (a) in respect of the terms and conditions of service of a part-time employee; and
- (b) prescribing the manner in which the hours of work of an employee are to be computed for the purposes of determining whether that employee falls within the definition of a "part-time employee".

(10) The Minister may, from time to time, by notification published in the *Gazette*, declare any particular industry, establishment or undertaking, or any class, category or description of industries, establishments or undertakings or any particular activity, service or work, or any class, category or description of activities, services or works, to be an industrial undertaking for the purposes of this Ordinance.

[Subs. Act A1238:s.3]

Minister may prohibit employment other than under contract of service.

2A. (1) The Minister may by order prohibit the employment, engagement or contracting of any person or class of persons to carry out work in any occupation in any agricultural, forestry or industrial undertaking, constructional work, trade, business or place of work other than under a contract of service entered into with the principal or owner of that agricultural, forestry or industrial undertaking, constructional work, trade, business or place of work.

(2) Upon the coming into force of any such order, the person or class of persons employed, engaged, or contracted with to carry out the work shall be deemed to be an employee or employees and the principal or owner of the agricultural, forestry or industrial undertaking, constructional work, trade, business or place of work, shall be deemed to be the employer for the purposes of such provisions of this Ordinance and any other written law as may be specified in the order.

(3) Notwithstanding subsection (1), the Minister may by order approve the employment of any person or class of persons by such other person or class of persons (not being the principal or owner) as he may specify but subject to such conditions as he may deem fit to impose.

(4) Any person who contravenes any order made under this section commits an offence.

[Ins. Act A1238:s.4]

General power to exempt or exclude.

2B. The Minister may by order exempt or exclude, subject to such conditions as he may deem fit to impose, any person or class of persons from all or any of the provisions of this Ordinance.

CHAPTER II

Officers

Director of Labour and other officers.

3. (1) The Minister may appoint an officer to be styled the Director of Labour, hereinafter referred to as the "Director".

(1A) The Minister may appoint, to such number as he considers necessary for carrying out the provisions of this Ordinance, officers of the following categories that is to say:

- (a) Deputy Directors of Labour;
- (b) Senior Assistant Directors of Labour;
- (c) Assistant Directors of Labour; and
- (d) Labour Officers and such other officers.

(1B) Subject to such limitations, if any, as may be prescribed by rules made under this Ordinance, any officer appointed under subsection (1A) shall perform all the duties imposed and may exercise all the powers conferred upon the Director by this Ordinance, and every duty so performed and power so exercised shall be deemed to have been duly performed and exercised for the purposes of this Ordinance.

(2) Any person affected by any decision or order, other than an order under Chapter IIA, given or made by an officer appointed under subsection (1A) may, if he is dissatisfied with such decision or order, within fourteen days of such decision or order being communicated to him, appeal in writing therefrom to the Director.

(3) If any employer is dissatisfied with any decision or order made or given by the Director of Labour either original or by virtue of the preceding subsection, he may appeal from such decision or order to the Minister within fourteen days of the date of such decision or order being communicated to him.

Officers to be authorized by Director.

3A. An officer appointed under subsection (1A) of section 3 shall not exercise any of the powers of the Director under this Ordinance unless he is in possession of an official identification signed by the Director authorizing him to exercise such powers, and any officer so authorized shall produce his official identification on demand to the owner or occupier of the place of employment and to the employer of any employees employed thereat.

[Ins. Act A1238:s.6]

Powers of inspection and inquiry.

4. (1) The Director shall have power to enter without prior notice at all times any place of employment where employees are employed or where he has reasonable grounds for believing that employees are employed and to inspect any building occupied or used for any purpose connected with such employment and to make any inquiry which he considers necessary in relation to any matter within the provisions of this Ordinance.

[Subs .Act A1238:s.7]

(2) In the course of an inspection under subsection (1)—

- (a) the Director may put questions concerning the employees to the employer or to any person who may be in charge of them, or to the employees themselves or any other person whom he believes to be acquainted with the facts and circumstances of any matter within the provisions of this Ordinance;
- (b) the employer or such person, or any such employee, or any such other person shall be legally bound to answer such questions truly to the best of his ability;
- (c) a statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish; and

- (d) any statement made and recorded under this section shall be admissible as evidence in any proceedings in Court.

[Subs .Act A1238:s.7]

(3) If the Director has reasonable ground for suspecting that any offence has been committed against an employee, and whenever any complaint of personal ill-usage or breach of any of the provisions of this Ordinance is made to the Director, the Director may forthwith remove, or cause to be removed, such employee from the place of employment where he is employed for further enquiry into the matter.

[Am. Act A1238:s.2,s.7]

(4) The Director may by order in writing require any employer to take within such reasonable time as the Director may determine such steps as he considers necessary with a view to remedying defects observed in plant, layout, working methods, supervision, medical or sanitary provision or other matters at any place of employment which he may have reasonable cause to believe constitute a threat to the health or safety of the employees.

[Am. Act A1238:s.2,s.7]

Inspection of documents.

5. (1) The Director may--- [Am. Act A1238:s.8]

- (a) require the employer to produce before him all or any of the employees employed by him together with any contracts of service, books of account of wages, registers and other documents relating to the employees or their employment and to answer such questions in respect of the employees or their employment as he may think fit to ask;

[Subs. Act A1238:s.8]

- (b) take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purposes;

[Am. Act A1238:s.8]

- (c) copy or make extracts from the contracts of service, books of account of wages, registers and other documents relating to the employees or their employment;
- (d) take possession of the contracts of service, books of account of wages, registers and other documents relating to the employees or their employment where, in his opinion—
 - (i) the inspection, copying or the making of extracts from the contracts of service, books of account of wages, registers or other documents cannot reasonably be undertaken without taking possession of them;
 - (ii) the contracts of service, books of account of wages, registers or other documents may be interfered with or destroyed unless he takes possession of them; or
 - (iii) the contracts of service, books of account of wages, registers or other documents may be needed as evidence in any legal proceedings under this Ordinance.

(2) Notwithstanding paragraph (a) of subsection (1), no employee shall be required to leave or to cease from performing any work on which he is engaged if his absence or cessation from such work would endanger life or property or seriously disrupt any operation being carried on by his employer.

[Ins. Act A1238:s.8]

Power of summons and institution of proceedings.

6. (1) Whenever the Director has reasonable grounds for suspicion that any offence under this Ordinance or any rule made hereunder has been committed or is about to be committed or wishes to enquire into any matter concerning terms and conditions of employment or any other matter relating to employer and employee dealt with under the provisions of this Ordinance or any rules made hereunder, the Director may summon any person whom he has reason to believe can give information respecting the subject-matter of the enquiry, and the person so summoned shall be legally bound to attend at the time and

place specified in the summons and to answer truthfully all questions which the Director may put to him.

[Am. Act A1238:s.9]

(1A) The Director may issue to the employer such order as may be necessary or expedient to resolve the matters dealt with under subsection (1).

[Ins. Act A1238:s.9]

(2) If the Director is of opinion that an offence has been committed or that any complaint is well founded he may institute such criminal proceedings as he shall deem necessary in the circumstances.

[Am. Act A1238:s.9]

(3) A summons issued under this section shall be in such form as may be prescribed.

[Ins. Act A1238:s.9]

7. [Deleted]

[Deleted by Act A1238:s.10]

CHAPTER IIA

Complaints and Inquiries

Director's power to inquire into complaints.

7A. (1) The Director may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payment in cash due to such employee under—

- (a) any term of the contract of service between such employee and his employer;
- (b) any of the provisions of this Ordinance or any subsidiary legislation made thereunder; or
- (c) the provisions of the Wages Councils Act 1947 [Act 195] or any order made thereunder,

and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount of such sum of money.

(2) The powers of the Director under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Chapter, any claim by—

- (a) an employee against any person liable under section 116C;
- (b) a subcontractor for labour against a contractor or subcontractor for any sum of money which the subcontractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or subcontractor; or
- (c) an employer against his employee in respect of indemnity due to such employer under subsection (1) of section 12;

and to make such consequential orders as may be necessary to give effect to his decision.

(3) In addition to the powers conferred by subsections (1) and (2), the Director may inquire into and confirm or set aside any decision made by an employer to dismiss without notice, or downgrade or impose any other lesser punishment made by an employer under subsection (1) of section 13 and the Director may make such consequential orders as may be necessary to give effect to his decision:

Provided that if the decision of the employer under paragraph (a) of subsection (1) of section 13 is set aside, the consequential order made by the Director against such employer shall be confined to payment of indemnity in lieu of notice and other payments that the employee is entitled to as if no misconduct was committed by the employee:

Provided further that the Director shall not set aside any decision made by an employer when any other lesser punishment is imposed by an employer under paragraph (c) of subsection (1) of section 13 if such decision has not resulted in any loss in wages or other payments payable to the employee under his contract of service:

And provided further that the Director, shall not exercise the power conferred by this subsection unless the employee has made a complaint to him under the provisions of this

Chapter within sixty days from the date on which the decision under section 13 is communicated to him either orally or in writing by his employer.

(4) An order made by the Director for the payment of money under this section shall carry interest at the rate of eight per centum per annum, or at such other rate not exceeding eight per centum per annum as the Director may direct, the interest to be calculated commencing on the thirty-first day from the date of the making of the order until the day the order is satisfied:

Provided that the Director, on an application by an employer made within thirty days from the date of the making of the order, if he is satisfied that special circumstances exist, may determine any other date from which the interest is to be calculated.

[Ins. Act A1238:s.11]

Limitation on power conferred by section 7A.

7 B. Notwithstanding section 7A, the Director shall not inquire into, hear, decide or make any order in respect of any claim, dispute or purported dispute which, in accordance with the Industrial Relations Act 1967—

- (a) is pending in any inquiry or proceedings under that Act;
- (b) has been decided upon by the Minister under subsection (3) of section 20 of that Act; or
- (c) has been referred to, or is pending in any proceedings before, the Industrial Court.

[Ins. Act A1238:s.11]

Additional powers of Director to inquire into complaints.

7C. (1) Notwithstanding the provisions of this Ordinance, the powers of the Director under paragraph (a) of subsection (1) of section 7A shall extend to employees whose wages per month exceed two thousand five hundred ringgit but does not exceed five thousand ringgit.

(2) For the purposes of this section, the term "wages" means wages as defined in section 2 but does not include any payment by way of commission, subsistence allowance or overtime payment.

(3) Save for this Chapter and Chapter XVI which shall apply with the necessary modifications, the other provisions of this Ordinance shall not apply to the employees referred to in subsection (1).

[Ins. Act A1238:s.11]

Claims for indemnity for termination of contract without notice.

7 D. (1) In the exercise of his powers under subsection (1) of section 7C, the Director may inquire into and decide any claim concerning any indemnity due to the employer or the employee where the contract of service is terminated by either party without notice, or if notice was given, without waiting for the expiry of that notice.

(2) The indemnity due to the employer or employee under subsection (1) shall be a sum equal to the amount of wages which would have accrued to the employee during the term of the notice or during the unexpired term of the notice.

[Ins. Act A1238:s.11]

Order of Director may be in writing.

7E. Notwithstanding subsection (1) of section 7A, an order of the Director made under subsection (1) of section 7C or subsection (1) of section 7D for the payment by or to the employer or employee of a sum of money as the Director deems just, without any limitation of amount, may be made in writing.

[Ins. Act A1238:s.11]

Procedure in Director's inquiry.

7F. The procedure for disposing of questions arising under sections 7A, 7C and 7D shall be as follows:

- (a) the person complaining shall present to the Director a written statement of his complaint and of the remedy which he seeks or he shall in person make a statement to the Director of his complaint and of the remedy which he seeks;

- (b) the Director shall as soon as practicable thereafter examine the complainant on oath or affirmation and shall record the substance of the complainant's statement in his case book;
- (c) the Director may make such inquiry as he deems necessary to satisfy himself that the complaint discloses matters which in his opinion ought to be inquired into and may summon in the prescribed form the person complained against, or if it appears to him without any inquiry that the complaint discloses matters which ought to be inquired into he may forthwith summon the person complained against:

Provided that if the person complained against attends in person before the Director it shall not be necessary to serve a summons upon him;

- (d) when issuing a summons to a person complained against, the Director shall give such person notice of the complaint made against him and the name of the complainant and shall inform him of the date, time and place at which he is required to attend and shall inform him that he may bring with him any witnesses he may wish to call on his behalf and that he may apply to the Director for summonses to such persons to appear as witnesses on his behalf;
- (e) when the Director issues a summons to a person complained against, he shall inform the complainant of the date, time and place mentioned therein and shall instruct the complainant to bring with him any witnesses he may wish to call on his behalf and may on the request of the complainant and subject to any condition as he may deem fit to impose, issue summonses to such witnesses to appear on behalf of the complainant;
- (f) when at any time before or during an inquiry, the Director has reason to believe that there are any persons whose financial interests are likely to be affected by such decision as he may give on completion of the inquiry or whom he has reason to believe have knowledge of the matters in issue or can give any evidence relevant thereto, he may summon any or all of such persons;
- (g) the Director shall, at the time and place appointed, examine on oath or affirmation those persons summoned or otherwise present whose evidence he

deems material to the matters in issue and shall then give his decision on the matters in issue;

- (h) if the person complained against or any person whose financial interests the Director has reason to believe are likely to be affected and who has been duly summoned to attend at the time and place appointed in the summons fails so to attend, the Director may hear and decide the complaint in the absence of such person notwithstanding that the interests of such person may be prejudicially affected by his decision;
- (i) in order to enable a court to enforce the decision of the Director, the Director shall embody his decision in an order in such form as may be prescribed.

Ins. Act A1238:s.11]

Director's record of inquiry.

