

CHAPTER 366

THE EMPLOYMENT AND LABOUR RELATIONS ACT

[PRINCIPAL LEGISLATION]

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SCHEDULES

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CHAPTER 366

THE EMPLOYMENT AND LABOUR RELATIONS ACT

An Act to make provisions for core labour rights, to establish basic employment standards, to provide a framework for collective bargaining, to provide for the prevention and settlement of disputes, and to provide for related matters.

[20th December, 2006]

[GN. No. 1 of 2007]

Acts Nos.	17 of 2010
6 of 2004	24 of 2015
8 of 2006	4 of 2016
21 of 2009	8 of 2021
2 of 2010	9 of 2021
11 of 2010	13 of 2023

PART I

PRELIMINARY PROVISIONS

Short title **1.** This Act may be cited as the Employment and Labour Relations Act.

Application
Acts Nos.
8 of 2021 s. 17
9 of 2021 s. 22 **2.**–(1) This Act shall apply to all employees including those in the public service of the Government of Tanzania in Mainland Tanzania but shall not apply to members, whether temporary or permanent, in the service of:

- (a) the Tanzania Peoples Defence Forces;
- (b) the Police Force;
- (c) the Prisons Service;
- (d) the National Service;
- (e) the Fire and Rescue Force; or
- (f) the Immigration Services Department.

(2) The Minister may, after consultation with the Council and the relevant Minister responsible for the service or services excluded under subsection (1) of this section, by notice published in the *Gazette*, determine the categories of

employees employed in the said services who may be excluded services to whom this Act may apply.

(3) The provisions of sections 5, 6 and 7 shall apply to members of the forces and services referred to in subsection (1).

Objects

3. The principal objects of this Act shall be-

- (a) to promote economic development through economic efficiency, productivity and social justice;
- (b) to provide the legal framework for effective and fair employment relations and minimum standards regarding conditions of work;
- (c) to provide a framework for voluntary collective bargaining;
- (d) to regulate the resort to industrial action as a means to resolve disputes;
- (e) to provide a framework for the resolution of disputes by mediation, arbitration and adjudication;
- (f) to give effect to the provisions of the Constitution of the United Republic of Tanzania, 1977 in so far as they apply to employment and labour relations and conditions of work; and
- (g) generally to give effect to the core Conventions of the International Labour Organisation as well as other ratified conventions.

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Interpretation
Act No.
24 of 2015 s. 4
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4. In this Act, unless the context requires otherwise-

“arbitrator” means an arbitrator appointed under section 19 of the Labour Institutions Act;

“basic wage” means that part of an employee’s remuneration paid in respect of work done during the hours ordinarily worked but does not include-

- (a) allowances, whether or not based on the employee’s basic wage;
- (b) pay for overtime worked in terms of section 20(5);

(c) additional pay for work on a Sunday or a public holiday; or

(d) additional pay for night work, as required under section 21(4);

“child” means a person under the age of 14 years: provided that for the employment in hazardous sectors, child means a person under the age of 18 years;

“collective agreement” means a written agreement concluded by a registered trade union and an employer or registered employers’ association on any labour matter;

“Commission” means the Commission for Mediation and Arbitration established under section 12 of the Labour Institutions Act;

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“complaint” means any dispute arising from the application, interpretation or implementation of-

(a) an agreement or contract with an employee;

(b) a collective agreement;

(c) this Act or any other written law administered by the Minister; and

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(d) Part VII of the Merchant Shipping Act;

“Council” means the Labour, Economic and Social Council established under section 3 of the Labour Institutions Act;

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“dispute” -

(a) means any dispute concerning a labour matter between any employer or registered employers’ association on the one hand, and any employee or registered trade union on the other hand; and

(b) includes an alleged dispute;

“dispute of interest” means any dispute except a complaint;

“employee” means an individual who-

(a) has entered into a contract of employment; or

(b) has entered into any other contract under which-

(i) the individual undertakes to work personally for the other party to the contract; and

(ii) the other party is not a client or customer of any profession, business, or undertaking carried on by the individual; or

(c) is deemed to be an employee by the Minister under section 99(3);

“employer” means any person, including the Government and an executive agency, who employs an employee;

“employers’ association” means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and their employees or the trade unions representing those employees;

“employment” means the performance of a contract of employment by parties to the contract, under employer-employee relationship;

“Essential Services Committee” means the Essential Services Committee established under section 29 of the Labour Institutions Act;

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“federation” means either an association of trade unions or an association of employers’ associations;

“Labour Commissioner” means the Labour Commissioner appointed under section 43(1) of the Labour Institutions Act;

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“Labour Court” means the Labour Division of the High Court established under section 51 of the Labour Institutions Act;

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“Labour matter” means any matter relating to employment or labour relations;

“lockout” means a total or partial refusal by one or more employers to allow their employees to work, if that refusal is to compel them to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;

“mediator” means a mediator appointed under section 19 of the Labour Institutions Act;

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“Minister” means the Minister for the time being responsible for labour;

- “operational requirements” means requirements based on the economic, technological, structural or similar needs of the employer;
- “organisation” means a trade union or an employers’ association;
- “protest action” means a total or partial stoppage of work by employees for the purpose of promoting or defending the socio-economic interests of workers but not for a purpose-
- (a) referred to in the definition of strike; or
 - (b) a dispute in respect of which there is a legal remedy;
- “registered organisation” means a registered trade union or registered employers’ association;
- “Registrar” means the Registrar appointed under section 43(2) of the Labour Institutions Act;
- “reinstatement” means that the contract of employment has revived with all its incidents and that the employee is entitled to all his rights during the period of absence from actual service;
- “remuneration” means the total value of all payments, in money or in kind, made or owing to an employee arising from the employment of that employee;
- “strike” means a total or partial stoppage of work by employees if the stoppage is to compel their employer, any other employer, or an employers’ association to which the employer belongs, to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;
- “specific task” means a task which is occasional or seasonal and is non-continuous in nature; and
- “trade union” means any number of employees associated together for the purpose, whether by itself or with other purposes, of regulating relations between employees and their employers or the employers’ associations to which the employers belong.

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PART II

FUNDAMENTAL RIGHTS AND PROTECTIONS

Sub-Part A - Child Labour

Prohibition of
child labour
Act No.
21 of 2009 s. 172

5.-(1) A person shall not employ a child under the age of fourteen years.

(2) A child of fourteen years of age may only be employed to do light work, which is not likely to be harmful to the child's health and development; and does not prejudice the child's attendance at school, participation in vocational orientation or training programmes approved by the competent authority or the child's capacity to benefit from the instruction received.

(3) A child under eighteen years of age shall not be employed in a mine, factory or as crew on a ship or in any other worksite including non-formal settings and agriculture, where work conditions may be considered hazardous by the Minister.

(4) For purposes of subsection (3), "ship" includes a vessel of any description used for navigation.

(5) A person shall not employ a child in employment-

- (a) that is inappropriate for a person of that age; and
- (b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

(6) Notwithstanding the provisions of subsection (3), any written law regulating the provisions of training may permit a child under the age of eighteen to work-

- (a) on board a training ship as part of the child's training;
- (b) in a factory or a mine if that work is part of the child's training; or
- (c) in any other worksites on condition that the health, safety and morals of the child are fully protected and that the child has received or is receiving adequate specific instruction or vocational training in the relevant work or activity.

- (7) The Minister shall make regulations-
- (a) to prohibit, or place conditions on the employment and training of children under eighteen years of age; and
 - (b) to determine the forms of work referred to in subsection (5) of this Act and to make provision for the regular revision and updating of the list of hazardous forms of work.
- (8) It is an offence for any person-
- (a) to employ a child in contravention of this section; or
 - (b) to procure a child for employment in contravention of this section.

(9) In any proceedings under this section, if the age of the child is in issue, the burden of proving that it was reasonable to believe, after investigation, that the child was not under age for purposes of this section shall lie on the person employing or procuring the child for employment.

(10) Without prejudice to the provisions of this section, every employer shall ensure that every child lawfully employed under this Act is protected against discrimination or acts which may have negative effect on the child taking into consideration age and evolving capacities.

Sub-Part B: Forced Labour

Prohibition of
forced labour

6.-(1) A person who procures, demands or imposes forced labour, commits an offence.

(2) For purposes of this section, forced labour includes bonded labour or any work exacted from a person under the threat of a penalty and to which that person has not consented but does not include-

- (a) any work exacted under the National Defence Act, for work of a purely military character;
- (b) any work that forms part of the normal civic obligations of a citizen of the United Republic of Tanzania;
- (c) any work exacted from any person as a consequence of a conviction in a court of law, provided that the work is carried out under the supervision and control of a

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- public authority and that the person is not hired to, or placed at, the disposal of private persons;
- (d) any work exacted in cases of an emergency or a circumstance that would endanger the existence or the well-being of the whole or part of the population; or
 - (e) minor communal services performed by the members of a community in the direct interest of that community after consultation with them or their direct representatives on the need for the services.

Sub-Part C: Discrimination

Prohibition of
discrimination in
work place

7.-(1) Every employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice.

(2) An employer shall register, with the Labour Commissioner, a plan to promote equal opportunity and to eliminate discrimination in the work place.

(3) The Labour Commissioner may require an employer-

- (a) to develop a plan prescribed in subsection (2); and
- (b) to register the plan with the Commissioner.

(4) An employer shall not discriminate, directly or indirectly, against an employee, in any employment policy or practice, on any of the following grounds:

- (a) colour;
- (b) nationality;
- (c) tribe or place of origin;
- (d) race;
- (e) national extraction;
- (f) social origin;
- (g) political opinion or religion;
- (h) sex;
- (i) gender;
- (j) pregnancy;
- (k) marital status or family responsibility;
- (l) disability;
- (m) HIV/Aids;

- (n) age; or
- (o) station of life.

(5) Harassment of an employee shall be a form of discrimination and shall be prohibited on any one, or combination, of the grounds prescribed in subsection (4).

(6) It is not discrimination-

- (a) to take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace;
- (b) to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job; or
- (c) to employ citizens in accordance with the National Employment Promotion Services Act.

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(7) A person who contravenes the provisions of subsections (4) and (5), commits an offence.

(8) In any proceedings-

- (a) where the employee makes out a *prima facie* case of discrimination by the employer on any of the grounds prescribed in subsection (4), it shall be the duty of the employer to prove-
 - (i) that the discrimination did not take place as alleged; or
 - (ii) that the discriminatory act or omission is not based on any of those grounds;
- (b) employer shall prove a defence in terms of subsection (6) if the discrimination did take place on a ground stipulated in subsection (5); or
- (c) the Labour Court or arbitrator, as the case may be, shall take into account any plan registered with the Labour Commissioner under this section.

(9) For purposes of this section-

- (a) “employer” includes an employment agency;
- (b) “employee” includes an applicant for employment; and
- (c) an “employment policy or practice” includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments

and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion transfer, demotion, termination of employment and disciplinary measures.

(10) For the avoidance of doubt every employer shall take positive steps to guarantee equal remuneration for men and women for work of equal value.

Prohibition of discrimination in trade unions and employer associations

8.-(1) Trade union or employers' association shall not discriminate, directly or indirectly, against any of the grounds prescribed in section 7(4)-

- (a) in its admission, representation or termination of membership;
- (b) in any employment policy or practice prescribed in section 7(9); or
- (c) in any collective agreement.

(2) A person who contravenes the provisions of subsection (1), commits an offence.

Sub-Part D - Freedom of Association

Employee's right to freedom of association

9.-(1) Every employee shall have the right-

- (a) to form and join a trade union; or
- (b) to participate in the lawful activities of the trade union.

(2) Notwithstanding the provisions of subsection (1)-

- (a) a magistrate may only form or join a trade union that restricts its membership to judicial officers;
- (b) a prosecutor may only form or join a trade union that restricts its membership to prosecutors or other court officials;
- (c) a senior management employee may not belong to a trade union that represents the non-senior management employees of the employer.

(3) A person shall not discriminate against an employee on the grounds that the employee-

- (a) exercises or has exercised any right under this Act or any other written law administered by the Minister;
- (b) belongs to or has belonged to a trade union; or
- (c) participates or has participated in the lawful activities of a trade union.

(4) A person shall not discriminate against an official of an office bearer of a trade union or federation for representing it or participating in its lawful activities.

(5) A person who contravenes the provisions of subsections (3) and (4), commits an offence.

(6) For purposes of this section -

- (a) “employee” includes an applicant for employment; and
- (b) “senior management employee” means an employee who, by virtue of that employee’s position-
 - (i) makes policy on behalf of the employer; and
 - (ii) is authorised to conclude collective agreements on behalf of the employer.