7G. The Director shall keep a case book in which he shall record the evidence of persons summoned or otherwise present and his decision and order in each matter in issue before him and shall authenticate the same by attaching his signature thereto and the record in such case book shall be sufficient evidence of the giving of any decision; and any person interested in such decision or order shall be entitled to a copy thereof free of charge and to a copy of the record upon payment of the prescribed fee.

[Ins. Act A1238:s.11]

Joinder of several complaints in one complaint.

7H. Where it appears to the Director in any proceedings under this Chapter that there are more employees than one having a common cause for complaint against the same employer or person liable, it shall not be necessary for each employee to make a separate complaint under this Chapter, but the Director may, if he thinks fit, permit one or more of them to make a complaint and to attend and act on behalf of and generally to represent the others, and the Director may proceed to a decision on the joint complaint or complaints of each and all such employees:

Provided that, where the Director is of the opinion that the interests of the employer or person liable are likely to be prejudiced by the non-attendance of any employee, he shall require the personal attendance of such employee.

[Ins. Act A1238:s.11]

Prohibitory order by Director to third party.

7I. (1) Whenever the Director shall have made an order under section 7A, 7C or 7D, against any employer or any person liable for the payment of any sum of money to any employee or subcontractor for labour and the Director has reason to believe that there exists between such employer or person liable and any other person a contract, not necessarily a contract as defined in section 2, in the course of the performance of which the employee or subcontractor performed the work in respect of which the order was made, the Director may summon such other person and, if after enquiry he is satisfied that such a contract exists, may make an order in the prescribed form prohibiting him from paying to the employer or person liable and requiring him to pay to the Director any money (not exceeding the amount found due to such employee or subcontractor for labour) admitted by him to be owing to the employer or person liable in respect of such contract:

Provided that where such other person admits to the Director in writing that money is owing by him under such contract to the employer or person liable he need not be summoned to attend before the Director and the Director may make such order in his absence:

Provided further that where such other person is liable as a principal under subsection (1) of section 116C to pay any wages due by the employer or person liable and where the money admitted by him to be owing to the employer or person liable is not sufficient to pay the whole of such wages, nothing in this subsection shall relieve him of his liability for the balance of such wages up to the amount for which he is liable under proviso (b) of subsection (1) of section 116C.

(2) The payment of any money in pursuance of an order under subsection (1) shall be a discharge and payment up to the amount so paid of money due to the employer or person liable under the contract.

[Ins. Act A1238:s.11]

No fees for summons; service of summons.

7J. (1) No fee shall be charged by the Director in respect of any summons issued by him under this Chapter.

(2) Any such summons may be served by a Sessions Court or a Magistrates' Court on behalf of the Director or in such other manner, and by such person, as the Director may deem fit.

[Ins. Act A1238:s.11]

Enforcement of Director's order by Sessions Court.

7K. Where any order has been made by the Director under this Chapter, and the same has not been complied with by the person to whom it is addressed, the Director may send a certified copy thereof to the Registrar of a Sessions Court, or to the Court of a First Class Magistrate, having jurisdiction in the place to which the order relates or in the place where the order was made, and the Registrar or Court, as the case may be, shall cause the copy to be recorded and thereupon the order shall for all purposes be enforceable as a judgment of the Sessions Court or of the Court of the First Class Magistrate, as the case may be, notwithstanding that the same may in respect of amount or value be in excess of the ordinary jurisdiction of the said Court:

Provided that no sale of immovable property shall for the purposes of such enforcement be ordered except by the High Court.

[Ins. Act A1238:s.11]

Submission by Director to High Court on point of law.

7L. (1) In any proceedings under this Chapter the Director may, if he thinks fit, submit any question of law for the decision of a Judge of the High Court and if he does so he shall decide the proceedings in conformity with such decision.

(2) An appeal shall lie to the Court of Appeal from any decision of a Judge under subsection (1).

[Ins. Act A1238:s.11]

Appeal against Director's order to High Court.

7M. (1) If any person whose financial interests are affected is dissatisfied with the decision or order of the Director under section 7A, 7C, 7D or 7I, such person may appeal to the High Court.

(2) Subject to any rules made under section 4 of the Subordinate Courts Rules Act 1955 [Act 55], the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.

Employee's remedy when employer about to abscond.

7N. (1) If any employee complains to a Magistrate that he has reasonable grounds for believing that his employer, in order to evade payment of his wages, is about to abscond, the Magistrate may summon such employer and direct him to show cause why he should not be required to give security by bond to remain in the State until such wages are paid; and if, after hearing the evidence of such employer, the Magistrate decides that such bond shall be given, the Magistrate may order such employer to give security by bond in such sum as to the Magistrate seems reasonable, that he will not leave the State until the Magistrate is satisfied that all the just claims of such employee against him for wages have been paid or settled.

(2) If the employer fails to comply with the terms of such order to give security, he shall be detained in prison until arrangements have been made to the satisfaction of the Magistrate for settling the claims of such employee:

Provided that—

- (a) such employer shall be released at any time by the committing Magistrate on security being furnished or on his paying either the whole or such part as to the Magistrate seems reasonable of all just claims of such employee against him for wages or on filing of a petition in bankruptcy by or against him; and
- (b) in no case shall the period of such detention exceed three months.

(3) The bond to be given by an employer shall be a personal bond with one or more sureties, and the penalty for breach of the bond shall be fixed with due regard to the circumstances of the case and the means of the employer.

(4) If on or after a complaint by any employee under subsection (1) it appears to the Magistrate that there is good ground for believing that the employer complained against has absconded or is absconding or is about to abscond, the Magistrate may issue a warrant for the arrest of such employer and such employer shall be detained in custody pending the hearing of the complaint unless he finds good and sufficient security to the satisfaction of the Magistrate for his appearance to answer the complaint.

(5) For the purposes of this section, a certificate purporting to be signed by the Director and issued to the Magistrate to the effect that wages claimed have been paid or settled shall be sufficient evidence of the payment or settlement thereof.

[Ins. Act A1238:s.11]

Examination on summons by the Director.

7O. Any person summoned by the Director under this Chapter shall be legally bound to attend at the time and place specified in the summons and to answer truthfully all questions which the Director may put to him.

[Ins. Act A1238:s.11]

Right of employee to appear before the Director.

7P. No employer shall prevent or attempt to prevent any employee from appearing before the Director in pursuance of this Chapter.

[Ins. Act A1238:s.11]

CHAPTER III

Rules

Section 8. [Deleted].

[Deleted by Act A1238:s.12]

PART II
CONTRACTS OF SERVICE

CHAPTER IV

Terms and Conditions

More favourable conditions of service under the Ordinance to prevail.

9. Subject to section 9A, any term or condition of a contract of service or of an agreement, whether such contract of service was entered into before or after the coming into force of this Ordinance, which provides a term or condition of service which is less favourable to an employee than a term or condition of service prescribed by this Ordinance or any rules, order or other subsidiary legislation made thereunder shall be void and of no effect to that extent and the more favourable provisions of this Ordinance or any rules, order or other subsidiary legislation made thereunder shall be substituted therefor.

[Subs. by Act A1238:s.15]

Validity of any term or condition of service which is more favourable.

9A. Subject to any express prohibition under this Ordinance or any rules, order or other subsidiary legislation made thereunder, nothing in section 9 shall be construed as preventing an employer and an employee from agreeing to any term or condition of service under which an employee is employed, or shall render invalid any term or condition of service stipulated in any collective agreement or in any award of the Industrial Court, which is more favourable to the employee than the provisions of this Ordinance or any rules, order or other subsidiary legislation made thereunder.

[Ins. by Act A1238:s.16]

Removal of doubt in respect of matters not provided for by or under this Ordinance.

9B. For the removal of doubt, it is hereby declared that if no provision is made in respect of any matter under this Ordinance or any subsidiary legislation made thereunder, or if no rules, order or other subsidiary legislation has been made on any matter in respect of which rules, or an order or other subsidiary legislation may be made under this Ordinance, it shall not be

construed as preventing such matter from being provided for in a contract of service, or from being negotiated upon between an employer and an employee.

[Ins. by Act A1238:s.16]

Contracts of service not to restrict rights of employees to join, participate in or organize trade unions.

9C. Nothing in any contract of service shall in any manner restrict the right of any employee who is a party to such contract—

- (a) to join a registered trade union;
- (b) to participate in the activities of a registered trade union, whether as an officer of such union or otherwise; or
- (c) to associate with any other persons for the purpose of organizing a trade union in accordance with the Trade Unions Act 1959 [Act 262].

[Ins. by Act A1238:s.16]

Guaranteed week.

10. (1) In the case of an employee employed on a contract of service and paid according to the number of days' work performed an employer shall provide work suitable to the capacity of such employee for not less than six days in every week with the exception of gazetted public holidays and Sundays (or such other rest day as may be substituted for a Sunday by agreement between the employer and the employee, entered into not less than three days before the rest is taken) and if he is unable or fails to provide such work on such number of days whereon the employee presents himself for work and is fit to work the employer shall nevertheless be bound to pay to the employee in respect of each of such days, wages, including cost of living allowance, if any, at not less than his ordinary rate of pay, or if the employee is on piece rates at not less than the average of his previous weeks' earnings or if he has not been working, at the average rate earned during the last full weeks' work by similar class of employee engaged on similar work..

[Am. by Act A1238:s.2, 17]

(2) A contract of service shall be deemed to be breached by an employer if he fails to provide work or pay wages in accordance with subsection (1).

[Ins. by Act A1238:s.17]

Provision as to termination of contracts.

10A. (1) A contract of service for a specified period of time or for the performance of a specified piece of work shall, unless otherwise terminated in accordance with this Chapter, terminate when the period of time for which such contract was made has expired or when the piece of work specified in such contract has been completed.

(2) A contract of service for an unspecified period of time shall continue in force until terminated in accordance with this Chapter.

[Ins. by Act A1238:s.18]

Termination of contract of service by notice.

[Am. by Act A1238:s.19]

11. (1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate such contract of service.

[Subs. by Act A1238:s.19]

(2) The length of such notice shall be the same for both employer and employee and shall be determined by a provision made in writing for such notice in the terms of the contract of service, or, in the absence of such provision in writing, shall not be less than—

- (a) four weeks' notice if the employee has been so employed for less than two years on the date on which the notice is given;
- (b) six weeks' notice if he has been so employed for two years or more but less than five years on such date;
- (c) eight weeks' notice if he has been so employed for five years or more on such date:

Provided that this section shall not be taken to prevent either party from waiving his right to a notice under this subsection.

[Subs. by Act A1238:s.19]

(3) Notwithstanding anything contained in subsection (2), where the termination of service of the employee is attributable wholly or mainly to the fact that—

- (a) the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed;
- (b) the employer has ceased, or intends to cease, to carry on the business in the place at which the employee was contracted to work;
- (c) requirements of that business for the employee to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish;
- (d) the requirements of that business for the employee to carry out work of a particular kind in the place at which he was contracted to work have ceased or diminished or are expected to cease or diminish;
- (e) the employee has refused to accept his transfer to any other place of employment, unless his contract of service requires him to accept such transfer; or
- (f) a change has occurred in the ownership of the business for the purpose of which an employee is employed or of a part of such business, regardless of whether the change occurs by virtue of a sale or other disposition or by operation of law,

the employee shall be entitled to, and the employer shall give to the employee, notice of termination of service, and the length of such notice shall be not less than that provided under paragraph (a), (b) or (c) of subsection (2), as the case may be, regardless of anything to the contrary contained in the contract of service.

(4) Such notice shall be written and may be given at any time, and the day on which the notice is given shall be included in the period of the notice.

[Ins. by Act A1238:s.19]

Termination of contract without notice.

[Am. by Act A1238:s.20]

12. (1) Either party to a contract of service may terminate such contract of service without notice or, if notice has already been given in accordance with section 11, without waiting for the expiry of that notice, by paying to the other party an indemnity of a sum equal to the amount of wages which would have accrued to the employee during the term of such notice or during the unexpired term of such notice.

(2) Either party to a contract of service may terminate such contract of service without notice in the event of any wilful breach by the other party of a condition of the contract of service.

[Subs. by Act A1238:s.20]

Termination of contract for special reasons.

[Am. by Act A1238:s.21]

13. (1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry—

- (a) dismiss without notice the employee;
- (b) downgrade the employee; or
- (c) impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.

(2) For the purposes of an inquiry under subsection (1), the employer may suspend the employee from work for a period not exceeding two weeks but shall pay him not less than half his wages for such period:

Provided that if the inquiry does not disclose any misconduct on the part of the employee, the employer shall forthwith restore to the employee the full amount of wages so withheld.

(3) An employee may terminate his contract of service with his employer without notice where he or his dependants are immediately threatened by danger to the person by

violence or disease such as such employee did not by his contract of service undertake to run.

[Subs. by Act A1238:s.21]

When contract is deemed to be broken by employer and employee.

13A. (1) An employer shall be deemed to have broken his contract of service with the employee if he fails to pay wages in accordance with this Ordinance.

(2) An employee shall be deemed to have broken his contract of service with the employer if he has been continuously absent from work for more than two consecutive working days without prior leave from his employer, unless he has reasonable excuse for such absence and has informed or attempted to inform his employer of such excuse prior to or at the earliest opportunity during such absence.

[Ins. by Act A1238:s.22]

Section 14. [Deleted]

[Deleted by Act A1238:s.23]

Section 15. [Deleted]

[Deleted by Act A1238:s.23]

Section 16. [Deleted]

[Deleted by Act A1238:s.23]

Section 17. [Deleted]

[Deleted by Act A1238:s.23]

Contracts to be in writing and to include provision for termination.

18. (1) A contract of service for a specified period of time exceeding one month or for the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds or may exceed one month, shall be in writing and shall be signed by both parties:

Provided that an employee unable to sign may indicate his consent by affixing thereto the impression of his thumb.

(2) In every written contract of service, a clause shall be included setting out the manner in which such contract may be terminated by either party in accordance with this Ordinance.

(3) Such written contract of service shall contain such particulars necessary to define the rights and obligations of the parties thereto as may be prescribed by rules made under this Ordinance.

[Subs. by Act A1238:s.26]

Section 19. [Deleted]

[Deleted by Act A1238:s.27]

Section 20. [Deleted]

[Deleted by Act A1238:s.27]

Section 21. [Deleted]

[Deleted by Act A1238:s.27]

Section 22. [Deleted]

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Section 23. [Deleted]

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Section 24. [Deleted]

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Section 25. [Deleted]

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Section 26. [Deleted]

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Section 27. [Deleted]

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Section 28. [Deleted]

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Section 29. [Deleted]

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Section 30. [Deleted]

[Deleted by Act A1238:s.27]

Section 31. [Deleted]

[Deleted by Act A1238:s.27]

Section 32. [Deleted]

[Deleted by Act A1238:s.27]

Section 33. [Deleted]

[Deleted by Act A1238:s.27]

CHAPTER VI

Apprenticeship Contracts

Apprenticeship contracts excluded from sections 10, 10A, 11, 12, 13, 13A and 18.

34. Sections 10, 10A, 11, 12, 13, 13A and 18 shall not apply to apprenticeship contracts which are in a form approved by and of which a copy has been filed with the Director.

[Subs. by Act A1238:s.29]

Section 35. [Deleted]

[Deleted by Act A1238:s.30]

Section 36. [Deleted]

[Deleted by Act A1238:s.30]

Section 37. [Deleted]

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Section 38. [Deleted]

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Section 39. [Deleted]

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Section 40. [Deleted]

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Section 41. [Deleted]

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Section 42. [Deleted]

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Section 43. [Deleted]

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Section 44. [Deleted]

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Section 45. [Deleted]

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Section 46. [Deleted]

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Section 47. [Deleted]

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- Section 48.** [Deleted] *[Deleted by Act A1238:s.31]*
- Section 49.** [Deleted] *[Deleted by Act A1238:s.31]*
- Section 50.** [Deleted] *[Deleted by Act A1238:s.31]*
- Section 51.** [Deleted] *[Deleted by Act A1238:s.31]*
- Section 52.** [Deleted] *[Deleted by Act A1238:s.31]*
- Section 53.** [Deleted] *[Deleted by Act A1238:s.31]*
- Section 54.** [Deleted] *[Deleted by Act A1238:s.31]*
- Section 55.** [Deleted] *[Deleted by Act A1238:s.31]*

PART IV

PROVISIONS RELATING TO EMPLOYMENT

CHAPTER X

Registers, Returns and Notice Board

- Section 56.** [Deleted] *[Deleted by Act A1238:s.31]*

Duty to display notice board.

- 57.** The owner of any—
- (a) estate of twenty hectares or more;
 - (b) mine;
 - (c) factory;
 - (d) trade, business or manufacturing activity carried on in any premises,

on or in which not less than five employees are employed shall, if such estate, mine, factory or premises are outside the limits of a City, Municipality, Town Council, Town Board or other local authority, cause to be erected where practicable in a conspicuous place at or adjacent to the place where the access road to such estate, mine, factory or premises joins the main road or a railway or river, as the case may be, a notice board on which shall be set out in the national language the name of such estate, mine, factory, trade, business or manufacturing activity and the address of its registered or other office.

[Subs. by Act A1238:s.35]

Duty to keep registers.

58. (1) Every employer shall prepare and keep one or more registers containing such information regarding each employee employed by him as may be prescribed by rules made under this Ordinance.

(2) Every such register shall be preserved for such period that every particular recorded therein shall be available for inspection for not less than six years after the recording thereof.

(3) Notwithstanding subsections (1) and (2), the Director, on a written application by an employer, may permit the employer to keep the information required under subsection (1) in any other manner as may be approved by the Director subject to such conditions as he may deem fit to impose.

[Subs. by Act A1238:s.36]

Power to make rules requiring information as to wages.

58A. The Minister may, by rules made under this Ordinance, provide that every employer or any specified class or classes of employers shall make available, in such form and at such intervals as may be prescribed, to every employee employed by him or them or to such class or classes of employees as may be specified such particulars as may be specified relating to the wages of such employees or any of them.

[Ins. by Act A1238:s.37]

Duty to submit returns.

59. (1) The Director may by notification in the *Gazette* or by notice in writing require every employer or such class or classes of employers as may be specified, and every owner or occupier of land upon which employees are employed or such class or classes of owners or occupiers as may be specified, to forward to the Director at such times as he may direct a return or returns, in such form or forms as he may prescribe, giving such particulars relating to the employees of the employers, or to the employees employed on the land, as may be prescribed.

(2) Notwithstanding the provisions of this Ordinance, the powers of the Director under subsection (1) extend to every employee employed under a contract of service irrespective of the monthly wages of the employee.

[Subs. by Act A1238:s.38]

Duty to give notice and other information.

59A. (1) Any person or employer who proposes—

- (a) to operate any agricultural, forestry or industrial undertaking or any establishment where any commerce, trade, profession or business of any description is carried on;
- (b) to take over or commence business in such undertaking or establishment;
or
- (c) to change the name or the location of such undertaking or establishment,

in which any employee is employed or is likely to be employed shall, within ninety days of such commencing of operation, taking over or commencing of business, or changing of the name or the location of the undertaking or establishment, as the case may be, give notice in writing of such proposal to the nearest office of the Director having administrative jurisdiction for the area in which that undertaking or establishment is located and furnish such office of the Director with—

- (aa) the registered name, address and nature of business of;

(ab) the name of the manager or person in charge of; and

(ac) a statement of the categories and total number of employees employed in,

that undertaking or establishment.

(2) For the purposes of this section, the expressions "commencing of operation" and "commencing of business" each means the date on which the undertaking or establishment is registered under any written law, or the date on which the first employee is employed in furtherance of the undertaking or commerce, trade, profession or business in such establishment, whichever is earlier.

(3) Where any undertaking or establishment as is referred to in subsection (1) is already in operation or has commenced business, such notice shall be given within ninety days of the coming into force of this section.

[Ins. by Act A1238:s.39]

Section 60. [Deleted].

[Deleted by Act A1238:s.40]

Section 61. [Deleted]

[Deleted by Act A1238:s.40]

Section 62. [Deleted]

[Deleted by Act A1238:s.40]

Section 63. [Deleted]

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Section 64. [Deleted]

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Section 65. [Deleted]

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Section 66. [Deleted]

[Deleted by Act A1238:s.40]

Section 67.[Deleted]

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Section 68. [Deleted].

[Deleted by Act A1238:s.40]

Section 69. [Deleted].

[Deleted by Act A1238:s.40]

CHAPTER XI

Special Provisions Relating to the Employment of Children and Young Persons.

Section 70. [Deleted].

[Deleted by Act A1238:s.42]

Certificate of medical officer as to age.

71. Where, in any proceeding under this Ordinance, a person is alleged to be a child or young person, the Court may accept a certificate of a medical officer to the effect that, in his opinion, such person is or is not a child or young person.

[Subs. by Act A1238:s.43]

Employment in which children and young persons may be engaged.

72. (1) No child or young person shall be, or be required or permitted to be, engaged in any employment other than those specified in this section.

(2) A child may be engaged in any of the following employment:

- (a) employment involving light work suitable to his capacity in any undertaking carried on by his family;
- (b) employment in any public entertainment, in accordance with the terms and conditions of a licence granted in that behalf under this Chapter;
- (c) employment requiring him to perform work approved or sponsored by the Federal Government or the Government of any State and carried on in any school, training institution or training vessel; and
- (d) employment as an apprentice under a written apprenticeship contract.

(3) A young person may be engaged in any of the following employment:

- (a) any employment mentioned in subsection (2); and in relation to paragraph (a) of that subsection, any employment suitable to his capacity (whether or not the undertaking is carried on by his family);
- (b) employment as a domestic servant;
- (c) employment in any office, shop (including hotels, bars, restaurants and stalls), godown, factory, workshop, store, boarding house, theatre, cinema, club or association;
- (d) employment in an industrial undertaking suitable to his capacity; and
- (e) employment on any vessel under the personal charge of his parent or guardian:

Provided that no female young person may be engaged in any employment in hotels, bars, restaurants, boarding houses or clubs unless such establishments are under the management or control of her parent or guardian:

Provided further that a female young person may be engaged in any employment in a club not managed by her parent or guardian with the approval of the Director.

(4) The Minister may, if he is satisfied that any employment (not mentioned in subsection (2) or (3)) is not dangerous to life, limb, health or morals, by order declare such employment to be an employment in which a child or young person may be, or permitted to be, engaged; and the Minister may in such order impose such conditions as he deems fit and he may at any time revoke or vary the order or may withdraw or alter such conditions.

(5) No child or young person shall be, or be required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machinery Act 1967 [Act 139] or the Electricity Supply Act 1990 [Act 447] or in any employment requiring him to work underground.

[Subs. by Act A1238:s.44]

The Minister may prohibit any child or young person from engaging or being engaged in any employment.

73. Notwithstanding section 72, the Minister may, in any particular case, by order prohibit any child or young person from engaging or from being engaged in any of the employments mentioned in that section if he is satisfied that having regard to the circumstances such employment would be detrimental to the interests of the child or young person, as the case may be.

[Subs. by Act A1238:s.45]

Number of days of work.

73A. No child or young person engaged in any employment shall in any period of seven consecutive days be required or permitted to work for more than six days.

[Ins. by Act A1238:s.46]

Hours of work of children.

73B. (1) No child engaged in any employment shall be required or permitted—

- (a) to work between the hours of 8 o'clock in the evening and 7 o'clock in the morning;
- (b) to work for more than three consecutive hours without a period of rest of at least thirty minutes;
- (c) to work for more than six hours in a day or, if the child is attending school, for a period which together with the time he spends attending school, exceeds seven hours; or
- (d) to commence work on any day without having had a period of not less than fourteen consecutive hours free from work.

(2) Paragraph (a) of subsection (1) shall not apply to any child engaged in employment in any public entertainment.

[Ins. by Act A1238:s.46]

Hours of work of young person.

- 73C.** (1) No young person engaged in any employment shall be required or permitted—
- (a) to work between the hours of 8 o'clock in the evening and 6 o'clock in the morning;
 - (b) to work for more than four consecutive hours without a period of rest of at least thirty minutes;
 - (c) to work for more than seven hours in any one day or, if the young person is attending school, for a period which together with the time he spends attending school, exceeds eight hours:

Provided that if the young person is an apprentice under paragraph (d) of subsection (2) of section 72, the period of work in any one day shall not exceed eight hours; or

- (d) to commence work on any day without having had a period of not less than twelve consecutive hours free from work.

(2) Paragraph (a) of subsection (1) shall not apply to any young person engaged in employment in an agricultural undertaking or any employment in a public entertainment or on any vessel under paragraph (e) of subsection (3) of section 72.

[Ins. by Act A1238:s.46]

Employment connected with public entertainment.

73D. (1) No child or young person shall take part or be required or permitted to take part in any public entertainment unless there has been issued by the Director or by such other officer as may be authorized in writing in that behalf by the Director to the person employing such child or young person a licence in that behalf; and the Director may, in addition to such conditions or restrictions as may be prescribed from time to time under Chapter XVIB impose in respect of such licence (whether at the time the licence is issued or thereafter from time to time) such conditions as he deems fit.

(2) No licence under subsection (1) shall be granted by the Director to any person where he is of the opinion that the employment is dangerous to the life, limb, health or morals of the child or young person.

(3) The Director may cancel any licence issued under this section on any ground for which he could refuse to issue a licence or on breach of any condition thereof, and such cancellation shall take effect forthwith until and unless set aside on appeal.

(4) Any child or young person or the parent or guardian of such child or young person or any other person aggrieved by the decision of the Director may within fourteen days of the making of that decision appeal to the Minister, and the decision of the Minister shall be final.

(5) In the event of an appeal, the child or young person or the parent or guardian of such child or young person shall be entitled to be supplied by the Director the reasons in writing for the cancellation of or refusal to issue a licence or for the imposition of conditions on a licence.

[Ins. by Act A1238:s.46]

Section 74. [Deleted].

[Deleted by Act A1238:s.47]

Power to prescribe minimum wages after inquiry.

74A. (1) If representation is made to the Minister that the wages of children or young persons in any class of work in any area are not reasonable, having regard to the nature of the work and conditions of employment obtaining in such class of work, the Minister may, if he considers it expedient, direct an inquiry.

(2) For the purpose of such inquiry, the Minister shall appoint a Board consisting of an independent member who shall be chairman and an equal number of representatives of employers and employees.

(3) The Board shall, after holding the inquiry, report to the Minister its findings and recommendations; and the Minister may, after considering the report of the Board, make an order prescribing the minimum rates of wages to be paid to children or young persons or to both, employed in the class of work in the area.

(4) Upon publication of such order, it shall not be lawful for any employer to pay any child or young person to whom the order applies, wages below the minimum rates specified in the order.

[Ins. by Act A1238:s.48]

Contractual capacity.

74B. Notwithstanding anything to the contrary contained in the Contracts Act 1950 [Act 136] or the provisions of any other written law, any child or young person shall be competent to enter into a contract of service under this Ordinance otherwise than as an employer, and may sue as plaintiff without his next friend or defend any action without a guardian *ad litem*:

Provided that no damages and no indemnity under section 12 of this Ordinance shall be recoverable from a child or young person for a breach of any contract of service.

[Ins. by Act A1238:s.48]

CHAPTER XIA

Employment of Women.

Prohibition of night work.