Employer’s right to freedom of association

10.-(1) Every employer shall have the right-

- (a) to form and join an employer’s association; or
- (b) to participate in the lawful activities of an employer’s association.

(2) A person shall not discriminate against an employer on the grounds that the employer-

- (a) exercises or has exercised a right under the Act;
- (b) belongs or has belonged to an employer’s association; or
- (c) participates or has participated in the lawful activities of an employer’s association.

(3) A person shall not discriminate against an official or office bearer of an employer’s association or federation for representing it or participating in its lawful activities.

(4) A person who contravenes the provisions of subsections (2) and (3), commits an offence.

Rights of trade unions and employers' associations

- 11.** Every organisation has the right to-
- (a) determine its own constitution;
 - (b) plan and organise its administration and lawful activities;
 - (c) join and form a federation;
 - (d) participate in the lawful activities of a federation; and
 - (e) affiliate with, and participate in the affairs of any international workers' organisation or international employers' organisation or the International Labour Organisation, and to contribute to, or receive financial assistance from those organisations.

Sub-Part E- Access to health insurance¹

Access to health insurance Act No. 13 of 2023 s.65

12.-(1) Subject to the provisions of the Universal Health Insurance Act, the employer shall register his employee with a health insurance scheme.

(2) A person who contravenes the provisions of this section commits an offence.

[s. 11A]

**PART III
EMPLOYMENT STANDARDS**

Sub-Part A - Preliminary

Application of this Part Cap. 165

13.-(1) Subject to the provisions of subsection (2), the provisions of Sub-Parts A to D and F shall not apply to seafarers whose terms and conditions of employment are regulated under the Merchant Shipping Act.

(2) Notwithstanding the provisions of subsection (1), the provisions of this Part apply to seafarers who work on fishing vessels and shall be to the extent that in the event there is any conflict between the provisions of this Act and the Merchant Shipping Act and its regulations, the provisions of this Act shall prevail.

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¹ This sub-part was added by Act No 13 of 2023, s. 65.

(3) Where the provisions of any written law relating to vocational training regulates an employment standard stipulated in section 14(1), the provisions of that other law shall apply.

[s. 12]

Employment standards

14.—(1) Provisions of this Act on wage determination that stipulate a minimum term and condition of employment shall be an employment standard.

(2) An employment standard constitutes a term of a contract with an employee unless-

- (a) a term of the contract contains a term that is more favourable to the employee;
- (b) a provision of an agreement alters the employment standard to the extent permitted by the provisions of this Part; or
- (c) a provision of any collective agreement, a written law regulating employment, wage determination or exemption granted under section 101 alters the employment standard.

[s. 13]

Contracts with employees
Act No.
24 of 2015 s. 5

15.—(1) A contract with an employee shall be of the following types:

- (a) a contract for an unspecified period of time;
- (b) a contract for a specified period of time for professionals and managerial cadre; and
- (c) a contract for a specific task.

(2) A contract with an employee shall be in writing if the contract provides that the employee is to work within or outside the United Republic of Tanzania.

[s. 14]

Written statement of particulars

16.—(1) Subject to the provisions of section 20(2), an employer shall supply an employee, when the employee commences employment, with the following particulars in writing, namely-

- (a) name, age, permanent address and sex of the employee;

- (b) place of recruitment;
- (c) job description;
- (d) date of commencement;
- (e) form and duration of the contract;
- (f) place of work;
- (g) hours of work;
- (h) remuneration, the method of its calculation, and details of any benefits or payments in kind; and
- (i) any other prescribed matter.

(2) Where all the particulars referred to in subsection (1) are stated in a written contract and the employer has supplied the employee with that contract, then the employer may not furnish the written statement.

(3) Where an employee does not understand the written particulars, the employer shall ensure that they are explained to the employee in a manner that the employee understands.

(4) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the written particulars to reflect the change and notify the employee of the change in writing.

(5) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.

(6) Where in any legal proceedings, an employer fails to produce a written contract or the written particulars prescribed in subsection (1), the burden of proving or disproving an alleged term of employment stipulated in subsection (1) shall be on the employer.

(7) The provisions of this section shall not apply to an employee who works less than 6 days in a month for an employer.

[s. 15]

Informing
employees of
their rights

17. Every employer shall display a statement in the prescribed form of the employee's rights under this Act in a conspicuous place.

[s. 16]

Sub-Part B – Hours of work

Application of
this Sub-Part

18.–(1) The provisions of this Sub-Part shall not apply to employees who manage other employees on behalf of the employer and who report directly to a senior management employee specified in section 9(6)(b).

(2) The provisions of sections 20(1) and (3), 24(1), 25(1) and 26(1) shall not apply to work in an emergency which cannot be performed by employees during their ordinary hours of work.

[s. 17]

Interpretation

19. For purposes of this Sub-Part-

- (a) “day” means a period of 24 hours measured from the time when the employee normally starts work, and “daily” has a corresponding meaning;
- (b) “overtime” means work over and above ordinary hours of work; and
- (c) “week” means a period of seven days measured from the day the employee normally starts the working week and “weekly” has a corresponding meaning.

[s. 18]

Hours of work

20.–(1) Subject to the provisions of this Sub-Part, an employer shall not require or permit an employee to work more than 12 hours in any day.

(2) Subject to this Sub-Part, the maximum number of ordinary days or hours that an employee may be permitted or required to work are-

- (a) six days in any week;
- (b) 45 hours in any week; and
- (c) nine hours in any day.

(3) Subject to this Sub-Part, an employer shall not require or permit an employee to work overtime-

- (a) except in accordance with an agreement; and
- (b) more than 50 overtime hours in any four week cycle.

(4) An agreement under subsection (3) may not require an employee to work more than the 12-hour limit contained in subsection (1).

(5) An employer shall pay an employee not less than one and one-half times the employee's basic wage for any overtime worked.

[s. 19]

Night work

21.—(1) In this section, “night” means the hours after twenty hours and before six hours.

(2) It is prohibited for an employer to require or permit-

(a) pregnant employees to work at night-

(i) two months before the expected date of confinement; or

(ii) before that date if the employee produces a medical certificate that she is no longer fit to perform night work;

(b) mothers to work at night-

(i) for a period of 2 months after the date of birth;

(ii) before that date if the mother requests to work and produces a medical certificate that her and the baby's health shall not be endangered;

(iii) after that date if the mother produces a medical certificate that she is not yet fit to perform night work or that the baby's health does not permit the employee to work night shift;

(c) children under the age of 18 years;

(d) an employee who is medically certified as unfit to do night work.

(3) An employer shall transfer any employee working night shift who becomes certified as unfit to do night work unless it is impracticable.

(4) An employer shall pay an employee at least 5% of that employee's basic wage for each hour worked at night and if the hours worked are overtime hours, the 5% shall be calculated on the employee's overtime rate.

(5) For purposes of this section, a medical certificate means a certificate issued by a registered medical practitioner or any

other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

[s. 20]

Compressed
working week

22.-(1) A written agreement shall require or permit an employee to work up to twelve hours in a day, inclusive of any meal interval, without receiving overtime pay.

(2) An agreement under subsection (1) shall not require or permit an employee to work-

- (a) more than 5 days in a week;
- (b) more than 45 hours in a week; or
- (c) more than 10 hours overtime in a week.

[s. 21]

Averaging hours
of work

23.-(1) Notwithstanding the provisions of section 20 or 25, a collective agreement shall provide for the averaging of the ordinary and overtime hours of work over an agreed period.

(2) A collective agreement in subsection (1) shall not require or permit an employee to work more than an average of-

- (a) 40 ordinary hours of work per week calculated over the agreed period; or
- (b) ten hours overtime per week calculated over the agreed period.

(3) A collective agreement prescribed in subsection (1) shall not permit averaging for a period longer than a year.

[s. 22]

Break in working
day

24.-(1) Subject to this Part, an employer shall give an employee who works continuously for more than five hours a break of at least 60 minutes.

(2) An employer may require an employee to work during a break only if the work cannot be left unattended or cannot be performed by another employee.

(3) An employer shall not be obliged to pay an employee for the period of a break unless the employee is required to work, or to be available for work, during the break.

[s. 23]

Daily and weekly
rest periods

- 25.**—(1) An employer shall allow an employee-
- (a) a daily rest period of at least 12 consecutive hours between ending and recommencing work; or
 - (b) a weekly rest period of at least 24 hours between the last ordinary working day in the week and the first ordinary working day of the next week.
- (2) A daily rest period may be reduced to 8 hours where-
- (a) there is a written agreement to that effect; and
 - (b) the ordinary working hours are interrupted by an interval of at least three hours; or
 - (c) the employee lives on the premises of the workplace.
- (3) A weekly rest period may, by written agreement, provide for-
- (a) a rest period of at least 60 consecutive hours every two weeks; or
 - (b) a reduced weekly rest period by 8 hours if the rest period in the following week is extended equivalently.
- (4) An employee may only work during the weekly rest period referred to in subsection (1) where the employee has agreed to do so and provided that the employer shall pay the employee double the employee's hourly basic wage for each hour worked during the period.

[s. 24]

Public holidays
Cap. 35

- 26.** Where an employee works on a public holiday specified in the Public Holidays Act, the employer shall pay the employee double the employee's basic wage for each hour worked on that day.

[s. 25]

Sub-Part C - Remuneration

Calculation of
wage rates

- 27.**—(1) The provisions of this section apply, when, for any purpose of this Act, it is necessary to determine the applicable hourly, daily, weekly or monthly rate of pay.

(2) The hourly, daily, weekly or monthly wage rates shall be determined in accordance with the Table provided for in the First Schedule.

(3) Where an employee is employed on a basis other than time worked, that employee shall be considered, for purposes of this section, to be paid on a weekly basis and that employee's basic weekly wage shall be calculated on the amount earned

- (a) over the immediately preceding 13 weeks; or
- (b) where the employee has been in employment for less than 13 weeks, that period.

[s. 26]

Payment of
remuneration

28.-(1) An employer shall pay to an employee any monetary remuneration to which the employee is entitled-

- (a) during working hours at the place of work on the agreed pay day;
- (b) in cash, unless the employee agrees otherwise, in which case the payment shall be made either by-
 - (i) cheque payable to the employee; or
 - (ii) direct deposit into an account designated by the employee in writing; and
- (c) in a sealed envelope, if the payment is made in cash or by cheque.

(2) Each payment prescribed in subsection (1) shall be supported by a written statement of particulars in the prescribed form which-

- (a) shall accompany the payment if the payment is in cash or by cheque; or
- (b) shall be given to the employee in a sealed envelope if the payment is by direct deposit.

(3) Remuneration shall be due and payable at the end of contract period provided the employer may pay an advance before the due day on a mutually agreed day and, if such day is not agreed, at least once on completion of half the contract period; such advance shall not be considered a loan and shall not attract interest.

(4) Notwithstanding the provisions of subsection (1), the Minister may by regulations, provide for the partial payment of remuneration in the form of allowance in kind, but in no case alcoholic beverages or noxious drugs, in industries or occupations in which payment in the form of such allowance is customary or desirable, and any such allowance in kind shall be for the personal use of the employee and his or her family, and the value attributed to such allowance shall be fair and reasonable.

(5) An employer who contravenes the provisions of this section, commits an offence.

[s. 27]

Deductions
and other acts
concerning
remuneration

29.—(1) An employer shall not make any deduction from an employee's remuneration unless—

- (a) the deduction is required or permitted under a written law, collective agreement, wage determination, court order or arbitration award; or
- (b) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt.

(2) A deduction under subsection (1)(b) may be made to reimburse an employer for loss or damage only where—

- (a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
- (b) the employer has submitted to the employee, in writing, the cause, the amount and calculation of the debt;
- (c) the employer has given the employee a reasonable opportunity to challenge the cause, amount or calculation;
- (d) the total amount of the debt does not exceed the actual amount of the loss or damage; or
- (e) the total deductions from the employee's remuneration under this subsection do not exceed one quarter of the employee's remuneration in money.

(3) An agreement to make a deduction under subsection (1) (b) in respect of goods or services purchased by the employee shall specify the cause, amount and calculation of the debt.

(4) An employer who deducts an amount from an employee's remuneration under subsection (1) for payment to another person shall pay the amount to the person in accordance with any requirements specified in the agreement, law, determination, court order or arbitration award.

(5) An employer shall not require or permit an employee to-

- (a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or
- (b) acknowledge receipt of an amount greater than the remuneration actually received.