75. (1) Except in accordance with rules made under this Ordinance or any exemption granted under the proviso to this subsection, no employer shall require any female employee to work in any agricultural, forestry or industrial undertaking between the hours of ten o'clock in the evening and five o'clock in the morning nor commence work for the day without having had a period of eleven consecutive hours free from such work:

Provided that the Director may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction in this subsection, subject to any conditions he may impose.

(2) Any person—

(a) who is affected by any decision made or condition imposed under the proviso to subsection (1); and

(b) who is dissatisfied with such decision or condition,

may within thirty days of such decision or condition being communicated to him appeal in writing to the Minister.

(3) In deciding any appeal made to him under subsection (2), the Minister may make such decision or order, including the alteration or removal of any condition imposed or the imposition of any further condition, as appears just and such decision or order shall be final.

[Subs. by Act A1238:s.50]

Emergencies.

76. In any serious emergency when the public interest demands it the Minister may by order suspend the operation of section 75 in so far as they affect women.

[Am. by Act A1238:s.51]

Section 77. [Deleted].

[Deleted by Act A1238:s.52]

Prohibition of underground work.

78. No female employee shall be employed in any underground work.

[Subs. by Act A1238:s.53]

Prohibition of employment.

78A. Notwithstanding the provisions of this Chapter, the Minister may by order prohibit or permit the employment of female employees in such circumstances or under such conditions as may be described in such order.

[Ins. by Act A1238:s.54]

Section 79. [Deleted].

[Deleted by Act A1238:s.55]

Section 80. [Deleted].

[Deleted by Act A1238:s.55]

Section 81. [Deleted].

[Deleted by Act A1238:s.55]

Section 82. [Deleted].

[Deleted by Act A1238:s.55]

CHAPTER XIB
Maternity Protection

Length of eligible period and entitlement to maternity allowance.

83. (1) Every female employee shall be entitled to maternity leave for a period of not less than sixty consecutive days (also referred to in this Chapter as the "eligible period") in respect of each confinement and, subject to this Chapter, she shall be entitled to receive from her employer a maternity allowance to be calculated or prescribed as provided in subsection (2) in respect of the eligible period.

(2) Where a female employee is entitled to maternity leave under subsection (1) but is not entitled to receive maternity allowance from her employer for the eligible period under subsection (5), or because she has not fulfilled the conditions set out in subsection (6), she may, with the consent of the employer, commence work at any time during the eligible period if she has been certified fit to resume work by a registered medical practitioner.

(3) Subject to section 87, maternity leave shall not commence earlier than a period of thirty days immediately preceding the confinement of a female employee or later than the day immediately following her confinement:

Provided that where a medical officer or the registered medical practitioner appointed by the employer certifies that the female employee as a result of her advanced state of pregnancy is unable to perform her duties satisfactorily, the employee may be required to commence her maternity leave at any time during a period of fourteen days preceding the date of her confinement as determined in advance by the medical officer or the registered medical practitioner appointed by the employer.

(4) Where a female employee abstains from work to commence her maternity leave on a date earlier than the period of thirty days immediately preceding her confinement, such abstention shall not be treated as maternity leave and she shall not be entitled to any maternity allowance in respect of the days during which she abstains from work in excess of the period of thirty days immediately preceding her confinement.

(5) Notwithstanding subsection (1), a female employee shall not be entitled to any maternity allowance if at the time of her confinement she has five or more surviving children.

(6) A female employee shall be entitled to receive maternity allowance for the eligible period from her employer if—

(a) she has been employed by the employer at any time in the four months immediately before her confinement; and

(b) she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement.

(7) A female employee who is eligible for maternity allowance under this section shall be entitled to receive from the employer for each day of the eligible period a maternity allowance at her ordinary rate of pay for one day, or at the rate prescribed by the Minister under Chapter XVIB, whichever is the greater.

(8) A female employee employed on a monthly rate of pay shall be deemed to have received her maternity allowance if she continues to receive her monthly wages during her abstention from work during the eligible period without abatement in respect of the abstention.

(9) Where a female employee claims maternity allowance under this section from more than one employer, she shall not be entitled to receive a maternity allowance of an amount exceeding in the aggregate the amount which she would be entitled to receive if her claim was made against one employer only.

(10) Where there are more employers than one from whom the female employee would be entitled to claim maternity allowance in accordance with this section the employer who pays the maternity allowance shall be entitled to recover from such other employer, as a civil debt, a contribution which shall bear the same proportion to the amount of the maternity allowance paid to the female employee as the number of days on which she worked for such other employer during the period of nine months immediately preceding her confinement bears to the total number of days on which she worked during that period:

Provided that if the female employee has failed to comply with subsection (1) or (2) of section 87, the employer who pays the maternity allowance shall not thereby be prevented from recovering contribution calculated in accordance with the subsection.

(11) For the purposes of this section, "children" means all natural children, irrespective of age.

[Subs. by Act A1238:s.57]

Section 84. [Deleted]

[Deleted by Act A1238:s.58]

Payment of maternity allowance.

85. The maternity allowance referred to in section 83 and accruing in each wage period under the contract of service of the female employee shall be paid in the same manner as if such allowance were wages earned during such wage period as provided in section 108.

[Subs. by Act A1238:s.59]

Payment of allowance to nominee on death of a female employee.

86. If a female employee, after giving notice to her employer that she expects to be confined, commences her maternity leave and dies from any cause during the eligible period, her employer or any employer who would have been, but for the death of the female employee, liable to pay any maternity allowance shall pay to the person nominated by her under section 90 or, if there is no such person, to her legal personal representative, an allowance at the rate calculated or prescribed as provided in subsection (7) of section 83 from the day she commenced her maternity leave to the day immediately preceding her death.

[Subs. by Act A1238:s.60]

Loss of maternity allowance for failure to notify employer.

87. (1) A female employee who is about to leave her employer and who knows or has reason to believe that she will be confined within four months from the date upon which she leaves shall before leaving her employment notify her employer of her pregnancy and if she fails so to do, she shall not be entitled to receive any maternity allowance from such employer.

(2) A female employee shall within a period of sixty days immediately preceding her expected confinement notify her employer of it and the date from which she intends to commence her maternity leave and if she commences such leave without so notifying her employer, the payment of maternity allowance to her may be suspended, notwithstanding section 85, until such notice is given to her employer.

(3) Any female employee whose employer provides free medical treatment for his employees and who, when she is pregnant, persistently refuses or fails to submit to such medical treatment offered free by her employer as a registered medical practitioner certifies to be necessary or desirable in connection with her pregnancy, expected confinement or confinement shall, if she would otherwise be entitled to receive any maternity allowance, forfeit such allowance to the extent of seven days.

(4) The want of or any defect or inaccuracy in any notice required to be given in accordance with this section shall not be a bar to the maintenance of any claim to maternity allowance unless the employer is proved to have been prejudiced by the want, defect or inaccuracy of such notice.

(5) The failure to give any such notice within the period specified in this section shall not prejudice the right of a female employee to receive any maternity allowance if it is found that the failure was occasioned by mistake or other reasonable cause:

Provided that any dispute as to whether such failure was occasioned by mistake or other reasonable cause shall be referred under section 7A to the Director for his decision.

(6) Notice to an employer or, if there is more than one employer, to one of such employers, may be given either in writing or orally or to the foreman or other person under whose supervision the female employee was employed or to any person designated for the purpose by the employer.

[Subs. by Act A1238:s.61]

Section 88. [Deleted]

[Deleted by Act A1238:s.62]

Section 89. [Deleted]

[Deleted by Act A1238:s.62]

Payment of allowance to nominee.

90. A female employee may nominate some other person to whom the maternity allowance may be paid on her behalf and any payment of the maternity allowance made to the person so nominated shall, for the purposes of this Ordinance, be deemed to be a payment to the female employee herself.

[Subs. by Act A1238:s.63]

Notice of termination of employment.

91. When a female employee absents herself from work in accordance with the provisions of this Chapter her employer shall not give her notice of termination of employment during such absence or so that the notice will expire during such absence.

[Am. by Act A1238:s.2]

Restriction on dismissal of female employee after eligible period.

91A. (1) Where a female employee remains absent from her work after the expiration of the eligible period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy and confinement and to render her unfit for her work, it shall be an offence, until her absence exceeds a period of ninety days after the expiration of the eligible period, for her employer to terminate her services or give her notice of termination of service.

(2) Subject to subsection (1), where a female employee is dismissed from her employment with wages in lieu of notice at any time during the period of four months immediately preceding her confinement, she shall, in computing the period of her employment for the purposes of this Chapter, be deemed to have been employed as if she had been given due notice instead of wages in lieu thereof.

[Subs. by Act A1238:s.64]

Section 92. [Deleted]

[Deleted by Act A1238:s.65]

Section 93. [Deleted]

[Deleted by Act A1238:s.65]

Conditions contrary to Chapter void.

94. Any condition in a contract of service whereby a female employee relinquishes or is deemed to relinquish any right under this Chapter shall be void and of no effect and the right conferred under this Chapter shall be deemed to be substituted for such condition.

[Subs. by Act A1238:s.66]

Register of allowances paid.

94A. Every employer shall keep a register, in a form to be prescribed by the Minister by rules made under this Ordinance, of all payments made to female employees under this Chapter and of such other matters incidental thereto as may be prescribed by such rules.

[Ins. by Act A1238:s.67]

Section 95. [Deleted]

[Deleted by Act A1238:s.68]

CHAPTER XII

Repatriation

Rights and obligations of employee and employer in respect of repatriation.

96. (1) Every employee who is a party to an agreement or contract under this Ordinance shall have the right to be repatriated at the expense of the employer in the following cases ---

[Am. by Act A1238:s.2, 69]

- (a) on the termination of the agreement of contract by expiry of the period for which it was made ;
- (b) on the termination of the agreement of contract by reason of the inability of the employer to fulfil the agreement or contract.
- (c) on the termination of the agreement or contract by reason of inability of the employee fulfil the agreement or contract owing to sickness or accident ;

- (d) on the termination of the agreement or contract by notice or otherwise.

[Am. by Act A1238:s.2, 69]

- (e) upon cancellation by the Director or expiry of the Licence To Employ Non-Resident Employee;

[Subs. by Act A1238:s.69]

- (f) on the termination of the agreement or contract by agreement between the parties;

[Am. by Act A1238:s.69]

(2) Every non-resident employee who is ordered to leave the Sabah in accordance with this Ordinance or any rules made under this Ordinance or any provisions of any written law for the time being in force relating to immigration, shall be repatriated at the expense of the employer to his country or State of origin.

[Am. by Act A1238:s.69]

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

[Am. by Act A1238:s.2]

- (4) The expenses of repatriation shall include ---

- (a) travelling and subsistence, expenses during the journey ; and

- (b) subsistence expenses during the period, if any, between the date of termination of the contract of service or the cancellation or expiry of the Licence To Employ Non-Resident Employee and the date of repatriation; and

[Am. by Act A1238:s.69]

- (c) provision of decent interment and the payment of the reasonable expenses of burial in the event of death of an employee occurring during the course of, or pending repatriation.

[Am. by Act A1238:s.2]

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

[Am. by Act A1238:s.2, 69]

(a) by the employee's own choice ; or

[Am. by Act A1238:s.2]

(b) for reasons of force majeure when the employer has been able during the said period to use the services of the employee at the rate of wages stipulated in the expired contract.

(6) If the employer fails to fulfil his obligation in respect of repatriation the said obligation shall be discharged by or under directions of the Director and any sum so expended may be recovered from the employer or employers from the security furnished to the Director or by civil suit as a debt due to the Government of the Federation.

[Am. by Act A1238:s.69]

Exemption from obligation to repatriate.

97. The Director may exempt the employer from liability for repatriation expenses in the following cases ---

(a) when the Director is satisfied that the resident employee by a declaration before the Director has signified that he does not wish to exercise his right to repatriation;

[Subs. by Act A1238:s.70]

(i) that the resident employee by a declaration before the Director has signified that he does not wish to exercise his right to repatriation ; and

[Am. by Act A1238:s.70]

(ii) [Deleted]

[Deleted by Act A1238:s.70]

(b) when the Director is satisfied that the resident employee by his own choice has failed to exercise his right of repatriation before the expiry of six months from the date of termination of the agreement or contract ;

[Am. by Act A1238:s.70]

(c) when the liability of the employer has been provided for under any of the provisions of any Fund established under Chapter XVIB;

[Am. by Act A1238:s.70]

(d) [Deleted]

[Deleted by Act A1238:s.70]

Employer to provide transport.

98. The employer shall take all necessary measures to ensure the provision of a proper and safe mode of transport and, when it is necessary to break the journey for the night, a suitable accommodation and, in the course of the journey, suitable arrangements for medical assistance and for the welfare of the employees who are being repatriated.

[Subs. by Act A1238:s.71]

Section 99. [Deleted]

[Deleted by Act A1238:s.72]

CHAPTER XIII

Domestic Service

Domestic servants.

100. The Minister may make rules* applying all or any of the provisions of this Ordinance to all domestic servants or to any group, class or number of domestic servants and make rules to provide generally for the engagement, repatriation and working conditions of domestic servants.

* See Labour (Domestic Service) Rules 1957.

CHAPTER XIV

General Provisions Relating to Contracts of Service

Section 101. [Deleted]

[Deleted by Act A1238:s.74]

Limitation on advances to employees.

102. (1) No employer shall during any one month make to an employee an advance or advances of wages not already earned by such employee which exceeds in the aggregate the amount of wages which the employee earned in the preceding month from his employment with such employer, or if he has not been so long in the employment of such employer, the amount which he is likely to earn in such employment during one month, unless such advance is made to the employee—

- (a) to enable him to purchase a house or to build or improve a house;
- (b) to enable him to purchase land;
- (c) to enable him to purchase livestock;
- (d) to enable him to purchase a motorcar, a motorcycle or a bicycle;
- (e) to enable him to purchase shares of the employer's business offered for sale by the employer;
- (f) for any other purpose—
 - (i) in respect of which an application in writing is made by the employer to the Director;
 - (ii) which is, in the opinion of the Director, beneficial to the employee; and
 - (iii) which is approved in writing by the Director, provided that in granting such approval, the Director may make such modifications or impose such conditions as he may deem proper;

- (g) for such other purpose as the Minister may, from time to time, by notification in the *Gazette*, specify either generally in respect of all employees, or only in respect of any particular employee, or any class, category or description of employees.

[Subs. by Act A1238:s.75]

Holidays.

103. (1) Every employee shall be entitled to a paid holiday at his ordinary rate of pay on the following days in any one calendar year:

- (a) on fourteen gazetted public holidays as specified under the Holidays Ordinance (Sabah) [*Cap. 56*], four of which shall be—
- (i) the National Day;
 - (ii) the Birthday of the Yang di-Pertuan Agong;
 - (iii) the Birthday of the Yang di-Pertua Negeri of Sabah; and
 - (iv) the Workers' Day:

Provided that the other ten public holidays referred to in this paragraph be fixed with regard to the religion and customs of the employees; and

- (b) on any day in addition to the gazetted public holidays referred to in paragraph (a) declared as a public holiday by the Government of the State:

Provided that if any of the public holidays referred to in paragraphs (a) and (b) falls on a rest day, the working day following the rest day shall be a paid holiday in substitution of that public holiday.

(2) The employer shall exhibit conspicuously at the place of employment before the commencement of each calendar year a notice specifying the remaining ten gazetted public holidays in respect of which his employees shall be entitled to paid holidays under paragraph (a) of subsection (1):

Provided that by agreement between the employer and an employee any other day or days may be substituted for one or more of the remaining ten gazetted public holidays provided for in paragraph (a) of subsection (1):

And provided further that the employer may grant the employee any other day as a paid public holiday in substitution for any of the public holidays referred to in paragraph (b) of subsection (1).

(3) Where any of the public holidays or any other day substituted therefor as provided in subsection (1) or (2) falls within the period during which an employee is on sick leave or annual leave to which the employee is entitled under this Ordinance, or falls during the period of temporary disablement under the Workmen's Compensation Act 1952 [Act 273], or under the Employees' Social Security Act 1969 [Act 4], the employer shall grant another day as a paid holiday in substitution for such public holiday or the day substituted therefor.

(4) Any employee who absents himself from work on the working day immediately preceding or immediately succeeding a public holiday or two or more consecutive public holidays or any day or days substituted therefor under this section without the prior consent of his employer, shall not be entitled to any holiday pay for such holiday or consecutive holidays unless he has a reasonable excuse for such absence.

(5) An employee on a monthly rate of pay shall be deemed to have received his holiday pay if he receives from his employer his monthly wages, without abatement (other than as provided under subsection (4)) in respect of the holiday, for the month in which the holiday falls.

(6) Notwithstanding subsections (1), (2) and (3), any employee may be required by his employer to work on any paid holiday to which he is entitled under those subsections, and in such event he shall, in addition to the holiday pay he is entitled to for that day—

- (a) in the case of an employee employed on a monthly, weekly, daily, hourly, or other similar rate of pay, be paid two days' wages at the ordinary rate of pay; or
- (b) in the case of an employee employed on piece rates, be paid twice the ordinary rate per piece,

regardless that the period of work done on that day is less than the normal hours of work.

(7) For any overtime work carried out by an employee referred to in paragraph (a) of subsection (6) in excess of the normal hours of work on a paid public holiday, the employee shall be paid at a rate which is not less than three times his hourly rate of pay.

(8) For any overtime work carried out by an employee referred to in paragraph (b) of subsection (6) in excess of the normal hours of work on any paid holiday, the employee shall be paid not less than three times the ordinary rate per piece.

(9) An employee who works on a holiday shall be entitled to a travelling allowance for that day if payable to him under the terms of his contract of service with his employer but such employee shall not be entitled under this subsection to receive an increased rate of any housing allowance or food allowance.

(10) For the purposes of this section if any such holiday falls on a half working day, the ordinary rate of pay payable shall be that of a full working day.

[Subs. by Act A1238:s.76]

Hours of work.

104. (1) Except as provided in this section, an employee shall not be required under his contract of service to work—

- (a) more than five consecutive hours without a period of leisure of not less than thirty minutes duration;
- (b) more than eight hours in one day;
- (c) in excess of a spread over period of ten hours in one day;
- (d) more than forty-eight hours in one week:

Provided that—

- (aa) for the purpose of paragraph (a), any break of less than thirty minutes in the five consecutive hours shall not break the continuity of that five consecutive hours;

(ab) an employee who is engaged in work which must be carried on continuously and which requires his continual attendance may be required to work for eight consecutive hours inclusive of a period or periods of not less than forty-five minutes in the aggregate during which he shall have the opportunity to have a meal; and

(ac) where, by agreement under the contract of service between the employee and the employer, the number of hours of work on one or more days of the week is less than eight, the limit of eight hours may be exceeded on the remaining days of the week, but so that no employee shall be required to work for more than nine hours in one day or forty-eight hours in one week.

(2) The Director may, on the written application of an employer, grant permission to the employer to enter into a contract of service with any one or more of his employees, or with any class, category or description of his employees, requiring the employee or employees, or the class, category or description of employees, as the case may be, to work in excess of the limit of hours prescribed under paragraphs (a), (b), (c) and (d) of subsection (1) but subject to such conditions, if any, as the Director may deem proper to impose, if he is satisfied that there are special circumstances pertaining to the business or undertaking of the employer which renders it necessary or expedient to grant such permission; and the Director may at any time revoke the approval given under this subsection if he has reason to believe that it is expedient to do so.

(3) Any person who is dissatisfied with any decision of the Director under subsection (2) may, within thirty days of such decision being communicated to him, appeal in writing to the Minister.

(4) On an appeal made to him under subsection (3), the Minister may make such decision or order as appears just, and such decision or order shall be final.

(5) An employee may be required by his employer to exceed the limit of hours prescribed in subsection (1) and to work on a rest day in the case of—

(a) any accident, actual or threatened, in or with respect to his place of work;

(b) any work, the performance of which is essential to the life of the community;

- (c) work essential for the defence or security of Malaysia;
- (d) urgent work to be done to machinery or plant;
- (e) any interruption of work which was impossible to foresee; or
- (f) work to be performed by employees in any industrial undertaking essential to the economy of Malaysia or any essential service as defined in the Industrial Relations Act 1967:

Provided that the Director shall have the power to enquire into and decide whether or not the employer is justified in calling upon the employee to work in the circumstances specified in paragraphs (a) to (f).

(6) For any overtime work carried out in excess of the normal hours of work, the employee shall be paid at a rate which is not less than one and a half times his hourly rate of pay irrespective of the basis on which his rate of pay is fixed.

(7) No employer shall require or permit an employee to work overtime exceeding such limit as may be prescribed by the Minister from time to time by rules made under this Ordinance and the rules so made may provide different limits for different classes, categories or descriptions of employees, and such rules may also provide for such classes, categories or description of employees, as may be specified, to be excluded from their application:

Provided that any work carried out on a rest day, or any of the gazetted public holidays referred to in subsection (1) of section 103, or on any paid holiday substituted therefor under subsection 103, shall not be construed as overtime work for the purposes of this subsection:

And provided further that the Director may, on application made to him in writing by an employer or by an employee or a group of employees, permit any particular employee, or any group, class, category or description of employees in any particular industry, undertaking or establishment to work overtime in excess of the limit of hours so prescribed, subject to such conditions, if any, as he may deem proper to impose.

(8) Any person who is dissatisfied with any decision of the Director made under subsection (7) may, within thirty days of such decision being communicated to him, appeal in writing to the Minister.

(9) In deciding any appeal made to him under subsection (8), the Minister may make such decision or order as appears just and such decision or order shall be final.

(10) The Minister may make rules for the purpose of calculating the payment due for overtime to an employee employed on piece rates.

(11) Except in the circumstances described in paragraphs (a), (b), (c), (d) and (e) of subsection (5), no employer shall require any employee under any circumstances to work for more than twelve hours in any one day.

(12) This section shall not apply to employees engaged in work which by its nature involves long hours of inactive or stand-by employment.

(13) For the purposes of this Chapter, "hours of work" means the time during which an employee is at the disposal of the employer and is not free to dispose of his own time and movements.

[Subs. by Act A1238:s.77]

Shift work.

104A. (1) Notwithstanding paragraphs (b), (c) and (d) of subsection (1) of section 104, but subject to paragraph (a) of subsection (1) of that section, an employee who is engaged under his contract of service in shift work may be required by his employer to work more than eight hours in any one day or more than forty-eight hours in any one week but the average number of hours worked over any period of three weeks, or over any period exceeding three weeks as may be approved by the Director, shall not exceed forty-eight hours per week.

(2) The approval of the Director in subsection (1) may be granted if the Director is satisfied that there are special circumstances pertaining to the business or undertaking of the employer which render it necessary or expedient for him to grant the permission subject to such conditions as he may deem fit to impose.

(3) The Director may revoke the approval given under subsection (2) at any time if he has reason to believe that it is expedient so to do.

(4) Except in the circumstances described in paragraphs (a), (b), (c), (d) and (e) of subsection (5) of section 104, no employer shall require any employee who is engaged under his contract of service in shift work to work for more than twelve hours in any one day.

[Ins. by Act A1238:s.78]

Rest day.

104B.(1) Every employee shall be allowed in each week a rest day of one whole day as may be determined from time to time by the employer, and where an employee is allowed more than one rest day in a week, the last of such rest days shall be the rest day for the purposes of this Chapter:

Provided that this subsection shall not apply during the period in which the employee is on maternity leave as provided under section 83, or on sick leave as provided under section 104E, or during the period of temporary disablement under the Workmen's Compensation Act 1952, or under the Employees' Social Security Act 1969.

(2) Notwithstanding subsection (1) and the interpretation of the expression "day" in section 2, in the case of an employee engaged in shift work any continuous period of not less than thirty hours shall constitute a rest day.

(3) Notwithstanding subsection (1), the Director, on a written application by an employer and subject to any conditions he may deem fit to impose, may permit the employer to grant the rest day for each week on any day of the month in which the rest days fall and the day so granted shall be deemed to be the employee's rest day for the purposes of this section.

(4) The employer shall prepare a roster before the commencement of the month in which the rest days fall informing the employee of the days appointed to be his rest days therein, and where the same day in each week has been appointed as the rest day for all employees in the place of employment, the employer may, in lieu of preparing a roster, display a notice at a conspicuous place in the place of employment informing the employees of the fixed rest day so appointed.

(5) Every such roster and every particular recorded therein shall be preserved and shall be made available for inspection for a period not exceeding six years from the last day of the month in respect of which the roster was prepared or cause to be prepared.

[Ins. by Act A1238:s.78]

Work on rest day.

104C.(1) Except as provided in subsection (5) of section 104, no employee shall be compelled to work on a rest day unless he is engaged in work which by reason of its nature requires to be carried on continuously or continually by two or more shifts:

Provided that in the event of any dispute the Director shall have power to decide whether or not an employee is engaged in work which by reason of its nature requires to be carried on continuously by two or more shifts.

(2) An employee employed on a daily, hourly or other similar rate of pay who works on a rest day shall be paid for any period of work—

- (a) which does not exceed half his normal hours of work, one day's wages at the ordinary rate of pay; or
- (b) which is more than half but does not exceed his normal hours of work, two days' wages at the ordinary rate of pay.

(3) An employee employed on a monthly rate of pay who works on a rest day shall be paid for any period of work —

- (a) which does not exceed half his normal hours of work, wages equivalent to half the ordinary rate of pay for work done on that day; or
- (b) which is more than half but which does not exceed his normal hours of work, one day's wages at the ordinary rate of pay for work done on that day.

(4) For any work carried out in excess of the normal hours of work on a rest day by an employee mentioned in subsection (2) or (3), he shall be paid at a rate which is not less than two times his hourly rate of pay.

(5) An employee employed on piece rates who works on a rest day shall be paid twice his ordinary rate per piece.

[Ins. by Act A1238:s.78]

Annual leave.

104D. (1) An employee shall be entitled to paid annual leave of—

- (a) eight days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of less than two years;
- (b) twelve days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of two years or more but less than five years; and
- (c) sixteen days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of five years or more,

and if he has not completed twelve months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service:

Provided that any fraction of a day of annual leave so calculated which is less than one-half of a day shall be disregarded, and where the fraction of a day is one-half or more it shall be deemed to be one day:

And provided further that where an employee absents himself from work without the permission of his employer and without reasonable excuse for more than ten per centum of the working days during the twelve months of continuous service in respect of which his entitlement to such leave accrues he shall not be entitled to such leave.

(2) The paid annual leave to which an employee is entitled under subsection (1) shall be in addition to rest days and paid holidays.

(3) Where an employee who is on paid annual leave becomes entitled to sick leave or maternity leave while on such annual leave, the employee shall be granted the sick leave or maternity leave, as the case may be, and the annual leave shall be deemed to have not been taken in respect of the days for which sick leave or maternity leave is so granted.

(4) The employer shall grant and the employee shall take such leave not later than twelve months after the end of every twelve months continuous service and any employee who fails to take such leave at the end of such period shall thereupon cease to be entitled thereto:

Provided that an employee shall be entitled to payment in lieu of such annual leave if, at the request of his employer, he agrees in writing not to avail himself of any or all of his annual leave entitlement.

(5) Notwithstanding subsection (4), upon the termination of an employee's contract of service, the employee shall be entitled to take before such termination takes place the paid annual leave due to be taken in the year in which the termination takes place in respect of the twelve months of service preceding the year in which the termination takes place, and, in addition, the leave accrued in respect of the completed months of service during the year in which the termination takes place.