(6) Notwithstanding the provisions of any other law on bankruptcy or winding up of an employer's business, the claim of an employee or those claiming on behalf of the employee of any remuneration to which the employee is entitled under this Act, shall be the claim that which have accrued in respect of the twenty six weeks immediately preceding the date on which the declaration of bankruptcy or winding up is made.

(7) Any person who contravenes the provisions of this section, commits an offence.

[s. 28]

Sub-Part D - Leave

Application of
this Sub-Part

30.—(1) Subject to the provisions of subsection (2), an employee with less than six months service shall not be entitled to paid leave under the provisions of this Part.

(2) Notwithstanding the provisions of subsection (1)-

- (a) an employee employed on a seasonal basis is entitled to paid leave under the provisions of this Part;
- (b) an employee, with less than six months service and who has worked more than once in a year for the same employer, shall be entitled to paid leave under the provisions of this Part where the total period worked for that employer exceeds six months in that year.

[s. 29]

Interpretation in
this Sub-Part

31.–(1) For purposes of this Sub-Part-

- (a) “day” includes any rest period prescribed in section 25;
- (b) “leave cycle” means-
 - (i) in respect of annual leave, a period of 12 months consecutive employment with an employer following:
 - (aa) subject to subsection (2), an employee’s commencement of employment; or
 - (bb) the completion of the last 12 months leave cycle; and
 - (ii) in respect of all other forms of leave conferred under this Sub-Part, a period of 36 months’ consecutive employment with an employer following-
 - (aa) subject to subsection (2), an employee’s commencement of employment; or
 - (bb) the completion of the last 36 months leave cycle; and
- (c) “paid leave” means any leave paid under this Part and calculated on an employee’s basic wage.

(2) Notwithstanding the provisions of subsection (1)(b)(i) (aa) and (ii)(aa), an employer and employee may agree to a standard leave cycle provided that an employee’s entitlement to paid leave under this Sub-Part is not prejudiced.

[s. 30]

Annual leave
Act No.
24 of 2015 s. 6

32.–(1) An employer shall grant an employee at least 28 consecutive days’ leave in respect of each leave cycle, and such leave shall be inclusive of any public holiday that may fall within the period of leave.

(2) The number of days referred to in subsection (1) may be reduced by the number of days during the leave cycle which, at the request of the employee, the employer granted that employee paid occasional leave.

(3) An employer may determine when the annual leave is to be taken provided that it is taken no later than-

- (a) six months after the end of the leave cycle; or

- (b) twelve months after the end of the leave cycle where-
 - (i) the employee has consented; and
 - (ii) the extension is justified by the operational requirements of the employer.

(4) An employer shall pay an employee the remuneration the employee would have been paid had the employee worked during the period of leave before the commencement of the leave.

(5) An employer shall not require or permit an employee to take annual leave in place of any leave to which the employee is entitled under this Part.

(6) With the consent of an employee, the employer may require or permit such employee to work for the employer during a period of annual leave on condition that such employee shall not work for a continuous period of two years.

(7) Subject to subsections (6) and (8) an employer shall pay the employee one month salary in lieu of annual leave to which that employee is entitled or was called upon to work.

(8) An employer shall pay an employee a *pro rata* amount for annual leave accrued-

- (a) subject to the provisions of subsection (9), at the termination of employment; or
- (b) at the expiry of each season in respect of an employee employed on a seasonal basis.

(9) An employee is not entitled to be paid any *pro rata* amount for accrued annual leave where the employee has not taken the leave within the periods and circumstances prescribed in subsection (3).

(10) The *pro rata* amount of annual leave referred to in subsection (8) shall be calculated at the rate of one day's basic wage for every 13 days the employee worked or was entitled to work.

[s. 31]

Sick leave

33.-(1) An employee shall be entitled to sick leave for at least 126 days in any leave cycle.

(2) The sick leave referred to in subsection (1) shall be calculated as follows:

- (a) the first 63 days shall be paid full wages; and
- (b) the second 63 days shall be paid half wages.

(3) Notwithstanding the provisions of subsection (2), an employer shall not be required to pay an employee for sick leave where-

- (a) the employee fails to produce a medical certificate; or
- (b) the employee is entitled to paid sick leave under any law, fund or collective agreement.

(4) For purposes of this section, “medical certificate” means a certificate issued by a registered medical practitioner or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

[s. 32]

Maternity leave

34.-(1) An employee shall give notice to the employer of her intention to take maternity leave at least 3 months before the expected date of birth and such notice shall be supported by a medical certificate.

(2) An employee may commence maternity leave-

- (a) at any time from four weeks before the expected date of confinement; or
- (b) on an earlier date if a medical practitioner certifies that it is necessary for the employee’s health or that of her unborn child.

(3) An employee shall not work within six weeks of the birth of her child unless a medical practitioner certifies that she is fit to do so.

(4) Subject to the provisions of subsections (2) and (3), the employee may resume employment on the same terms and conditions of employment at the end of her maternity leave.

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

(6) Subject to the provisions of subsections (7) and (8), an employee shall be entitled, within any leave cycle, to at least-

- (a) 84 days paid maternity leave; or
- (b) 100 days' paid maternity leave if the employee gives birth to more than one child at the same time.

(7) Notwithstanding the provisions of subsection (6)(a), an employee is entitled to an additional 84 days paid maternity leave within the leave cycle if the child dies within a year of birth.

(8) An employer is only obliged to grant paid leave for 4 terms of maternity leave to an employee in terms of this section.

(9) Where an employee performs work that is hazardous to her health or that of her child, her employer shall offer her suitable alternative employment, where practicable, on terms and conditions that are no less favourable than her terms and conditions.

(10) Where an employee is breast-feeding a child, the employer shall allow the employee to feed the child during working hours up to a maximum of two hours per day.

(11) For purposes of this section, "medical certificate" means a certificate issued by a registered medical practitioner, including a midwife, or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

[s. 33]

Paternity and
other forms of
leave

35.-(1) During any leave cycle, an employee shall be entitled to-

- (a) at least 3 days paid paternity leave where-
 - (i) the leave is taken within 7 days of the birth of a child; and
 - (ii) the employee is the father of the child; and
- (b) at least 4 days paid leave for any of the following reasons:
 - (i) the sickness or death of the employee's child; or
 - (ii) the death of the employee's spouse, parent, grandparent, grandchild or sibling.

(2) Before paying an employee for leave under this section, an employer may require reasonable proof of the event prescribed in subsection (1).

(3) For purposes of clarity-

- (a) the 3 days referred to in subsection (1)(a) are the total number of days to which the employee is entitled irrespective of how many of the employee's children are born within the leave cycle;
- (b) the 4 days referred to in subsection (1)(b) are the total number of days to which the employee is entitled irrespective of how many of the events prescribed in that paragraph occur within the leave cycle, but the employee may take more days as may be authorised by the employer for the event and other subsequent events within the same leave cycle provided that such extra days will be without pay.

[s. 34]

Sub-Part E - Unfair termination of employment

Application of
this Sub-Part

36. The provisions of this Sub-Part shall not apply to an employee with less than 6 months' employment with the same employer, whether under one or more contracts.

[s. 35]

Interpretation

37. For purposes of this Sub-Part-

- (a) "termination of employment" includes-
 - (i) a lawful termination of employment under the common law;
 - (ii) a termination by an employer because the employer made continued employment intolerable for the employee;
 - (iii) a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal;

- (iv) a failure to allow an employee to resume work after taking maternity leave granted under this Act or any agreed maternity leave; and
 - (v) a failure to re-employ an employee where the employer has terminated the employment of a number of employees for the same or similar reasons and has offered to re-employ one or more of them; and
- (b) “terminate employment” has a meaning corresponding to “termination of employment”.

[s. 36]

Unfair
termination

38.—(1) It shall be unlawful for an employer to terminate the employment of an employee unfairly.

(2) A termination of employment by an employer is unfair if the employer fails to prove-

- (a) that the reason for the termination is valid;
- (b) that the reason is a fair reason-
 - (i) related to the employee’s conduct, capacity or compatibility; or
 - (ii) based on the operational requirements of the employer, and
- (c) that the employment was terminated in accordance with a fair procedure.

(3) It shall not be a fair reason to terminate the employment of an employee -

- (a) for the reason that the employee -
 - (i) discloses information that the employee is entitled or required to disclose to another person under this Act or any other law;
 - (ii) fails or refuses to do anything that an employer may not lawfully permit or require the employee to do;
 - (iii) exercises any right conferred by agreement, this Act or any other law;
 - (iv) belongs, or belonged, to any trade union; or

- (v) participates in the lawful activities of a trade union, including a lawful strike; or
- (b) for reasons-
 - (i) related to pregnancy;
 - (ii) related to disability; and
 - (iii) that constitute discrimination under this Act.

(4) In deciding whether a termination by an employer is fair, an employer, arbitrator or Labour Court shall take into account any Code of Good Practice published under section 100.

(5) A disciplinary action in form of penalty, termination or dismissal shall not lie upon an employee who has been charged with a criminal offence which is substantially the same until final determination by the Court and any appeal thereto.

[s. 37]

Termination
based on
operational
requirements
Acts Nos.
17 of 2010 s. 8
24 of 2015 s. 7

39.-(1) In any termination for operational requirements (retrenchment), the employer shall comply with the following principles, that is to say, he shall-

- (a) give notice of any intention to retrench as soon as it is contemplated;
- (b) disclose all relevant information on the intended retrenchment for the purpose of proper consultation;
- (c) consult prior to retrenchment or redundancy on-
 - (i) the reasons for the intended retrenchment;
 - (ii) any measures to avoid or minimise the intended retrenchment;
 - (iii) the method of selection of the employees to be retrenched;
 - (iv) the timing of the retrenchment; and
 - (v) severance pay in respect of the retrenchments; and
- (d) give the notice, make the disclosure and consult, in terms of this subsection, with-
 - (i) any trade union recognised in terms of section 68;
 - (ii) any registered trade union which members in the workplace not represented by a recognised trade union;

(iii) any employees not represented by a recognised or registered trade union.

(2) Where in the consultations held in terms of subsection (1) no agreement is reached between the parties, the matter shall be referred to mediation under Part VIII of this Act.

(3) Where the mediation has failed, the dispute shall be referred for arbitration which shall be concluded within thirty days during which period no retrenchment shall take effect and, where the employees are dissatisfied with the award and are desirous to proceed with revision to the Labour Court under section 92(2), the employer may proceed with their retrenchment.

[s. 38]

Proof of unfair termination proceedings

40. In any proceedings concerning unfair termination of an employee by an employer, the employer shall prove that the termination is fair.

[s. 39]

Remedies for unfair termination

41.—(1) Where an arbitrator or Labour Court finds a termination is unfair, the arbitrator or Court may order the employer-

- (a) to reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination;
- (b) to re-engage the employee on any terms that the arbitrator or Court may decide; or
- (c) to pay compensation to the employee of not less than twelve months remuneration.

(2) An order for compensation made under this section shall be in addition to, and not a substitute for, any other amount to which the employee may be entitled in terms of any law or agreement.

(3) Where an order of reinstatement or re-engagement is made by an arbitrator or Court and the employer decides not

to reinstate or re-engage the employee, the employer shall pay compensation of twelve months wages in addition to wages due and other benefits from the date of unfair termination to the date of final payment.

[s. 40]

Sub-Part F– Other incidents of Termination

Notice of
termination

42.–(1) Where a contract of employment can be terminated on notice, the period of notice shall not be less than-

- (a) seven days, where notice is given in the first month of employment; and
- (b) after that-
 - (i) 4 days, where the employee is employed on a daily or weekly basis; or
 - (ii) 28 days, where the employee is employed on a monthly basis.

(2) An agreement may provide for a notice period that is longer than that required in subsection (1) provided that, the agreed notice period is of equal duration for both the employer and the employee.

- (3) Notice of termination shall be in writing, stating-
 - (i) the reasons for termination; and
 - (ii) the date on which the notice is given.

(4) Notice of termination shall not be given-

- (a) during any period of leave taken under this Act; or
- (b) to run, concurrently with any such period of leave.

(5) Instead of giving an employee notice of termination, an employer may pay the employee the remuneration that the employee would have received if the employee had worked during the notice period.

(6) Where an employee refuses to work during the notice period, an employer may deduct, from any money due to that employee on termination, the amount that would have been due to the employee if that employee had worked during the notice period.

- (7) This section shall not affect the right of-
- (a) an employee to dispute the lawfulness or fairness of a termination of employment under this Act or any other law; and
 - (b) an employer or an employee to terminate employment without notice for any cause recognised by law.

[s. 41]

Severance pay
Act No.
2 of 2010 s. 13

43.—(1) For purposes of this section, “severance pay” means an amount at least equal to 7 days’ basic wage for each completed year of continuous service with that employer up to a maximum of ten years.

(2) An employer shall pay severance pay on termination of employment where-

- (a) the employee has completed 12 months continuous service with an employer; and
- (b) subject to the provisions of subsection (3), the employer terminates the employment.

(3) The provisions of subsection (2) shall not apply-

- (a) to a fair termination on grounds of misconduct;
- (b) to an employee who is terminated on grounds of capacity, compatibility or operational requirements of the employer but who unreasonably refuses to accept alternative employment with that employer or any other employer; or
- (c) to an employee who attains the age of retirement or an employee whose contract of service has expired or ended by reason of time.

(4) The payment of severance pay under this section shall not affect an employee’s right to any other amount payable under this or any other written law.

[s. 42]

Transport to place of recruitment **44.**—(1) Where an employee's contract of employment is terminated at a place other than where the employee was recruited, the employer shall either-

- (a) transport the employee and his personal effects to the place of recruitment;
- (b) pay for the transportation of the employee to the place of recruitment; or
- (c) pay the employee an allowance for transportation to the place of recruitment in accordance with subsection (2) and daily subsistence expenses during the period, if any, between the date of termination of the contract and the date of transporting the employee and his family to the place of recruitment.

(2) An allowance prescribed under subsection (1)(c) shall be equal to at least a bus fare to the bus station nearest to the place of recruitment.

(3) For purposes of this section, "recruit" means the solicitation of any employee for employment by the employer or the employer's agent.

[s. 43]

Payment of termination and certificates of employment

45.—(1) On termination of employment, an employer shall pay an employee-

- (a) any remuneration for work done before the termination;
- (b) any annual leave pay due to an employee under section 32 for leave that the employee has not taken;
- (c) any annual leave pay accrued during any incomplete leave cycle determined in accordance with section 32(1);
- (d) any notice pay due under section 42(5);
- (e) any severance pay due under section 43; and
- (f) any transport allowance that may be due under section 44.

(2) On termination, the employer shall issue to an employee a prescribed certificate of service.

[s. 44]

PART IV
TRADE UNIONS, EMPLOYERS
ASSOCIATIONS AND FEDERATIONS

Obligation to register

46.—(1) A trade union or employers' association shall register itself under this Part within 6 months of its establishment.

(2) A federation may register if it meets the requirements for registration of a federation in terms of section 47(3).

(3) It is an offence for a trade union or employer's association to operate as a union or association—

- (a) after 6 months have expired of its establishment if it has not applied for registration under this Part; or
- (b) unless it is registered under this Part.

[s. 45]

Requirements for registration

47.—(1) The requirements for registration as a trade union are—

- (a) it is a *bonafide* trade union;
- (b) it is an association not for gain;
- (c) it is independent of any employer or employer's association;
- (d) it has been established at a meeting of at least 20 employees;
- (e) it has adopted a constitution and rules that comply with provisions of section 48;
- (f) it has adopted a name that does not resemble the name of another union so as to mislead or create confusion; and
- (g) it has an address in the United Republic of Tanzania.

(2) The requirements for registration as an employers' association are—

- (a) it is a *bona fide* employers association;
- (b) it is an association not for gain;
- (c) it has been established at a meeting of at least four employers;
- (d) it has adopted a constitution and rules that comply with provisions of section 48;

- (e) it has adopted a name that does not resemble the name of another employer association so as to mislead or create confusion; and
- (f) it has an address in the United Republic of Tanzania.
- (3) The requirements for registration as a federation are-
 - (a) it is a *bona fide* federation;
 - (b) it is a federation not for gain;
 - (c) it has been established at a meeting of at least five registered organisations of the same kind;
 - (d) it has adopted a constitution and rules that comply with section 48;
 - (e) it has adopted a name that does not resemble the name of another organisation or federation so as to mislead or create confusion;
 - (f) it comprises registered organisations only; and
 - (g) it has an address in the United Republic of Tanzania.

[s. 46]

Constitutional requirements

48.-(1) The constitution and rules of a trade union, employers' association or federation shall-

- (a) state that it is an organisation not for gain;
- (b) prescribe the qualifications for membership and the grounds and procedure for termination of membership;
- (c) prescribe the membership fee or any method of determining the fee;
- (d) prescribe rules for the convening and conduct of meetings, including the quorum required, and the minutes to be kept of, those meetings;
- (e) establish the manner in which decisions are made;
- (f) establish the office of secretary and define its functions;
- (g) provide for office bearers, officials and define their respective functions;
- (h) prescribe a procedure for the nomination and election of office bearers;
- (i) prescribe a procedure for the appointment or nomination or election of officials;

- (j) establish the circumstances and manner in which office bearers, officials and trade union representatives may be removed from office;
 - (k) establish the circumstances and manner in which a ballot shall be conducted;
 - (l) provide for the conduct of a ballot of the members in respect of whom-
 - (i) in the case of a trade union, the union may call upon to strike;
 - (ii) in the case of an employers' association, the association may call upon to lock out; and
 - (iii) in the case of a federation of trade unions, the federation may call upon to engage in protest action;
 - (m) provide for banking and investing of money;
 - (n) establish purposes for which its money may be used;
 - (o) provide for acquiring and controlling of property;
 - (p) prescribe a procedure for the amendment of the constitution and rules;
 - (q) prescribe a procedure for affiliation, or amalgamation-
 - (i) in the case of trade unions, with other registered unions;
 - (ii) in the case of employer's associations, with other registered associations; and
 - (iii) in the case of federations, with other federations;
 - (r) prescribe a procedure for affiliation to an international workers' association or an international employers' association;
 - (s) prescribe a procedure to dissolve the organisation or federation; and
 - (t) any other prescribed matter.
- (2) A constitution or rules of a registered organisation shall not-
- (a) conflict with-
 - (i) the basic rights and duties set out in Part III of the Constitution of the United Republic of Tanzania, 1977; and

- (ii) the provisions of this law or any other written law; or
- (b) evade any obligation imposed by any law.

[s. 47]

Process of registration

49.—(1) An organisation or federation may apply for registration, by submitting to the Registrar-

- (a) a prescribed form that has been properly completed and signed by the secretary of the organisation or federation;
- (b) a certified copy of the attendance register and minutes of its establishment meeting prescribed in section 47(1)(d), (2)(c) or (3)(c); and
- (c) a certified copy of its constitution and rules.

(2) Notwithstanding the provisions of subsection (1), the Registrar may require further information in support of the application.

(3) Where the Registrar is satisfied that the organisation or federation has complied with the requirements of sections 47 and 48, he shall register the organisation or federation.

(4) Where the Registrar is not satisfied that the organisation or federation complies with the requirements of sections 47 and 48, he

- (a) may give the applicant an opportunity to rectify its application within a stipulated period; and
- (b) may refuse the application and send the applicant a written notice of the decision and the reasons.

(5) After registering an organisation or federation, the Registrar shall-

- (a) enter the name of the organisation or federation in the appropriate Register; and
- (b) issue a certificate of registration to the organisation or federation.

[s. 48]

Effect of
registration

50.–(1) On registration, an organisation or federation shall be a body corporate -

- (a) with perpetual succession and a common seal; and
- (b) with the capacity, in its own name, to-
 - (i) sue and be sued;
 - (ii) contract; and
 - (iii) hold, purchase or otherwise acquire and dispose of movable or immovable property.

(2) A registered organisation or federation shall not be an association in restraint of trade.

(3) The fact that a person is a member of a registered organisation or federation shall not make that person liable for any of the obligations or liabilities of the union or organisation.

(4) A member, office bearer, official of a registered organisation or federation shall not be personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith while performing their functions for or on behalf of the organisation or federation.

(5) A duly issued certificate of registration is sufficient proof that a registered organisation or federation is a body corporate.

(6) For purposes of this section, “office bearer” in relation to a trade union includes a trade union representative prescribed in section 63.

[s. 49]

Change of name
or constitution

51.–(1) A change of name or change to the constitution and rules of a registered organisation or federation shall have effect only when the Registrar approves the change under this section.

(2) A registered organisation or federation may apply for the approval of a change of name or to its constitution and rules by submitting to the Registrar-

- (a) the prescribed form duly completed and signed by the Secretary;
- (b) a copy of the resolution containing the wording of the change; and

(c) a certificate signed by the Secretary stating that the resolution was passed in accordance with the constitution rules.

(3) Notwithstanding the provisions of subsection (2), the Registrar may require further information in support of the application.

(4) The Registrar shall-

(a) consider the application and any further information supplied by the applicant;

(b) where satisfied that the change to the constitution and rules complies with the requirements prescribed in sections 47 and 48, approve the change by issuing the prescribed certificate approving the change; or

(c) where satisfied that the change of name does not resemble the name of another union so as to mislead or create confusion, approve the change by issuing a new certificate of registration reflecting the new name.

(5) Where the Registrar refuses to approve a change, he shall give written notice of that decision and the reasons for the refusal.

[s. 50]

Accounts and
audit

52.-(1) Every registered organisation and federation shall, to the standards of generally accepted accounting practice, principles and procedures-

(a) keep books and records of its income, expenditure, assets and liabilities;

(b) for each financial year ending on 31st December, prepare financial statements in the prescribed form;

(c) arrange an annual audit of its books and records of accounts and its financial statements by a registered auditor; and

(d) by 31st March of the following year, submit the financial statements and auditor's report to-

(i) a meeting of members or their representatives as provided for in the constitution of the organisation or federation; and

(ii) the Registrar.

(2) Every registered organisation and federation shall make its financial statements and auditor's report available to members for inspection at its offices.

[s. 51]

Duties of registered organisations and federations

53.—(1) In addition to the records required by section 52, every registered organisation or federation shall keep for five years—

- (a) a list of its members in the prescribed form;
- (b) the minutes of its meetings; and
- (c) the ballot papers.

(2) Every registered organisation or federation shall provide to the Registrar—

- (a) by 31st March of the following year, an annual statement certified by the Secretary showing the total number of members as of 31st December of the previous year;
- (b) within 30 days of a request from the Registrar, a written explanation of anything relating to the statement of membership, the auditor's report or the financial statements:

Provided that, the Registrar shall not inquire into the financial affairs of any organisation unless there are serious grounds for believing that the organisation has infringed the law or that the funds of the organisation have been embezzled or otherwise misused;

- (c) within 30 days of any appointment or election of its national office bearers, the names and work addresses of those office bearers; and
- (d) 30 days before a new address for service of documents will take effect, notice of that change of address.

[s. 52]

Non-compliance with constitution

54.—(1) Where a federation or registered organisation fails to comply with its constitution, the Registrar or member of the federation or registered organisation may apply to the Labour Court for any appropriate order including—

- (a) setting aside any decision, agreement or election;

- (b) requiring the organisation or federation or any official thereof to-
 - (i) comply with the constitution; and
 - (ii) take steps to rectify the failure to comply; and
 - (c) restraining any person from any action not in compliance with the constitution.
- (2) Before the Labour Court hears an application prescribed in subsection (1), it shall satisfy itself that-
- (a) the organisation's or federation's internal procedures have been exhausted; or
 - (b) it is in the best interests of the organisation or federation that the application be heard notwithstanding that any internal procedures have not been exhausted.

[s. 53]

Amalgamation
of registered
organisations and
federations

55.-(1) A registered-

- (a) trade union may resolve to amalgamate with one or more registered trade unions;
- (b) employer's association may resolve to amalgamate with one or more registered employer's associations; and
- (c) federation may resolve to amalgamate with one or more federations to form a confederation.

(2) The amalgamating organisations or federations may apply to the Registrar for registration of the amalgamated organisation or federation and the provisions of section 49, relating to registration process shall *mutatis mutandis* apply in relation to the application.

(3) After the Registrar has registered the amalgamated organisation or federation, he shall cancel the registration of each of the amalgamating organisations or federations by removing their names from the appropriate Register.

(4) The registration of an amalgamated organisation or federation shall become effective from the date the Registrar enters its name in the appropriate Register.

(5) Where the Registrar has registered an amalgamated organisation or federation-

- (a) all the assets, rights, obligations and liabilities of the amalgamating organisations or federations shall devolve upon and vest in the amalgamated organisation or federation; and
- (b) the amalgamated organisation or federation shall succeed the amalgamating organisations or federations in respect of-
 - (i) any right that the amalgamating organisations or federations enjoyed;
 - (ii) any fund established under this Act or any other law;
 - (iii) any collective agreement or other agreement; and
 - (iv) any written authorisation by a member for the periodic deduction of levies or subscriptions due to the amalgamating organisations.