(6) The employer shall pay the employee his ordinary rate of pay for every day of paid annual leave, and an employee on a monthly rate of pay shall be deemed to have received the annual leave pay if he receives his monthly wages, without abatement in respect of such annual leave, for the month in which he takes such annual leave.

(7) If the contract of service has been terminated by either party before an employee has taken the paid annual leave to which he is entitled under this section, the employer shall pay the employee his ordinary rate of pay in respect of every day of such leave:

Provided that this subsection shall not apply where an employee is dismissed under paragraph (a) of subsection (1) of section 13.

(8) Where an employee is granted leave of absence without pay by his employer during any period of twelve months and the period of absence exceeds in the aggregate thirty

days, that period of leave of absence shall be disregarded for the purpose of computing his length of service with the employer under this section.

(9) The Minister may, by notification in the *Gazette*, fix the periods when and prescribe the manner in which annual leave shall be granted to employees in different types of employment or in different classes of industries.

[Ins. by Act A1238:s.78]

Sick leave.

104E. (1) An employee shall after examination at the expense of the employer—

- (a) by a registered medical practitioner duly appointed by the employer; or
- (b) if no such registered medical practitioner is appointed or, if having regard to the nature or circumstances of the illness, the services of the registered medical practitioner so appointed are not obtainable within a reasonable time or distance, by any other registered medical practitioner or by a medical officer,

be entitled to paid sick leave—

(aa) where no hospitalization is necessary—

- (i) of fourteen days in the aggregate in each calendar year if the employee has been employed for less than two years;
- (ii) of eighteen days in the aggregate in each calendar year if the employee has been employed for two years or more but less than five years;
- (iii) of twenty-two days in the aggregate in each calendar year if the employee has been employed for five years or more; or

(ab) of sixty days in the aggregate in each calendar year if hospitalisation is necessary, as may be certified by such registered medical practitioner or medical officer:

Provided that the total number of days of paid sick leave in a calendar year which an employee is entitled to under this section shall be sixty days in the aggregate:

And provided further that if an employee is certified by such registered medical practitioner or medical officer to be ill enough to need to be hospitalised but is not hospitalised for any reason the employee shall be deemed to be hospitalised for the purposes of this section.

(2) An employee shall also be entitled to paid sick leave under paragraphs (aa) and (ab) of subsection (1) after examination by a dental surgeon as defined in the Dental Act 1971 [Act 51]:

Provided that the entitlement for such sick leave shall be inclusive of the number of days provided for under paragraphs (aa) and (ab) of subsection (1).

(3) An employee who absents himself on sick leave—

- (a) which is not certified by a registered medical practitioner or a medical officer or a dental surgeon as provided under subsections (1) and (2); or
- (b) which is certified by such registered medical practitioner or medical officer or dental surgeon but without informing or attempting to inform his employer of such sick leave within forty-eight hours of the commencement thereof,

shall be deemed to absent himself from work without the permission of his employer and without reasonable excuse for the days on which he is so absent from work.

(4) The employer shall pay the employee his ordinary rate of pay for every day of such sick leave, and an employee on a monthly rate of pay shall be deemed to have received his sick leave pay if he receives from his employer his monthly wages, without abatement in respect of the days on which he was on sick leave, for the month during which he was on such sick leave.

[Ins. by Act A1238:s.78]

(5) No employee shall be entitled to paid sick leave for the period during which the employee is entitled to maternity allowance under section 83 or for any period during which

he is receiving any compensation for temporary disablement under the Workmen's Compensation Act 1952, or any periodical payments for temporary disablement under the Employees' Social Security Act 1969.

Termination, lay-off and retirement benefits.

104F. (1) The Minister may by rules made under this Ordinance provide for the entitlement of employees to, and for the payment by employers of—

- (a) termination benefits;
- (b) lay-off benefits; or
- (c) retirement benefits.

(2) Without prejudice to the generality of subsection (1), rules made by virtue of subsection (1) may provide—

- (a) for the definition of the expressions "termination benefits", "lay-off benefits", or "retirement benefits", as the case may be, and for the circumstances in which the same shall be payable;
- (b) for the application thereof to employees who were in employment under a contract of service immediately before the commencement of such rules and who continue in such employment after such commencement;
- (c) for the application thereof to all employees generally or to any particular class, category or description of employees;
- (d) for the exclusion from the application thereof of any particular employee or employees or any class, category or description of employees; and
- (e) for the payment of different rates or amounts of termination benefits, lay-off benefits or retirement benefits, as the case may be, to different classes, categories or descriptions of employees.

[Ins. by Act A1238:s.78]

Task work.

105. (1) [Deleted]

[Deleted by Act A1238:s.79]

(2) Nothing in this Chapter contained shall prevent any employer from agreeing with any employee in his employment that the wages of such employee shall be paid at an agreed rate in accordance with the task, that is, the specific amount of work to be performed, and not by the day or by the piece.

[Am. by Act A1238:s.79]

Section 106. [Deleted]

[Deleted by Act A1238:s.79]

Period for which wages payable.

107. Unless the agreement or contract otherwise stipulates, and subject to the provisions of section 104, wages shall only be payable for days actually worked, for paid holidays, for days other than Sundays or other rest days on which through no fault of the employee no work is provided by the employer and for time spent in attending before any Court if such Court certifies that his attendance was necessary for the ends of public justice.

[Am. by Act A1238:s.81]

Wage period.

107A. (1) A contract of service shall specify a wage period not exceeding one month.

(2) If in the contract of service no wage period is specified, the wage period shall, for the purposes of the contract of service, be deemed to be one month.

[Ins. by Act A1238:s.82]

Wages not due for absence from work through imprisonment or attendance in court.

107B. Wages shall not become payable to or recoverable by any employee from his employer for or on account of the term of any sentence of imprisonment undergone by him or for any period spent by him in custody or for or on account of any period spent by him in going to or returning from prison or other place of custody or for or on account of any period

spent by him in going to, attending before or returning from a court otherwise than as a witness on his employer's behalf.

[Ins. by Act A1238:s.82]

Payment of wages.

108. (1) The wages of an employee shall be paid not later than seven days after the expiration of the wage period in respect of which they are due.

[Am by Act A1238:s.2, 83]

(2) All wages due to an employee whose agreement or contract is terminated by expiry of the period for which it was made shall be paid to him on the day on which such agreement or contract terminates:

[Am. by Act A1238:s.2, 83]

Provided that if the Director is satisfied that payment within such time is not reasonably practicable, he may, on the application of the employer, extend the time of payment by such number of days as he thinks fit.

[Ins. by Act A1238:s.83]

(3) All wages due to an employee whose agreement or contract is terminated by his employer shall be paid to him on the day on which such agreement or contract is terminated or, if this is not possible, on the first day, not being a rest day or gazetted holiday, after the day on which such agreement or contract is terminated.

[Am. by Act A1238:s.2, 83]

(4) All wages due to an employee who terminates his agreement or contract with his employer after he has given due notice to such employer as required under section 11 shall be paid to him on the day on which such agreement or contract is terminated.

[Am. by Act A1238:s.2, 83]

(5) If an employee terminates his agreement or contract without giving notice to his employer as required by section 11 or if the required notice having been given the employee terminates his agreement or contract without waiting for the expiry of the seventh day after the day on which he terminates his agreement or contract :

[Am. by Act A1238:s.2, 83]

Provided that the employer may, subject to any order made by a Court or the Director to the contrary, deduct from the wages due to the employee such sum as the employee is liable to pay in lieu of notice according to the provisions of section 12 or the terms of his contract if any.

[Am. by Act A1238:s.2]

Restriction on places at which wages may be paid.

109. No employer shall pay wages to employees in taverns or other similar establishments or in places of amusement or in shops or stores for the retail sale of merchandise except in the case of employees employed in such establishments, places, shops or stores.

[Subs. by Act A1238:s.84]

Wages to be paid in legal tender.

110. (1) Except where otherwise expressly permitted by this Ordinance the entire amount of the wages earned by, or payable to, any employee in respect of any work done by him shall be actually paid to him in legal tender and every payment of, or on account of, any such wages made in any other form shall be illegal, null and void.

[Am. by Act A1238:s.2, 85]

(2) Every employee shall be entitled to recover in the courts or before the Director acting under section 7A so much of his wages, exclusive of sums lawfully deducted under section 113, as shall not have been actually paid to him in legal tender or paid to him by any of the ways under section 110A.

[Ins. by Act A1238:s.85]

(3) Where payment of wages is made in cash it shall be made on working days only and at or near the workplace.

[Ins. by Act A1238:s.85]

Payment of wages through bank.

110A. (1) Nothing in section 110 shall operate so as to render unlawful or invalid any payment of wages by the employer to the employee with the employee's written consent in any of the following ways:

- (a) payment into an account at a bank or a finance company licensed under the Banking and Financial Institutions Act 1989 [Act 372] in any part of Sabah being an account in the name of the employee or an account in the name of the employee jointly with one or more other person, not being his employer;
- (b) payment by cheque made payable to or to the order of the employee.

(2) The consent of the employee under this section may be withdrawn by him at any time by notice in writing given to the employer; and such notice shall take effect at but not before the end of the period of four weeks beginning with the day on which the notice is given.

(3) The consent of the employee to the mode of payment of wages under subsection (1) shall not be unreasonably withheld or, if granted, shall not be unreasonably withdrawn by the employee notwithstanding subsection (2).

(4) Any dispute as to whether an employee has unreasonably withheld or withdrawn his consent to the mode of payment of his wages under subsection (1) shall be referred to the Director whose decision on the matter shall be final.

[Ins. by Act A1238:s.86]

Section 111. [Deleted].

[Deleted by Act A1238:s.87]

Conditions restricting place at which, manner in which, and person with whom wages paid to be spent illegal.

[Am. by Act A1238:s.83]

112. No employer shall impose any condition in any contract of service as to the place at which, or the manner in which, or the person with whom, any wages paid to the employee are to be expended and any such condition in a contract of service shall be void and of no effect.

[Am. by Act A1238:s.2, 88]

Lawful deductions.

[Am. by Act A1238:s.89]

113. (1) No deductions shall be made by an employer from the wages of an employee otherwise than in accordance with the provisions of this Ordinance.

[Am. by Act A1238:s.2, 89]

(2) It shall be lawful for an employer to make the following deductions:

- (a) deductions to the extent of any overpayment of wages made during the immediately preceding three months from the month in which deductions are to be made, by the employer to the employee by the employer's mistake;
- (b) deductions for the indemnity due to the employer by the employee under subsection (1) of section 12;
- (c) deductions for the recovery of advances of wages made under section 102 provided no interest is charged on the advances; and
- (d) deductions authorized by any other written law.

(3) The following deductions shall only be made at the request in writing of the employee:

- (a) deductions in respect of the payments to a registered trade union or co-operative thrift and loan society of any sum of money due to the trade union or society by the employee on account of entrance fees, subscriptions, instalments and interest on loans or other dues; and
- (b) deductions in respect of the payments for any shares of the employer's business offered for sale by the employer and purchased by the employee.

(4) The following deductions shall not be made except at the request in writing of the employee and with the prior permission in writing of the Director:

- (a) deductions in respect of payments into any superannuation scheme, provident fund, employer's welfare scheme or insurance scheme established for the benefit of the employee;
- (b) deductions in respect of repayments of advances of wages made to an employee under section 102 where interest is levied on the advances and deductions in respect of the payments of the interest so levied;
- (c) deductions in respect of payments to a third party on behalf of the employee;
- (d) deductions in respect of payments for the purchase by the employee of any goods of the employer's business offered for sale by the employer; and
- (e) deductions in respect of the rental for accommodation and the cost of services, food and meals provided by the employer to the employee at the employee's request or under the terms of the employee's contract of service.

(5) The Director shall not permit any deduction for payment under paragraph (e) of subsection (4) unless he is satisfied that the provision of the accommodation, services, food or meals is for the benefit of the employee.

(6) Where an employee obtains foodstuffs, provisions or other goods on credit from a shop the business of which is carried on by a co-operative society registered under the Co-operative Societies Act 1993 [Act 502], it shall be lawful for his employer, at the request in writing of the employee and with the agreement of the manager of the co-operative shop to make deductions from the wages of the employee of an amount not exceeding the amount of the credit and to pay the amount so deducted to the manager in satisfaction of the employee's debt.

(7) Notwithstanding subsections (2), (3), (4) and (6) the Director, on an application by an employer or a specified class or classes of employers, may permit any deduction for a specified purpose from the wages of an employee or a specified class or classes of employees subject to such conditions as he may deem fit to impose.

(8) The total of any amounts deducted under this section from the wages of an employee in respect of any one month shall not exceed fifty per centum of the wages earned by that employee in that month.

(9) The limitation in subsection (8) shall not apply to—

- (a) deductions from the indemnity payable by an employer to an employee under subsection (1) of section 12;
- (b) deductions from the final payment of the wages of an employee for any amount due to the employer and remaining unpaid by the employee on the termination of the employee's contract of service; and
- (c) deductions for the repayment of a housing loan which, subject to the prior permission in writing of the Director, may exceed the fifty per centum limit by an additional amount of not more than twenty-five per centum of the wages earned.

[Subs. by Act A1238:s.89]

Interest on advances forbidden.

114. No employer shall—

- (a) make any deduction; or
- (b) receive any payment,

from any employee by way of discount, interest or any similar charge on account of any advance or advances of wages made to an employee in anticipation of the regular date for the payment of wages, where such advance or advances do not exceed in the aggregate one month's wages.

[Subs. by Act A1238:s.90]

Deductions for fines, etc.

115. Except where otherwise expressly permitted by the provisions of this Ordinance or any rule made hereunder, no employer shall make any deduction or make any agreement or contract with an employee for any deduction from wages to be paid by the employer to the

employee or for any payment to the employer by the employee for or in respect of any fine, or of bad or negligent work or of injury to the materials or other property of the employer.