[s. 54]

Cancellation of registration

56.-(1) The Registrar may apply to the Labour Court for an order to cancel the registration of a registered organisation or federation if that organisation or federation fails to comply with-

- (a) the requirements for registration; or
- (b) the provisions of this Part.

(2) Where the Labour Court may make any appropriate order including-

- (a) cancelling the registration of an organisation or federation; and
- (b) giving the organisation or federation an opportunity to remedy any failure to comply.

(3) Where the registration of an organisation or federation is cancelled-

- (a) all the rights enjoyed by it under this Act shall cease; and
- (b) the organisation or federation shall be dissolved in accordance with the provisions of section 57.

[s. 55]

Dissolution of
trade union
or employers
association

57.—(1) The Registrar may apply to the Labour Court for the dissolution of any organisation that contravenes the provisions of section 46.

(2) An organisation or federation may apply to the Labour Court for its dissolution.

(3) Where the Labour Court makes an order for cancelling the registration of an organisation or federation under section 56(2), it may in addition make an order dissolving the organisation or federation.

(4) In accordance with the laws relating to bankruptcy, any interested person may apply to the Labour Court for dissolution of a registered organisation or federation on any ground of bankruptcy.

(5) The laws of bankruptcy, shall apply to an application prescribed in subsection (3) and any reference to a court in those laws shall be interpreted as referring to the Labour Court.

(6) In granting an order of dissolution under this section, the Labour Court may—

- (a) appoint any suitable person as a liquidator on any appropriate conditions; and
- (b) decide where any residue of assets shall vest if the constitution and rules fail to do so.

[s. 56]

Appeals from
decisions of
Registrar

58. A person who is aggrieved by a decision of the Registrar made under this Part may appeal to the Labour Court against that decision.

[s. 57]

Publication in
Gazette

59.—(1) The Registrar shall publish a notice in the *Gazette* stating the following facts, that:

- (a) an organisation or federation has been registered;
- (b) the registration of any organisation or federation has been cancelled;
- (c) a change of a name or amalgamation affecting any registered organisation or federation has been registered; and

(d) a registered organisation or federation has been dissolved.

(2) Where the notice referred to in subsection (1) deals with registration of an organisation or federation, it shall contain a statement to the effect that, any person may view the constitution of that organisation or federation at the Registrar's office.

[s. 58]

PART V ORGANISATIONAL RIGHTS

Interpretation

60. For purposes of this Part-

“authorised representative” means an office bearer or official of a trade union or any other person authorised to represent the trade union;

“employer's premises” includes any premises under the control of the employer where work is done or the employees are accommodated;

“labour laws” includes this Act and any other law relating to labour matters;

“registered trade union” includes two or more trade unions acting jointly; and

“representative trade union” means a registered trade union that is the most representative trade union.

[s. 59]

Access to
employer's
premises

61.-(1) An authorised representative of a registered trade union shall be entitled to enter the employer's premises in order to-

- (a) recruit members;
- (b) communicate with members;
- (c) meet members in dealings with the employer;
- (d) hold meetings of employees on the premises; and
- (e) vote in any ballot under the union constitution.

(2) A registered trade union may establish a field branch at any workplace where ten or more of its members are employed.

(3) The employer shall provide a union recognised in terms of section 68 reasonable and necessary facilities to conduct its activities at the workplace.

(4) The rights under this section shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent undue disruption of work.

[s. 60]

Deduction of
trade union dues

62.-(1) An employer shall deduct dues of a registered trade union from an employee's wages where that employee has authorised the employer to do so in the prescribed form.

(2) The employer shall remit the deductions to the trade union within seven days after the end of the month in which the deductions are made.

(3) Where the employer fails to remit the union dues within the time specified in subsection (2), without reasonable grounds, the employer shall be liable to pay the union the equivalent of five percent of the total amount due for each day the dues remain un-remitted.

(4) An employee may revoke an authorisation by giving one month's written notice to the employer and the trade union.

(5) Where an employee revokes any authorisation under subsection (3), the employer shall cease to make any deductions after the expiry of the notice.

(6) With each monthly remittance, the employer shall give a registered trade union-

- (a) a list in the prescribed form of the names of the members in respect of whom deductions are required to be made; and
- (b) a copy of any notice of revocation under subsection (3).

[s. 61]

Trade union
representation

63.—(1) A registered trade union shall be entitled to-

- (a) one trade union representative for one to nine members;
- (b) three representatives for ten to twenty members;
- (c) ten representatives for twenty one to one hundred members;
- (d) fifteen representatives for work places with more than one hundred members.

(2) In workplace with more than one hundred members, at least five of the trade union representatives shall represent women employees, if any, who are employed and belong to the union.

(3) The constitution of a registered trade union shall govern the election, terms of office and removal from office of a trade union representative.

(4) Trade union representatives shall perform the following functions to:

- (a) represent members in grievance and disciplinary hearings;
- (b) make representations on behalf of members in respect of rules;
- (c) consult on productivity in the workplace;
- (d) represent the trade union in enquiries and investigations conducted by inspectors in terms of any labour laws;
- (e) monitor employer compliance with labour laws;
- (f) perform trade union functions under the union's constitution;
- (g) further good relations; and
- (h) perform any function or role agreed to by the employer.

(5) Trade union representatives shall be entitled to reasonable paid time off to perform any of the functions referred to in subsection (4).

(6) The employer shall disclose to the trade union representatives any information relevant to the performance of their functions.

(7) The provisions of section 71 relating to disclosure of relevant information shall *mutatis mutandis* apply to any disclosure prescribed in subsection (6).

(8) The rights under this section are subject to any reasonable conditions to ensure the orderly exercise of the rights and that work is not unduly interrupted.

[s. 62]

Leave for trade union activities

64. The employer shall grant reasonable paid leave to-

- (a) trade union representatives referred to in section 63 to attend training courses relevant to their functions; and
- (b) office bearers of -
 - (i) a registered trade union, to perform the functions of their office; or
 - (ii) a registered federation, to which the representative union belongs, to perform the functions of their office.

[s. 63]

Procedure for exercising organisational right

65.-(1) A registered trade union may notify an employer in the prescribed form that it seeks to exercise a right conferred under this Part.

(2) Within 30 days of the receipt of a notice under subsection (1), the employer shall meet with the trade union to conclude a collective agreement granting the right and regulating the manner in which the right is to be exercised.

(3) Where there is no agreement or the employer fails to meet with the trade union within 30 days, the union may refer the dispute to the Commission for mediation.

(4) Where the mediation fails to resolve the dispute, the trade union may refer the dispute to the Labour Court which shall make appropriate orders.

(5) A dispute over the interpretation or application of an order made under this section shall be referred to the Labour Court for decision.

[s. 64]

Termination of
organisational
rights

66.—(1) Where a trade union materially breaches the terms and conditions for the exercise of organisational rights, the employer-

- (a) may refer the issue to the Commission for mediation;
- (b) where the mediation fails to resolve the issue, may apply to the Labour Court to-
 - (i) terminate any of the organisational rights granted to the trade union under a collective agreement; or
 - (ii) withdraw an order made under section 65.

(2) A Labour Court making a decision under this section may make any appropriate order including-

- (a) requiring the union to take measures to ensure compliance with the conditions for the exercise of a right;
- (b) suspending the exercise of a right for a period of time; and
- (c) terminating the organisational rights contained in a collective agreement or order made under section 65.

[s. 65]

PART VI COLLECTIVE BARGAINING

Interpretation

67. For purposes of this Part-

- (a) a “bargaining unit”-
 - (i) means any unit of employees in respect of which a registered trade union is recognised, or is entitled to be recognised, as the exclusive bargaining agent in terms of this Part; and
 - (ii) includes a unit of employees employed by more than one employer;
- (b) a “recognised trade union” means a trade union recognised by a collective agreement or in respect of an order made by the Labour Court under the provisions of section 68; and

- (c) a “registered trade union” includes two or more registered trade unions acting jointly.

[s. 66]

Recognition
as exclusive
bargaining agent
of employees
Act No.
17 of 2010 s. 9

68.—(1) A registered trade union that represents the majority of the employees in an appropriate bargaining unit shall be entitled to be recognised as the exclusive bargaining agent of the employees in that unit.

(2) An employer or employers’ association may not recognise a trade union as an exclusive bargaining agent unless the trade union is registered and represents the majority of the employees in the bargaining unit.

(3) A registered trade union may notify the employer or employers’ association in the prescribed form that it shall seek recognition as the exclusive bargaining agent within an appropriate bargaining unit.

(4) Within 30 days of the notice prescribed in subsection (3), an employer shall meet to conclude a collective agreement recognising the trade union.

(5) Where there is no agreement or the employer fails to meet with the trade union within the 30 days, the union may refer the dispute to the Commission for mediation, and the period of thirty days may be extended by agreement.

(6) Where the mediation fails to resolve the dispute, the trade union or the employer may refer the dispute to the Labour Court for decision.

(7) The Labour Court may decide any dispute over the representativeness of the trade union by arranging any appropriate person to conduct a ballot of the affected employees.

(8) In determining the appropriateness of a bargaining unit, the Labour Court shall-

- (a) consider the following:
- (i) the wishes of the parties;
 - (ii) the bargaining history of the parties;

- (iii) the extent of union organisation among the employees of the employer or employers;
 - (iv) the employee similarity of interest;
 - (v) the organisational structure of the employer or employers;
 - (vi) the different functions and processes of the employer or employers and the degree of integration; and
 - (vii) the geographic location of the employer or the employers; and
- (b) promote orderly and effective collective bargaining with a minimum of fragmentation of an employer's organisational structure.

(9) A dispute over the interpretation or application of an order made under this section shall be referred to the authority or the Court which made the order for interpretation and other necessary orders.

(10) An order made pursuant to this section shall be enforced like any other order issued by the Labour Court.

(11) This section shall not preclude registered trade unions, employers and registered employers' associations from establishing their own collective bargaining arrangements by collective agreement.

[s. 67]

Duty to bargain
in good faith

69.—(1) An employer or employers' association shall bargain in good faith with a recognised trade union.

(2) A recognised trade union shall bargain in good faith with the employer or employers' association that has recognised it or is required to recognise it under the provisions of section 68.

[s. 68]

Withdrawal of
recognition
Act No.
17 of 2010 s. 10

70. Where a recognised trade union ceases to represent the majority of the employees in the bargaining unit, the employer shall-

- (a) give the trade union notice to acquire a majority within three months; and

(b) withdraw exclusive recognition, where it fails to acquire that majority at the expiry of the three months.

(2) Where a recognised trade union has ceased to represent the majority in the bargaining unit, any other trade union may fill the prescribed forms for purpose of being recognized as an exclusive bargaining unit.

(3) Where a party to a collective agreement prescribed in section 68(10), or a party subject to a recognition order, materially breaches the agreement or order, the other party may apply to Labour Court to have recognition withdrawn by-

- (a) terminating the recognition agreement; and
- (b) rescinding the recognition order.

(4) The Labour Court may decide any dispute over the representativeness of the trade union by arranging any appropriate person to conduct a ballot of the affected employees.

(5) The Labour Court may make any appropriate order including-

- (a) giving the trade union an opportunity to become representative;
- (b) altering the bargaining unit;
- (c) suspending recognition for a period of time; and
- (d) withdrawing recognition.

[s. 69]

Obligation to disclose relevant information

71.-(1) An employer that has recognised a trade union under this Part shall allow the union to engage effectively in collective bargaining.

(2) An employer shall not be obliged to disclose information that-

- (a) is legally privileged;
- (b) the employer cannot disclose without contravening a law or an order of court;
- (c) is confidential and, where disclosed, may cause substantial harm to an employee or the employer; and
- (d) is private personal information relating to an employee without that employee's consent.

(3) A trade union that receives confidential or private personal information under this section-

- (a) shall not disclose the information to any person other than its members and advisors; and
- (b) shall take reasonable measures to ensure that the information disclosed is kept confidential.

(4) Where there is a dispute over disclosure of information, any party to the dispute may refer the dispute to the Commission for mediation.

(5) Where the mediation fails, any party may refer the dispute to the Labour Court for decision.

(6) In making any decision, the Labour Court may-

- (a) hold the proceedings *in camera*;
- (b) take into account any previous breaches of confidentiality by the trade union or its members;
- (c) order an employer to disclose any confidential information where, on balance, the effect of the non-disclosure may seriously impede the union's ability-
 - (i) to bargain effectively; or
 - (ii) to represent employees effectively;
- (d) order the disclosure of information on terms designed to limit any harm that may be caused by disclosure;
- (e) order the trade union to pay damages for any breach of confidentiality; and
- (f) suspend or withdraw the right to disclosure.

[s. 70]

Binding nature
of collective
agreements
Acts Nos.
8 of 2006 Sch.
17 of 2010 s. 11

72.-(1) Collective agreements shall be in writing and signed by the parties.

(2) A collective agreement shall be binding on the last signature unless the agreement states otherwise.

(3) A collective agreement shall be binding on-

- (a) the parties to the agreement;
- (b) members of the parties to the agreement; and
- (c) employees who are not members of a trade union party to the agreement if the trade union is recognised as the

exclusive bargaining agent of those employees under section 68.

(4) A collective agreement shall continue to be binding on employers or employees who were party to the agreement at the time of its commencement and includes resigned members from that trade union or employer association.

(5) A collective agreement becomes binding on employers and employees who become members of the parties to the agreement after its commencement.

(6) Unless a collective agreement provides otherwise, any party to an agreement may terminate the agreement on reasonable notice and shall give reasons for the termination.

(7) The parties to a collective agreement shall be required to lodge a copy of the agreement with the Labour Commissioner and shall be a rebuttable presumption that the copy so registered is authentic and may be executed as a decree of the Court.

[s. 71]

Agency Shop
agreements
Act No
24 of 2015 s. 8

73.—(1) An agreement that compels an employee to become a member of a trade union is not enforceable.

(2) A recognised trade union and employer may conclude a collective agreement providing for an agency shop.

(3) The requirements for a binding agency shop agreement are—

- (a) the agreement applies to employees in the bargaining unit only;
- (b) employees who are not members of the trade union are not compelled to become members;
- (c) any agency fee deducted from the remuneration of an employee, who is not a member, is equivalent to, or less than, the union dues deducted by the employer from the remuneration of a member;
- (d) the amount deducted from both members and non-members shall be paid into a separate account administered by the trade union; and

- (e) the moneys in that account may only be used to advance or defend the socio-economic interests of the employees in that workplace and shall not be used to pay-
 - (i) an affiliation fee to a political party; or
 - (ii) any contributions to a political party of person standing for political office.

(4) Notwithstanding the provisions of any law or contract, an employer may deduct an agency fee under an agency shop agreement that complies with the provisions of this section from an employee's wages without the consent of that employee:

Provided that, such deduction complies with the terms and conditions prescribed in the regulations.

- (5) A trade union party to an agency shop agreement shall-
 - (a) appoint a registered auditor to audit the account prescribed in subsection (3) (d) annually;
 - (b) submit the auditor's report to the Labour Commissioner and to the Registrar within thirty days of the date of the report; and
 - (c) permit any interested person to inspect the report at the union's offices during office hours.

(6) A report by an auditor appointed by a trade union under this section shall include an opinion on whether the provisions of this section have been complied with.

(7) An agency shop agreement shall be-

- (a) suspended for so long as the trade union is not representative; or
- (b) terminated once recognition is withdrawn under section 70.

(8) Where an agency shop agreement is suspended or terminated, the provisions of this section shall continue to apply in respect of any money remaining in the account prescribed in subsection (3)(d).

(9) For purposes of this section, "agency shop" means a union security arrangement in terms of which employees in a

bargaining unit, who are not members of the recognised trade union, are required to pay an agency fee to the trade union.

[s. 72]

Workers
participation
agreement
Act No.
24 of 2015 s. 9

74.—(1) A recognised trade union and an employer or an employers' association may conclude a collective agreement establishing a forum for workers participation in a workplace.

(2) Where a registered trade union, employer or employers' association wishes to establish a forum for workers' participation in any workplace, the union, employer or association may request the assistance of the Labour Commissioner to facilitate discussions between the union, employer or association.

(3) The Labour Commissioner shall facilitate any discussion concerning the establishment of a forum for workers participation in any workplace taking into account any code of good practice published by the Council on workers participation.

[s. 73]

Disputes
concerning
collective
agreements

75. Unless the parties to a collective agreement agree otherwise—

- (a) a dispute concerning the application, interpretation or implementation of a collective agreement shall be referred to the Commission for mediation; and
- (b) where the mediation fails, any party may refer the dispute to the Labour Court for a decision.

[s. 74]

PART VII STRIKES AND LOCKOUTS

Right to strike
and to lockout

76.—(1) Subject to the provisions contained in this Part—

- (a) every employee has the right to strike in respect of a dispute of interest; and
- (b) every employer has the right to lockout in respect of a dispute of interest.

[s. 75]

Restrictions on
right to strike or
lockout

77.–(1) A person shall not take part in a strike or a lock out or in any way conduct himself in a manner contemplating or in furtherance of a strike or lockout where-

- (a) subject to the provisions of subsection (2), that person is engaged in an essential service referred to in section 78;
- (b) that person is engaged in a minimum service prescribed in section 80;
- (c) that person is bound by an agreement that requires the issue in dispute to be referred to arbitration;
- (d) that person is bound by a collective agreement or arbitration award that regulates the issue in dispute;
- (e) that person is bound by a wage determination that regulates the issue in dispute during the first year of that determination;
- (f) that person is a magistrate, a prosecutor or other court personnel;
- (g) the issue in dispute is a complaint; and
- (h) the procedures prescribed in sections 81, 82 and 83 have not been followed.

(2) Notwithstanding the provisions of subsection (1) (a), a person engaged in an essential service may strike or lockout where-

- (a) there is a collective agreement providing for minimum services during a strike or lockout; and
- (b) that agreement has been approved under section 78 by the Essential Services Committee.

(3) The following conduct associated with strikes and lockouts is prohibited:

- (a) picketing-
 - (i) in support of a strike; or
 - (ii) in opposition to a lawful lockout;
- (b) use of replacement labour in a lockout or a lawful strike;
- (c) locking employers in the premises; and
- (d) preventing employers from entering the premises.

(4) For purposes of this section, “replacement labour” means taking into employment any person to continue or

maintain production during a strike or a lockout, but it does not include the deployment of an employee to do the work of an employee on strike or subject to a lockout provided that the deployment is with the consent of that employee.

[s. 76]

Essential services **78.**—(1) For purposes of this section, “service” includes any part of service.

(2) The following services are essential services:

- (a) water and sanitation;
- (b) electricity;
- (c) health services and associated laboratory services;
- (d) fire-fighting services;
- (e) air traffic control and civil aviation telecommunications; and
- (f) any transport services required for the provision of these services.

(3) In addition to the services designated in subsection (2), the Essential Services Committee may designate a service as essential where the interruption of that service endangers the personal safety or health of the population or any part of it.

(4) Before the Essential Services Committee designates an essential service under subsection (3), it shall—

- (a) give notice in the prescribed manner of the investigation inviting interested parties to make representations;
- (b) conduct an investigation in the prescribed manner;
- (c) make any written representations available for inspection;
- (d) hold a public hearing at which the interested parties may make oral representations; and
- (e) consider those representations.

(5) Where the Essential Services Committee designates a service as an essential service, it shall publish a notice to that effect in the *Gazette*.

(6) The Essential Services Committee may vary or cancel a designation made under this section in accordance with the procedure set out in subsections (4) and (5) *mutatis mutandis*.

(7) A party to a dispute as to whether or not a service is an essential service or an employer or an employee is engaged in an essential service shall refer the dispute to the Essential Services Committee for determination.

(8) The party who refers the dispute to the Essential Services Committee shall satisfy the Committee that a copy of the dispute has been served on all the other parties to the dispute.

(9) The Essential Services Committee shall determine the dispute as soon as possible.

[s. 77]

Disputes of
interest in
essential services

79.—(1) Unless a collective agreement provides otherwise-

(a) a party to a dispute of interest in an essential service may refer the dispute to the Commission for mediation; and

(b) where the mediation fails, any party to the dispute may refer the dispute to arbitration by the Commission.

(2) The provisions of subsection (1) shall apply where-

(a) the parties are bound by a collective agreement providing for minimum services during a strike or lockout; and

(b) the Essential Services Committee has approved that agreement in terms of section 80(2).

[s. 78]

Minimum
services during
strike or lockout

80.—(1) The parties to a collective agreement may agree to the provision of minimum services during a strike or a lockout.

(2) A party to a collective agreement that provides for minimum services during a strike or lockout in an essential service may apply in the prescribed manner to the Essential Services Committee for approval of that agreement.

(3) An employer may apply in the prescribed manner to the Essential Services Committee for the designation of a minimum service where-

(a) a minimum service is necessary to prevent damage to property, machinery or plant during a strike or lawful lockout; and

- (b) there is no collective agreement providing for minimum services during a strike or lockout.

[s. 79]

Procedure for engaging in lawful strike

81-(1) Subject to the provisions of this section, employees may engage in a lawful strike where-

- (a) the dispute is a dispute of interest;
- (b) the dispute has been referred in the prescribed form to the Commission for mediation;
- (c) the dispute remains unresolved at the end of period of mediation provided under section 87(4) read together with section 88(1) and (2);
- (d) the strike is called by a trade union, a ballot has been conducted under the union's constitution and a majority of those who voted were in favour of the strike; and
- (e) after the applicable period referred to in paragraph (c), they or their trade union have given forty eight hours notice to their employer of their intention to strike.

(2) Where the dispute relates to the unilateral alteration of terms and conditions of employment, the employees and the trade union, may require the employer in the referral of the dispute under subsection (1)-

- (a) not to implement any proposed change to terms and conditions; or
- (b) where the employer has implemented the change, to restore the terms and conditions of employment that applied before the change.

(3) Where the employer does not comply with the requirement referred to in subsection (2) within forty eight hours of service of the referral on the employer, the employees and trade union may strike without complying with subsection (1)(c) to (e).

(4) This section shall not prevent a trade union and an employer or employers' association from agreeing to their own strike procedure in a collective agreement, in which case the

provisions of that agreement shall apply and the provisions of subsections (1) to (3) shall not apply.

[s. 80]

Procedure for
engaging in
secondary strike

82.—(1) “secondary strike” means a strike that is-

- (a) in support of a lawful strike (the “primary strike”) by other employees against their employer (the “primary employer”); or
- (b) in opposition to a lockout (the “primary lockout”) imposed by another employer (the “primary employer”) against its employees.

(2) A trade union may only call a secondary strike where-

- (a) fourteen days notice of the commencement of the secondary strike has been given to the secondary employer;
- (b) there is a relationship between the secondary and primary employer that may permit the exercise of pressure; and
- (c) the secondary strike is proportional taking into account-
 - (i) the effect of the strike on the secondary employer; and
 - (ii) the possible effect that the strike may have on resolving the dispute giving rise to the primary strike or primary lockout.

(3) Employees engaged in the following services are prohibited from engaging in a secondary strike:

- (a) the essential services referred to in section 78 in respect of which there is no approved collective agreement as prescribed in section 80(2); or
- (b) agreed or determined minimum services as prescribed in section 80.

(4) This section shall not prevent a trade union and an employer or an employers’ association from agreeing to their own requirements and procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsections (1) and (2) shall not apply.

[s. 81]

Procedure for engaging in lawful lockout

83.—(1) Subject to the provisions of subsection (2), an employer may engage in a lawful lockout where-

- (a) the dispute is a dispute of interest;
- (b) the dispute has been referred in the prescribed form to the Commission for mediation;
- (c) the dispute remains unresolved at the end of the period of mediation prescribed in sections 87 and 88; and
- (d) after the applicable period referred to in paragraph (c) the employer or employers' association has given forty eight hours notice to the employees or their trade union of the intention to lockout.

(2) This section shall not prevent a trade union and an employer or an employers' association from agreeing to their own procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsection (1) shall not apply.

[s. 82]

Nature of protection of lawful strike or lockout

84.—(1) Notwithstanding the provisions of any law, including the common law, a lawful strike or lawful lockout shall not be-

- (a) a breach of contract;
- (b) a tort; or
- (c) a criminal offence.

(2) An employer shall not terminate the employment of an employee for-

- (a) participating in a lawful strike; or
 - (b) not acceding to an employer's demand in a lockout.
- (3) Civil or criminal proceedings shall not be instituted against any person for participating in a lawful strike or lawful lockout.