[Am. by Act A1238:s.91]

Remuneration other than wages.

116. (1) Nothing in this Chapter shall render illegal a contract of service with an employee under which the employer agrees to provide the employee with house accommodation, food, fuel, light, water, medical attendance, or any approved amenity or approved service in addition to wages but no employer shall provide any employee with any intoxicating liquor as part of the terms of a contract of service.

(2) The Director may, on application made to him in writing by an employer, approve in writing any amenity or service as an approved amenity or approved service, and in granting such approval the Director may make such modifications or impose such conditions as he may deem proper.

(3) Any person who is dissatisfied with any decision of the Director under subsection (2) may, within thirty days of such decision being communicated to him, appeal in writing to the Minister.

(4) On any appeal made to him under subsection (3), the Minister may make such decision or order as appears just, and such decision or order shall be final.

[Subs. by Act A1238:s.92]

Priority of wages over other debts.

116A. (1) Where by order of a court made upon the application of any person holding a mortgage, charge, lien or decree (in this section referred to as "the secured creditor") or in the exercise of rights under a debenture the property of any person (in this section referred to as "the person liable") liable under any of the provisions of this Ordinance to pay the wages due to any employee or to pay money due to any subcontractor for labour is sold, or any money due to the person liable is attached or garnished, the Court or the receiver or manager shall not authorize payment of the proceeds of the sale, or of the money so attached or garnished, to the secured creditor or the debenture holder until the Court or the receiver or manager has ascertained and caused to be paid, out of such proceeds or money,

the wages of such employee, or the money due to any subcontractor for labour under a contract between him and the person liable, which the person liable was liable to pay at the date of such sale, attachment or garnishment:

Provided that this section shall only apply to the sale of a place of employment on which—

- (a) any employee to whom wages are due as aforesaid;
- (b) any employee to whom wages are due by such subcontractor for labour as aforesaid;
- (c) any subcontractor for labour to whom money is owed on account of the subcontract by the subcontractor for labour as aforesaid,

was employed or worked at the time when such wages were earned or such money accrued due, and to the proceeds of the sale of any products of such place of employment and of any movable property therein used in connection with such employment and to any money due to the person liable on account of work performed by such employee or subcontractor for labour or derived from the sale of the products of such work:

Provided further that—

- (a) where the person liable is an employer, the total amount of the wages of any employee to which priority over the claim of a secured creditor is given by this section shall not exceed the amount due by the employer to the employee as wages for any four consecutive months' work;
- (b) where the person liable is a principal and where the wages are claimed from such principal under section 116C, the total amount of the wages of any employee to which priority over the claim of a secured creditor is given by this section shall not exceed the amount due by the principal to the contractor at the date of the sale, attachment or garnishment unless the contractor is also a subcontractor for labour;
- (c) where the person liable is a contractor or subcontractor who owes money to a subcontractor for labour, the total amount due to such subcontractor for labour to which priority over the claim of a secured creditor is given by this section shall

not exceed the amount due by such subcontractor for labour to his employees (including any further subcontractors for labour under such first-mentioned subcontractor for labour) for any four consecutive months' work.

(2) In this section, except for the second proviso to subsection (1), "wages" includes termination and lay-off benefits, annual leave pay, sick leave pay, public holiday pay and maternity allowance.

[Ins. by Act A1238:s.93]

Reference by the Court to Director.

116B.(1) For the purposes of ascertaining the amount due to any employee or subcontractor for labour under section 116A, the court or the receiver or manager may refer the question to the Director with a request that he hold an inquiry into the matter and forward his findings to the court or the receiver or manager, and the Director shall comply with any such request.

(2) For the purpose of any inquiry under subsection (1), the Director shall have all the powers conferred upon him by paragraph (f) of section 7F and section 7O shall have effect as if the inquiry were being held under section 7A.

[Ins. by Act A1238:s.93]

Liability of principals and contractors for wages.

116C.(1) Where a principal in the course of or for the purposes of his trade or business, contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, and any wages are due to any employee by the contractor or any subcontractor under the contractor for work done in the course of the performance of the contract, the principal and the contractor and any such subcontractor (not being the employer) shall be jointly and severally liable with the employer to pay such wages as if that employee had been immediately employed by the principal and by the contractor and any such subcontractor:

Provided that—

- (a) in the case of a contract for constructional work, the principal shall not be liable for the payment of wages under this subsection unless he is also a constructional contractor or a housing developer;
 - (b) the principal, and the contractor and any subcontractor (not being the employer), shall not be liable to any employee under this subsection for more than the wages due to him for any three consecutive months; and
 - (c) the employee shall have instituted proceedings against the principal for the recovery of his wages or made a complaint to the Director under Chapter IIA within ninety days from the date on which such wages became due for payment by his employer in accordance with the provisions for the payment of wages contained in Part IV.
- (2) Any person, other than the employer, who has paid wages under this section to the employee of any employer may institute civil proceedings against such employer for the recovery of the amount of wages so paid.

[Ins. by Act A1238:s.93]

CHAPTER XIVA

Employment of Non Resident employee

Section 117. [Deleted].

[Deleted by Act A1238:s.95]

Employment of non resident employee and priority for resident employee.

118. (1) No person shall employ any non- resident employee unless he has obtained from the Director a Licence to Employ Non-Resident Employee.

(2) The power of the Director to issue a Licence to Employ Non-Resident Employee shall be subject to the laws on immigration applicable to Sabah and such Licence shall be in such form and subject to such conditions as may be prescribed.

[Subs. by Act A1238:s.96]

Duty to furnish information and returns.

118A. (1) An employer who employs a non-resident employee shall, within fourteen days of the employment, furnish the nearest office of the Director with the particulars of the non-resident employee in such manner as may be determined by the Director.

(2) An employer or any specified class or classes of employers, whenever required to do so by the Director, shall furnish returns of particulars relating to the employment of a non-resident employee in such manner and at such intervals as the Director may direct.

[Ins. by Act A1238:s.97]

Director may inquire into complaint.

118B. The Director may inquire into any complaint from a resident employee that he is being discriminated against in relation to a non-resident employee, or from a non-resident employee that he is being discriminated against in relation to a resident employee, by his employer in respect of the terms and conditions of his employment; and the Director may issue to the employer such directives as may be necessary or expedient to resolve the matter.

[Ins. by Act A1238:s.97]

Prohibition on termination of resident employee for non-resident employee.

118C. No employer shall terminate the contract of service of a resident employee for the purpose of employing a non-resident employee.

[Ins. by Act A1238:s.97]

Termination of employment by reason of redundancy.

118D. Where an employer is required to reduce his workforce by reason of redundancy necessitating the retrenchment of any number of employees, the employer shall not terminate the services of a resident employee unless he has first terminated the services of all non-resident employees employed by him in a capacity similar to that of the resident employee.

[Ins. by Act A1238:s.97]

Permanent resident exempted from this Chapter.

118E. For the purposes of this Chapter, the term "non-resident employee" shall not include a non-resident employee who is a permanent resident of Sabah.

[Ins. by Act A1238:s.97]

Section 119. [Deleted].

[Deleted by Act A1238:s.98]

Section 120. [Deleted].

[Deleted by Act A1238:s.98]

Section 121. [Deleted].

[Deleted by Act A1238:s.98]

PART V

PROCEDURE, OFFENCES, PENALTIES, RULES,
SAVINGS, REPEAL

CHAPTER XVI

General

Section 122. [Deleted].

[Deleted by Act A1238:s.101]

Section 123. [Deleted].

[Deleted by Act A1238:s.101]

Prosecution.

123A. No prosecution shall be instituted for an offence under this Ordinance or any rules made under this Ordinance without the consent in writing of the Public Prosecutor.

[Ins. Act A1238:s.102]

Power of court imposing fine.

123B. When under this Ordinance any court imposes a fine or enforces the payment of any sum secured by bond, the court may, if it thinks fit, direct that the whole or any part of such fine or sum when recovered be paid to the party complaining.

[Ins. Act A1238:s.102]

Effect of imprisonment.

123C. From and after the determination of any imprisonment suffered under this Ordinance for non-payment of the amount of any fine, together with the costs assessed and directed to be paid by any order of court, the amount so ordered shall be deemed to be liquidated and discharged, and the order shall be annulled.

Right of audience.

124. The Director, or any officer authorized in writing by the Director, shall have the right to appear and be heard before a Magistrates' Court or a Sessions Court in any civil proceedings under or arising out of this Ordinance, or any rules made under this Ordinance; and such right shall include the right to appear and represent an employee in any such proceedings.

[Subs. Act A1238:s.103]

Public servants.

125. For the purpose of this Ordinance and of the Penal Code *[Cap 96]*, the Director and all officers duly appointed or authorised under this Ordinance shall be deemed to be public servants.

Protection of Director and officers.

125A. No suit shall lie against the Director and all officers duly appointed or authorized under this Ordinance for anything done or omitted to be done by him in good faith without negligence and in the intended exercise of any power conferred or performance of any duty imposed by this Ordinance.

[Ins. Act A1238:s.103]

Section 126. [Deleted].

[Deleted by Act A1238:s.101]

Saving clause as to civil jurisdiction of court.

127. Nothing in this Ordinance shall be construed as preventing any employer or employee from enforcing his civil rights and remedies for any breach or non-performance of a contract

of service by any suit in court in any case in which proceedings have not been instituted before the Director under section 7A or, if instituted, have been withdrawn.

[Subs. Act A1238:s.106]

Onus of proof.

128. (1) In all proceedings under this Ordinance the onus of proving that he is not the employer or the person whose duty it is under this Ordinance or under any rule made hereunder to do or abstain from doing anything shall be on the person who alleges that he is not the employer or other person as the case may be.

[Am. Act A1238:s.107]

(2) A certificate purporting to be under the hand of the Director stating that any return required under section 59 has not been forwarded or is incorrect shall be sufficient prima facie evidence of the truth of the facts stated in such certificate.

Service of summons.

129. (1) A summons issued by the Director in accordance with section 6 and Chapter IIA may be served on any person by delivering or tendering to him a copy thereof signed by the Director:

[Am. Act A1238:s.108]

Provided that ---

- (a) if the person to be summoned has an agent authorised to accept service of the summons on his behalf, service on such agent shall be sufficient ;
- (b) if the person to be summoned cannot be found and has no agent authorised to accept service of the summons on his behalf, service on any adult male member (not being a domestic servant) of the family of the person to be summoned who is residing with him shall be sufficient.

[Am. Act A1238:s.108]

(2) When such summons as aforesaid is addressed to a corporation it may be served ---

- (a) by leaving a copy thereof, signed by the Director, at the registered office, if any, of the corporation ; or
- (b) by sending such copy by post in a letter addressed to the corporation at its principal office, whether such office be situated within Malaysia or elsewhere ; or

[Am. Act A1238:s.108]

- (c) by delivering such copy to any director, secretary or other principal officer of the corporation.

(2A) When such summons is addressed to a firm, it may be served—

- (a) by leaving a copy thereof, signed by the Director, at the principal place at which the partnership business is carried on;
- (b) by sending such copy by registered post in a letter addressed to the firm at its principal office, whether such office be situated within Malaysia or elsewhere; or
- (c) by delivering such copy to any one or more of the partners in such firm or to any person having, at the time of service, the control or management of the partnership business at the principal place at which the partnership business is carried on within Malaysia.

[Ins. Act A1238:s.108]

(3) When the serving officer delivers or tenders a copy of the summons to the person to be summoned or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

(4) If ---

- (a) such person refuses or is unable to sign the acknowledgment ; or
- (b) the serving officer cannot find the person to be summoned and there is no agent empowered to accept service of the summons on his behalf nor any other person on whom the service can be made ;

the service officer shall affix a copy of the summons on the outer door of the house which the person to be summoned ordinarily resides and then return the original to the Director with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and the circumstances under which he did so.

[Am. Act A1238:s.108]

(5) The serving officer shall, in all cases in which the summons has been served under subsection (3), endorse or annex, or cause to be endorsed or annexed, on or to the original summons a return stating the time when and the manner in which the summons was served.

(6) When a summons is returned under subsection (4), the Director shall, if the return under the subsection has not been verified by the affidavit of the serving officer, and may if it has been so verified, examine the serving officer on affirmation touching his proceedings and may make such further enquiry in the matter as he thinks fit and shall either declare that the summons has been duly served or order such service as he thinks fit.

(7) When the Director is satisfied that there is reason to believe that the person to be summoned is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way, the Director may order the summons to be served by affixing a copy thereof in some conspicuous place or near the office of the Director and also upon some conspicuous part of the house, if any, in which the person to be summoned is known to have last resided, or in such other manner as the Director thinks fit, or may order the substitution of service of notice by advertisement in the *Gazette* and in such local newspaper or newspapers as the Director may think fit.

[Am. Act A1238:s.108]

(8) The service substituted by order of the Director shall be as effectual as if it had been made personally on the person to be summoned.

(9) Whenever service is substituted by order of the Director, the Director shall fix such time for the appearance of the person to be summoned as the case may require.

(10) Any order or notice in writing made or issued by the Director in the exercise of powers conferred by this Ordinance may be served as if the same were a summons, and the

provisions of this section, other than subsection (9), shall apply to the service of any such order or notice.

[Am. Act A1238:s.108]

Incapacity of Director hearing inquiry.

129A. Where the Director has, for the purpose of inquiring into any matter under this Ordinance, taken down any evidence or made any memorandum and is prevented by death, transfer or other cause from concluding such inquiry, any successor to such Director or other officer may deal with such evidence or memorandum as if he had taken it down or made it and proceed with the inquiry from the stage at which such Director left it.