(4) Notwithstanding the provisions of subsection (1), an employer shall not be obliged to remunerate an employee for services that the employee does not render during a lawful strike or lawful lockout, however-

- (a) the employer shall continue to make its contribution and the employee's contributions to any funds that the

- employee is required to belong to by law or under the contract of employment during the strike or lockout;
- (b) where the employer provides accommodation, the provision of food or other basic amenities of life, the employer shall continue to provide that accommodation, food or amenities during the strike or lockout; and
 - (c) after the end of the strike or lockout, the employer may-
 - (i) deduct any of the employee's contributions referred to in paragraph (a) from the employee's remuneration; or
 - (ii) deduct the agreed monetary value of the accommodation, food or amenities from the employee's remuneration with the consent of the employee.

(5) Where an employee does not consent to the deduction prescribed in subsection (4)(c)(ii), the employer may refer the dispute to mediation.

(6) Where the dispute referred to in subsection (5) is not resolved, the employer may refer it to the Labour Court for a decision.

(7) Subsection (4) shall not prevent a trade union or employer or employers' association from concluding a collective agreement that regulates the matters dealt with in that subsection differently.

[s. 83]

Strikes and lockouts not in compliance with this Part

85.—(1) Where a strike or lockout is not in compliance with this Act, or a trade union or employer or employers' association engages in prohibited conduct, the Labour Court shall have exclusive jurisdiction-

- (a) to issue an injunction to restrain any person from-
 - (i) participating in an unlawful strike or lockout; or
 - (ii) engaging in any prohibited conduct; and

- (b) to order the payment of just and equitable compensation for any loss attributable to the strike, lockout or conduct, having regard to-
 - (i) the degree of fault;
 - (ii) the cause of the strike, lockout or conduct;
 - (iii) any prior history of non-compliance;
 - (iv) the ability to pay;
 - (v) the extent of the harm;
 - (vi) the interests of collective bargaining; and
 - (vii) the duration of the strike, lockout or conduct.

(2) The Labour Court may not issue an injunction unless forty eight hours notice of the application has been given to the respondent.

(3) Notwithstanding the provisions of subsection (2), the Court may grant a shorter period on good cause and only if the respondent is given a reasonable opportunity to be heard.

(4) Other than in exceptional circumstances, the Labour Court may not make an order of compensation that may cause a trade union, employer or employer's association to become bankrupt.

[s. 84]

Protest action

86.-(1) Subject to the provisions of subsection (2), an employee may take part in protest action where-

- (a) the protest action has been called by a registered trade union or registered federation of trade unions;
- (b) the union or federation has served a notice on the Council stating-
 - (i) the reasons for the protest action; and
 - (ii) the duration and form of the protest action;
- (c) thirty days have elapsed from the date the notice was served; and
- (d) the union or federation has given at least fourteen days notice of the commencement of the protest action.

- (2) Employees engaged in the following services are prohibited from engaging in protest action:
- (a) the essential services referred to in section 78 in respect of which there is no approved collective agreement as prescribed in section 80(2); or
 - (b) agreed or determined minimum services as prescribed in section 80.
- (3) The Council shall convene a meeting within thirty days of the notice to-
- (a) resolve the matter giving rise to the protest action; and
 - (b) where unable to resolve the matter, secure an agreement with the trade unions or federation of trade unions calling for the protest action on the duration and form of the protest action in order to minimise the harm that may be caused by the protest action.
- (4) In order to achieve the objects prescribed in subsection (3), the Council may-
- (a) establish a tripartite Committee to perform its functions under subsection (3);
 - (b) appoint a mediator after consultation with the Commission to mediate; and
 - (c) apply to the Labour Court for a declaratory order prescribed in subsection (5).
- (5) A person who is likely to be, or has been, affected by the protest action may apply to the Labour Court for-
- (a) an order restraining any person from taking part in protest action or in any conduct in contemplation or furtherance of an action that does not comply with the provisions of subsections (1) and (2);
 - (b) a declaratory order on the proportionality of any proposed action taking into account-
 - (i) the nature and the duration of the protest action;
 - (ii) the importance of the reasons for the protest action; and
 - (iii) the steps taken by the union or the federation to minimise the harm caused by the protest action.

(6) Subject to the provisions of subsection (7), a person who takes part in protest action that complies with this section enjoys the protections conferred on lawful strikes in terms of section 84.

(7) The protections conferred by subsection (6) on persons engaged in lawful protest action shall not apply to persons who do not comply with any declaratory order issued under subsection (5)(b).

[s. 85]

PART VIII DISPUTE RESOLUTION

Sub-Part A - Mediation

Referral of
disputes for
mediation under
this Act
Act No.
8 of 2006 Sch.

87.—(1) Disputes referred to the Commission shall be in the prescribed form.

(2) The party who refers the dispute under subsection (1), shall satisfy the Commission that a copy of the referral has been served on the other parties to the dispute.

(3) On receipt of the referral made under subsection (1) the Commission shall-

- (a) appoint a mediator to mediate the dispute;
- (b) decide the time, date and place of the mediation hearing;
- (c) advise the parties to the dispute of the details stipulated in paragraphs (a) and (b).

(4) Subject to the provisions of section 88, the mediator shall resolve the dispute within thirty days of the referral or any longer period to which the parties agree in writing.

(5) The mediator shall decide the manner in which the mediation shall be conducted and if necessary may require further meetings within the period referred to in subsection (4).

(6) In any mediation, a party to a dispute may be represented by-

- (a) a member or an official of that party's trade union or employers' association;

- (b) an advocate; or
- (c) a personal representative of the party's own choice.

(7) Where the mediator fails to resolve a dispute within the period prescribed in subsection (4), a party to the dispute may where-

- (a) the dispute is a dispute of interest, give notice of its intention to commence a strike or a lockout in accordance with sections 81 or 83;
- (b) the dispute is a complaint-
 - (i) refer the complaint to arbitration; or
 - (ii) refer the complaint to the Labour Court.

(8) Notwithstanding the failure to resolve a dispute within the period stipulated in subsection (4), the mediator shall remain seized with the dispute until the dispute is settled and may convene meetings between the parties to the dispute in order to settle the dispute at any time before or during any strike, lockout, arbitration or adjudication.

[s. 86]

Consequences
of not attending
mediation
hearing

88.-(1) Where the employees or a trade union refer a dispute of interest to the Commission under section 87, the mediator may-

- (a) extend the period stipulated under section 87(4) by a further thirty days where the employees or union fail to attend the hearing arranged by the Commission; or
- (b) shorten the period stipulated in section 87(4) if the employer or employers' association party to the dispute fail to attend the hearing.

(2) Where an employer or an employers' association refers a dispute of interest to the Commission under section 87, the mediator may-

- (a) extend the period stipulated under section 87(4) by a further thirty days where the employer or employer's association fails to attend the hearing arranged by the Commission; or

- (b) shorten the period stipulated in section 87(4) if the employees or trade union party to the dispute fail to attend the hearing.
- (3) In respect of a complaint referred under this Act, the mediator may-
 - (a) dismiss the complaint where the party who referred the complaint fails to attend a mediation hearing; or
 - (b) decide the complaint where the other party to the complaint fails to attend a mediation hearing.
- (4) The decision made under this section may be enforced in the Labour Court as a decree of a court of competent jurisdiction.
- (5) The Commission may reverse a decision made under this section where-
 - (a) application is made in the prescribed manner; and
 - (b) the Commission is satisfied that there are good grounds for failing to attend the hearing.

[s. 87]

Sub-Part B: Arbitration

Resolving
disputes by
compulsory
arbitration
Acts Nos.
8 of 2006 Sch.
17 of 2010 s. 12

- 89.**—(1) For purposes of this section, a dispute means-
- (a) a dispute of interest where the parties to the dispute are engaged in an essential service; and
 - (b) a complaint over-
 - (i) the fairness or lawfulness of an employee's termination of employment;
 - (ii) any other contravention of this Act or any other labour laws or breach of contract or any employment or labour matter falling under common law, tortious liability and vicarious liability; and
 - (iii) any dispute referred to arbitration by the Labour Court under section 95(3)(a)(ii).
- (2) Where the parties fail to resolve a dispute referred to mediation under section 87, the Commission shall-
- (a) appoint an arbitrator to decide the dispute;

- (b) determine the time, date and place of the arbitration hearing; and
 - (c) advise the parties to the dispute of the details stipulated in paragraph(a) or (b).
- (3) Subsection (2) shall not prevent the Commission from-
- (a) appointing an arbitrator before the dispute has been mediated;
 - (b) determining the time, date and place of the arbitration hearing, which date may coincide with the date of the mediation hearing; and
 - (c) advising the parties to the dispute of the details stipulated in paragraphs (a) and (b).
- (4) The arbitrator-
- (a) may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly; and
 - (b) shall deal with the substantial merits of the dispute with the minimum of legal formalities.
- (5) Subject to the discretion of the arbitrator as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question witnesses, and present arguments.
- (6) Where the parties to the dispute consent, the arbitrator may suspend proceedings and resolve the dispute through mediation.
- (7) A mediator may, by an agreement between the parties or on application by the parties, draw a settlement agreement in respect of any dispute pending before him, which shall be signed by the parties and the mediator, and such agreement shall be deemed to be a decree of the Court.
- (8) Where a party fails to-
- (a) attend any arbitration proceedings convened by arbitrator, the matter may be heard *ex-parte* as provided for under rule 28 of the Labour Institutions (Mediation and Arbitration Guidelines) Rules; or

(b) comply with any direction made by the arbitrator, the arbitrator shall proceed to make the award.

(9) In any arbitration hearing, a party to a dispute may be represented by-

- (a) member or official of that party's trade union or employers' association;
- (b) an advocate; or
- (c) a personal representative of the party's own choice.

(10) An arbitrator may make any appropriate award but may not make an order for costs unless a party or a person representing a party acted in a frivolous or vexatious manner.

(11) Within thirty days of the conclusion of the arbitration proceedings, the arbitrator shall issue an award with reasons signed by the arbitrator.

[s. 88]

Effect of
arbitration award

90.-(1) An arbitration award made under this Act shall be binding on the parties to the dispute.

(2) An arbitration award made under this Act may be served and executed in the Labour Court as if it were a decree of a court of law.

[s. 89]

Correction of
arbitration award
Act No.
17 of 2010 s. 13

91. An arbitrator who has made an award under section 89(10) may, on application or on his own motion, correct in the award any clerical mistake or error arising from any accidental slip or omission.

[s. 90]

Revision of
arbitration award
Act No.
17 of 2010 s. 14

92.-(1) A party to an arbitration award made under section 89(10) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award-

- (a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement; and

(b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact.

(2) The Labour Court may set aside an arbitration award made under this Act on grounds that-

- (a) there was a misconduct on the part of the arbitrator;
- (b) the award was improperly procured; and
- (c) the award is unlawful, illogical or irrational.

(3) The Labour Court may stay the enforcement of the award pending its decision.

(4) Where the award is set aside, the Labour Court may-

- (a) determine the dispute in the manner it considers appropriate;
- (b) make any order it considers appropriate about the procedures to be followed to determine the dispute.

[s. 91]

Application of
Arbitration Act
Cap. 15

93. The Arbitration Act, does not apply to an arbitration conducted by the Commission.

[s. 92]

Voluntary
arbitration
Act No.
17 of 2010 s. 15
Cap. 15

94.-(1) This Act shall not prevent an agreement to submit a dispute to arbitration.

(2) The provisions of the Arbitration Act, shall apply to any agreed submission of a dispute to arbitration provided that-

- (a) notwithstanding the provisions of section 3 of the Arbitration Act, any dispute may be submitted to arbitration;
- (b) any reference to the High Court in the Arbitration Act shall be interpreted as referring to the Labour Court.

(3) A voluntary arbitration preferred under section 14(1)(b)(ii) of the Labour Institutions Act shall be dealt with by the Commission as if it were a compulsory arbitration referred to under subsections (2) to (9) of section 89.

[s. 93]

Sub-Part C: Adjudication

Jurisdiction of
Labour Court
Cap. 2
Acts Nos.
8 of 2006 Sch.
17 of 2010 s. 16

95.—(1) Subject to the Constitution of the United Republic of Tanzania, 1977 the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act and over any employment or labour matter falling under common law, tortious liability, vicarious liability or breach of contract and to decide-

- (a) appeals from the decisions of the Registrar made under Part IV;
- (b) reviews and revisions of-
 - (i) arbitrator's awards made under this Part; or
 - (ii) decisions of the Essential Services Committee made under Part VII;
- (c) reviews of decisions, codes, guidelines or regulations made by the Minister under this Act;
- (d) complaints, other than those that are to be decided by arbitration under the provisions of this Act;
- (e) any dispute reserved for decision by the Labour Court under this Act; and
- (f) applications including-
 - (i) a declaratory order in respect of any provision of this Act; or
 - (ii) an injunction.