[Ins. Act A1238:s.109]

Section 130. [Deleted]

[Deleted by Act A1238:s.110]

CHAPTER XVIA

Offences and penalties

Under sections 3 to 6.

130A. Any person who—

- (a) refuses the Director exercising his powers under this Ordinance, access to any premises or any part thereof;
- (b) assaults, obstructs, hinders or delays the Director in effecting any entrance into any premises or any part thereof which he is entitled to effect;
- (c) furnishes the Director as true, information which he knows or has reason to believe to be false; or
- (d) fails to produce, or conceals or attempts to conceal any document which he may be required to produce under this Ordinance or hinders or obstructs the Director in effecting possession of the documents,

commits an offence and shall on conviction be liable to a fine of ten thousand ringgit and in the case of a continuing offence, to a fine of one hundred ringgit for each day during which such offence is continued after conviction.

[Ins. Act A1238:s.111]

Offence in connection with inquiry or inspection.

130B. In any inquiry, investigation, entry or inspection made by the Director, or by any officer lawfully exercising the powers of the Director under this Ordinance, any person committing with respect to such inquiry, investigation, entry or inspection any offence described in Chapter X of the Penal Code shall on conviction be punished as prescribed in such Chapter.

[Ins. Act A1238:s.111]

Under Chapter IIA.

130C. If—

- (a) any person fails to comply with an order or decision of the Director made under subsection (1) of section 7A, subsection (1) of section 7C or subsection (1) of section 7D; or
- (b) any employer prevents or attempts to prevent any employee from appearing before the Director under Chapter IIA,

he commits an offence and shall on conviction be liable, to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a fine not exceeding one hundred ringgit for each day during which such offence is continued after conviction.

[Ins. Act A1238:s.111]

Under Chapter IV.

130D. Every employer who—

- (a) fails to make payment in accordance with the provisions of section 10 or contravenes the provisions of section 13; or
- (b) fails to comply with the provisions of Chapter IV (other than sections 10 and 13);

commits an offence, and shall on conviction be liable on conviction to a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

Under Chapter X.

130E. An employer who—

- (a) being an owner of any estate, mine or factory to which section 57 applies, fails to comply with the requirements of that section;
- (b) fails to keep a register required under section 58 or 94A, or to preserve the register for a period of not less than six years;
- (c) destroys, alters or mutilates the register referred to in paragraph (a), or causes or permits the register to be destroyed, altered or mutilated;
- (d) fails to comply with any rules made under section 58A;
- (e) fails, without reasonable cause (proof of which shall lie on him), to forward to the Director such returns as are prescribed under section 59 or forwards any of the returns knowing that it contains any false particulars; or
- (f) fails to give notice under section 59A or gives such notice containing any false particulars,

commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

Under Chapter XI.

130F. (1) Any person contravening any of the provisions of Chapter XI or of any rule or order made thereunder or who being the parent or guardian of a child or young person knowingly acquiesces in any such contravention in respect of such child or young person, commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) On the conviction of any person for an offence under subsection (1) the Director shall, if the person convicted is the holder of a licence under any written law in force on entertainment, inform the licensing authority concerned of the particulars of such conviction and the licensing authority may take such action as it considers appropriate.

[Ins. Act A1238:s.111]

Under Chapter XIA.

130G. An employer of a female employee commits an offence if the female employee is employed contrary to sections 75, 78 or 78A and shall be liable on conviction to a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

Under Chapter XIB.

130H. Any employer who—

- (a) fails to grant maternity leave to a female employee employed by him and entitled thereto under Chapter XIB;
- (b) fails to pay the maternity allowance to a female employee employed by him and entitled thereto under Chapter XIB or to her nominee, or to her personal legal representative;
- (c) fails to pay maternity allowance in the manner prescribed in section 85;
- (d) dismisses a female employee from her employment during the period in which she is entitled to maternity leave; or
- (e) contravenes the provisions of section 91A or 94A,

commits an offence and shall be liable on conviction, to a fine not exceeding ten thousand ringgit and shall also—

- (aa) in the event of a conviction for an offence under paragraph (a), be ordered by the court before which he is convicted to pay to the female employee concerned the maternity allowance to which she may be entitled under Chapter XIA in respect of every day on which the female employee had worked during the

eligible period referred to in paragraph (b) of subsection (1) of section 83, the payment so ordered being in addition to the wages payable to her, and the amount of maternity allowance so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court; and

- (ab) in the event of a conviction for an offence under paragraph (b), be ordered by the court before which he is convicted to pay to the female employee concerned the maternity allowance to which she is entitled, and the amount of maternity allowance so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

[Ins. Act A1238:s.111]

Under Chapter XII.

130I. Any employer who contravenes or fails to comply with the provisions of sections 96 and 98 commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit.

Under Chapter XIV.

130J. Any employer who—

- (a) makes to any employee any advance of wages in excess of that permitted under section 102;
- (b) contravenes any of the provisions of section 104B;
- (c) fails to pay the wages or indemnity due to any employee within the time prescribed in section 108;
- (d) pays wages, imposes any condition in a contract of service or makes any deduction or receives any payment in contravention of section 109, 110, 110A, 112 or 114;
- (e) makes deductions from the wages of an employee other than such deductions as are authorized by section 113;

- (f) gives any remuneration for services or receives any payment from an employer contrary to the provisions of this Ordinance;
- (g) fails to comply with any order of the Director;
- (h) provides any employee as part of the terms of his contract of service with any amenity or service or any intoxicating liquor in contravention of section 116; or
- (i) requires any employee to work on any occasion or under any circumstances which it is unlawful for him to require such employee to work,

commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

Penalties for failure or noncompliance in relation to rest days, overtime, holidays, annual leave and sick leave.

130K. (1) Any employer who fails to pay to any of his employees wages for work done by his employee on a rest day or pays wages less than the rate provided under section 104C, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the wages due for work done on every rest day at the rate provided under section 104C, and the amount of such wages shall be recoverable as if it were a fine imposed by such court.

(2) Any employer who fails to pay to any of his employees any overtime wages as provided under this Ordinance or any subsidiary legislation made thereunder, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the overtime wages due, and the amount of overtime wages so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

(3) Any employer who fails to pay to any of his employees wages as provided under section 103, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the wages due for any work done on any such holiday at the rate provided under section 103, and the amount of wages

so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

(4) Any employer who fails to grant to any of his employees annual leave or any part thereof as provided under section 104D, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the ordinary rate of pay in respect of every day of such leave not so granted, the payment so ordered being in addition to the wages payable to the employee for the work done on any such day, and the amount so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

(5) Any employer who fails to grant sick leave, or fails to pay sick leave pay, to any of his employees, as provided under section 104E, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the sick leave pay for every day of such sick leave at the rate provided under section 104E, and the amount so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

[Ins. Act A1238:s.111]

Under Chapter XIVA.

130L. An employer who fails to comply with Chapter XIVA, or any person who forges, alters or tampers with a Licence To Employ Non-Resident Employee or any person in possession of a forged, altered or tampered Licence To Employ Non-Resident Employee, commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for six months or to both.

[Ins. Act A1238:s.111]

General penalty.

130M. Any person who commits any offence under this Ordinance or any rule, order or other subsidiary legislation made thereunder, in respect of which no penalty is provided, shall be liable, on conviction, to a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

Power to compound offences.

130N. (1) The Director, Deputy Directors of Labour or Senior Assistant Directors of Labour appointed under paragraph (a) or (b) of subsection (1A) of section 3 may, compound any offence committed by a person which is punishable under this Ordinance or any rule made under this Ordinance.

(2) The Director, a Deputy Director of Labour or a Senior Assistant Director of Labour may, in a case where he deems it fit and proper so to do, compound an offence by making a written offer to the person who has committed the offence to compound the offence on payment to the Director, Deputy Director of Labour or Senior Assistant Director of Labour as the case may be, within such time as may be specified in the offer, of such sum of money, as may be specified in the offer, which shall not exceed fifty per centum of the amount of the maximum fine (including the daily fine, if any, in the case of a continuing offence) to which the person would have been liable if he had been convicted of the offence.

(3) An offer under subsection (2) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as the Director, Deputy Director of Labour or Senior Assistant Director of Labour may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2)—

(a) no prosecution shall thereafter be instituted in respect of the offence against the person to whom the offer to compound was made; and

(b) any book, register or document seized in connection with the offence shall be released immediately.

(5) Any moneys paid to the Director, Deputy Directors of Labour or Senior Assistant Directors of Labour pursuant to subsection (2), shall be paid into and form part of the Federal Consolidated Fund.

[Ins. Act A1238:s.111]

CHAPTER XVIB

Rules

Power to make rules.

130O.(1) The Minister may from time to time, after consultation with the State Authority, make such rules as may be necessary or expedient for giving full effect to the provisions of this Ordinance, or for the further, better or more convenient implementation of the provisions of this Ordinance.

(2) Without prejudice to the generality of the foregoing, the Minister may make rules—

- (a) limiting the powers of officers appointed under subsection (1A) of section 3;
- (b) prescribing the conditions under which female employees may work at night;
- (c) prescribing the rate of the maternity allowance to which female employees shall be entitled during the eligible period;
- (d) prescribing the maximum period during which notice of dismissal given by her employer to a female employee who is absent from her work as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement shall not expire;
- (e) prescribing the times which employees shall be entitled to take off from work for meals and which they shall be entitled or required to take off for rest;
- (f) prescribing the form of any register, summons or order required to be kept, issued or made under this Ordinance;
- (g) prescribing the procedure for sending summonses, warrants and orders issued or made under this Ordinance in Sabah for service or execution in the Republic of Singapore and Brunei, and making provisions for the

service or execution in Sabah of summonses, warrants and orders issued or made in the Republic of Singapore and Brunei;

- (h) prescribing fees to be paid for filing of claims under section 7A and for copies of notes of evidence recorded under Chapter IIA;
- (i) prescribing the contents of a written contract required under subsection (3) of section 18;
- (j) to provide for the application of all or any of the provisions of the Ordinance to all domestic servants and to provide generally for the engagement, repatriation and working conditions of domestic servants;
- (k) to provide for the entitlement of employees and the payment by employers of termination, lay-off and retirement benefits;
- (l) to prescribe the conditions for the employment of part-time employees, including the manner in which the hours of work of such employees are to be computed for the purposes of determining whether such employee falls within the definition of a part-time employee;
- (m) to regulate the employment of children and young persons and may specify—
 - (i) the form of licence to be issued under section 73D and the conditions and restrictions to be attached to such licence;
 - (ii) the time which children and young persons employed shall be entitled to take off from work for meals or rest periods; and
 - (iii) the procedure to be followed by any Board appointed under subsection (2) of section 74A;
- (n) to regulate the manner and form in which applications shall be made for a Licence To Employ Non-Resident Employee under this Ordinance and may —

- (i) specify the particulars to be furnished upon every such application;
 - (ii) specify the conditions under which any licence may be issued;
 - (iii) prescribe the form of licence;
 - (iv) prescribe the fees payable therefor and the particulars to be set forth therein;
 - (v) determine the security to be furnished by applicant for licence;
 - (vi) require records to be kept by licensee; and
 - (vii) prescribe the maximum duration for the employment of non-resident employee;
- (o) provide for the establishment of a Fund or Board or other method of recovering the discharge of any liabilities and the expenses of recruitment and repatriation of employees upon such terms and conditions and subject to such control as he deems necessary; and
- (p) to prescribe for the calculation of overtime for piece rated employees under subsection (10) of section 104.

(3) Any such rule may provide a penalty for the breach or contravention thereof a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

CHAPTER XVII
Saving and Repeal

Existing Ordinances not affected.

131. Nothing in this Ordinance shall operate to relieve any employer of any duty or liability imposed upon him by the provisions of any other written law for the time being in force or to limit any powers given to any Federal or State Government officer by any such Ordinance.

[Am. Act A1238:s.112]

Saving and transitional of contracts, etc., entered into before this Ordinance.

132. Any contract of service lawfully entered into between any employer and any employee and any licence issued under section 118 valid and in force before the date of coming into force of this Ordinance shall, if it is still legally binding upon the parties, continue to be in force after such date and, subject to the express provisions contained in such contract or licence, the parties thereto shall be subject and entitled to the benefit of the provisions of this Ordinance within six months from the date of coming into operation of this section.

[Subs. Act A1238:s.113]

SCHEDULE

[Subsection (2) of section 2]

Employee

*Provision of the Ordinance
not applicable*

1. Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed two thousand five hundred ringgit a month.

2. Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which—

- (a) he is engaged in manual labour including such labour as an artisan or apprentice:

Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity, such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one-half of the total time during which he is required to work in such wage period;

- (b) he is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;
- (c) he supervises or oversees other employees engaged in manual labour employed by the same employer in and throughout the performance of their work;
- (d) he is engaged in recruiting employees;

- (e) he is engaged in any capacity in any vessel registered in Malaysia and who
- Definition of "ordinary rate of pay" in section 2, sections 103, 104, 104A, 104B, 104C, 104D, 104E and subsection (2) of section 105.

- (i) is not an officer certificated under the Merchant

Shipping Acts of the United Kingdom as amended from time to time;

(ii) is not the holder of a local certificate as defined in Part VII of the Merchant Shipping Ordinance 1952; or

(iii) has not entered into an agreement under Part III of the Merchant Shipping Ordinance 1952; or

(f) he is engaged as a domestic servant

Definition of "ordinary rate of pay" in section 2, sections 10 and 11, subsections (1) and (2) of section 13, sections 57, 58, Chapter XIB, sections 102, 103, 104, 104A, 104B, 104C, 104D, 104E, 104F, subsection (2) of section 105 and Chapter XIVA except section 118.

3. For the purpose of this Schedule, "wages" means wages as defined in section 2, but shall not include any payment by way of commission, subsistence allowance and overtime payment.

[Ins. Act A1238:s.114]