(2) The Labour Court may refuse to hear a complaint where-

- (a) the complaint has not been referred to mediation by the Commission under section 87; or
- (b) the provisions of that section have not been complied with; and
- (c) the application is not urgent.

(3) Where a party refers a dispute to the Labour Court, the Court may-

- (a) where it is a dispute that is required to be referred to the Labour Court in terms of this Act-
 - (i) decide the dispute; or

- (ii) refer the dispute to the Commission to be decided by arbitration; and
- (b) where it is a complaint that is required to be referred to arbitration-
 - (i) refer the complaint to the Commission for it to be dealt with under section 89; or
 - (ii) decide the complaint provided that it may make an appropriate order as to costs.

[s. 94]

Sub-Part D - Dispute Procedures in Collective Agreements

Dispute
resolution
procedures
in collective
agreements
Act No.
8 of 2006 Sch.

96.—(1) This Part shall not prevent a trade union on the one hand and an employer or employers' association on the other hand from concluding a collective agreement providing for the resolution of disputes not within the provisions of this Part.

(2) A collective agreement may depart from the provisions of this Part provided that the disputes are mediated or arbitrated in an independent, neutral, expedited and professional manner.

(3) A person bound by a collective agreement prescribed in this section may not refer a dispute to the Commission for Mediation and Arbitration under the provision of this Part: Provided that, any dispute which is not resolved shall be referred by any party to the dispute or the mediator or arbitrator to the Labour Court for adjudication, decision and execution.

(4) Subject to the provisions of subsection (3), any resolution made or award passed by the mediator or arbitrator respectively, shall be binding on the parties and shall be executed as a decree of the Labour Court.

(5) On application, the Labour Court, may set aside a provision of a collective agreement that does not comply with subsection (2).

[s. 95]

PART IX

GENERAL PROVISIONS

Records to be kept by employers and employees

97.—(1) Every employer and employee shall keep a record of the following information:

- (a) the written particulars prescribed in section 16 and any changes to those particulars; and
- (b) any remuneration paid to the employee.

(2) Every employer shall retain the record of an employee prescribed in subsection (1) for a period of five years after the termination of that employee.

(3) An employer shall keep a record of the prescribed details of any strike, lockout or protest action involving its employees.

(4) The Labour Commissioner, in the prescribed manner, may require information based on the records referred to in this section from an employer.

(5) An employer shall submit to the Labour Commissioner any information required in terms of subsection (4).

(6) Subject to the provisions of section 102, the Labour Commissioner may—

- (a) compile, analyse and tabulate statistics collected from the information submitted under this section; and
- (b) upon the Minister's direction publish those statistics.

[s. 96]

Service of documents

98.—(1) A document required to be served on a registered organisation or federation in any civil or criminal proceedings shall be deemed to be duly served where it is—

- (a) delivered to the registered office of the organisation or federation;
- (b) delivered by registered post to its postal address; or
- (c) served personally on an officer of the organisation or federation.

(2) For purposes of this section, a “document” includes any notice, referral, submission, application or other document required to be served under this Act.

[s. 97]

Regulations

99.—(1) The Minister may, in consultation with the Council, make regulations and prescribe forms for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of all or any of the following matters:

- (a) all matters stated or required in this Act to be prescribed;
- (b) the prohibition or regulation of employment of children under the age of eighteen years;
- (c) the registration of plans for eliminating discrimination in the workplace;
- (d) the form and manner in which written particulars of employment are to be given to an employee;
- (e) regulating the payment of wages including payment of any money due to a deceased employee to the heirs or estate of that employee;
- (f) the form and content of information and documentation to be supplied by the employer to its employees;
- (g) regulating the procedure of registration of organisations and federations, the registers to be kept and the certificate of registration;
- (h) the authorisation of access by trade union officials to employer premises for the purpose of recruiting, meeting and representing members;
- (i) the deduction of trade union dues including authorisation and remittance of money to the registered trade union;
- (j) the procedure for the recognition of registered trade unions;
- (k) the lodgement of collective agreements with the Labour Commissioner;
- (l) the procedure for investigations by the Essential Services Committee into essential services and minimum services;

- (m) the books, records, accounts and other documents to be kept under this Act;
- (n) the information to be furnished by an employer to the Labour Commissioner;
- (o) the returns to be rendered by the employer to the Labour Commissioner;
- (p) the fees to be charged for registration or any other service or matter prescribed or permitted by this Act;
- (q) occupational safety and health standards and the working environment secured by an appropriate system of inspection; and
- (r) generally for all matters incidental to or connected with the matters or subjects specifically mentioned in this Act.

(3) The Minister, after consultation with the Council, may, by notice in the *Gazette*, deem any category of persons to be employees for purposes of this section, any provisions of this Act or any other written law in respect of which the Minister is responsible.

[s. 98]

Guidelines and codes of good practice

100.—(1) The Minister, after consulting the Council, may—

- (a) issue codes of good practice;
- (b) issue guidelines for the proper administration of this Act; or
- (c) change or replace any code or guideline.

(2) Any code of good practice or guideline or any change to, or replacement of, a code or guideline shall be published in the *Gazette*.

(3) A person interpreting or applying this Act shall take into account any code of good practice or guideline published under this section, and where that person departs from the code or guideline, he shall justify the grounds for departure.

[s. 99]

Exemptions

101.—(1) The Minister may exempt any employer or class of employers from any employment standard contained in sections 20, 21, 24 to 26, 28, 32 to 35, 42, 43 and 44.

(2) Before the Minister grants an exemption under this section—

- (a) the employer or employers' organisation shall satisfy the Minister that they have consulted with the employees affected by the exemption or their registered trade union;
- (b) he shall notify the affected employers and employees or their registered organisations of any proposed exemption and request representations to be submitted within a reasonable period;
- (c) he shall take into account any representations made by the employees or their registered trade union; and
- (d) he shall strike a fair balance between the interests of the employers and their employees, taking into account any applicable International Labour Organisation Convention or recommendation.

(3) An exemption granted under subsection (1) shall—

- (a) be in the prescribed form signed by the Minister, and the form shall include a statement of the employers, or category of employers affected by the exemption;
- (b) include any conditions under which the exemption is granted;
- (c) state the period of the exemption, which may be made retrospective to a date not earlier than the date of the application for exemption; and
- (d) if the exemption is granted to a class of employers, be published in the *Gazette*.

(4) An exemption granted under this section may be amended or withdrawn by the Minister.

(5) Where the exemption is published in the *Gazette* under subsection (3)(d), the Minister may amend or withdraw the exemption only by notice in the *Gazette* from a date stated in that notice.

(6) A person who is aggrieved by the grant, amendment or withdrawal of an exemption or its terms or period, may apply for the review of the decision in the Labour Court.

[s. 100]

Confidentiality

102.—(1) Subject to the provisions of subsection (2), it is an offence for a person to disclose any information relating to the financial or business affairs of another person if that information was acquired in the performance of any function or the exercise of any power under this Act.

(2) Subsection (1) does not apply where the information is disclosed in compliance with this Act—

- (a) to enable a person to perform a function or exercise a power under this Act;
- (b) in accordance with any written law;
- (c) for the purpose of the proper administration of this Act; and
- (d) for purposes of the administration of justice.

[s. 101]

Penalties

103.—(1) A district court and a resident magistrate's court have jurisdiction to impose a penalty for an offence under this Act.

(2) A person convicted of any of the offences referred to in sections 5 and 6, may be sentenced to—

- (a) a fine not exceeding five million shillings;
- (b) imprisonment for a term of one year; or
- (c) both.

(3) A person convicted of any of the offences referred to in sections 7, 8 and 9 may be sentenced to a fine not exceeding five million shillings.

(4) A person convicted of any of the offences referred to in sections 28, 29, 46(3) and 102 shall be sentenced to a fine not exceeding one million shillings.

(5) A person aggrieved by the decision of a court under this section may appeal to the High Court.

[s. 102]

Inconsistency
with written laws
Act No.
24 of 2015 s. 10

104. In case of conflict between this Act and any other written law relating to employment standards, the standards stipulated under this Act shall prevail.

[s. 102A]

Repeal and
amendment of
laws and savings
provisions

105.—(1) The laws specified in the Second Schedule are repealed subject to the savings and transitional provisions set out in the Third Schedule.

(2) Each of the laws specified in the Second Schedule are amended to the extent specified in that Schedule.

(3) The Third Schedule governs the transition from the administration of the laws repealed under paragraph (1) to the administration of the matters in this Act.

[s. 103]

FIRST SCHEDULE

(Made under section 27(2))

Table for calculation of comparable wage rates

For the purpose of this Table -

“ordinary hours” do not include overtime hours;

“ordinary days” mean the days the employee ordinarily works in a week excluding any day falling within the weekly rest period stipulated in section 25; and

“rate” is based on the employee’s basic wage.

Table - Calculation of comparable wage rates

Basis of payment	To calculate hourly rates	To calculate daily rates	To calculate weekly rates	To calculate monthly rates
Employees whose basic wage is set by the hour		Multiply the hourly rate by the number of ordinary hours of work each day	Multiply the hourly rate by the number of ordinary hours of work each week	Calculate the weekly rate, then Multiply the calculated weekly rate by 4,333
Employees whose basic wage is set by the day	Divide the daily rate by the number of ordinary hours of work each day		Multiply the daily rate by the number of ordinary days of work each week.	Calculate the weekly rate, then Multiply the calculated weekly rate by 4,333

Employees whose basic wage is set by the week	Divide the weekly rate (or calculated weekly rate) by the number of ordinary hours of work each week.	Divide the weekly rate (or calculated weekly rate) by the number of ordinary days of work each week		Multiply the weekly rate (or calculated weekly rate) by 4,333
Employees whose basic wage is set by the month	Divide the monthly rate by (4,333 times the number of hours ordinarily worked each week).	Divide the monthly rate by 4,333 times the number or days ordinarily worked each week	Divide the monthly rate by 4,333	

SECOND SCHEDULE

(Made under sections 105(1) and (2))

Citation of law	Extent of repeal
Employment Ordinance (Cap.366)	The whole
Regulation of Wages and Terms of Employment Ordinance (Cap. 300)	The whole
Wages and Salaries (General Revision) Act, 1974 (Act No. 22 of 1974)	The whole
Trade Union Act, 1998 (Act No.10 of 1998)	The whole
Security of Employment Act (Cap.574)	The whole
Severance Allowances Act (Cap.487)	The whole
Industrial Court of Tanzania Act, 1967 (Act No.41 of 1967)	The whole

THIRD SCHEDULE

(Made under section 105(3))

Savings and Transitional provisions

Interpretation
Act No.
10 of 1998

1. In this Schedule, unless the context requires otherwise-
- “employers organisation” means an employer’s organisation registered under the Trade Unions Act;
 - “federation” means a federation registered under the Trade Unions Act;
 - “repealed laws” means the laws repealed under section 105(1) and listed in the Second Schedule;

“trade union” means a trade union registered under the Trade Unions Act; and

“Trade Unions Act” means the Trade Unions Act.

Existing trade unions employer’s organisation and federations

2.–(1) A trade union, employer’s organisation or federation registered under the repealed laws immediately before the commencement of this Act, shall be deemed to be registered under this Act.

(2) As soon as practicable after the commencement of this Act, the Registrar shall-

(a) enter the names and details of the trade unions, employers’ organisations and federations into the appropriate registers prescribed under section 49(5)(a) of this Act; and

(b) issue a certificate in terms of section 49(5)(b) of this Act to the trade unions, employers’ organisations and federations referred to in paragraph (a).

(3) Where any provision of the constitution of a trade union, employers’ organisation or federation does not comply with the requirements of sections 47 and 48 of this Act, the trade union, employers organisation or federation shall rectify its constitution and submit the rectifications to the Registrar within 6 months of the commencement of this Act.

(4) The provisions of section 51, shall apply *mutatis mutandis* in respect of a rectification under subparagraph (3).

(5) Where a trade union, employers’ organisation or federation fails to comply with sub-paragraph (3) or fails to make the requisite changes, the Registrar shall apply to the Labour Court to cancel the registration of the trade union, employers’ organisation or federation because of its failure to comply with the provisions of this paragraph read together with sections 47 and 48 of this Act.

(6) Section 56, shall apply *mutatis mutandis* in respect of an application brought under subparagraph (5).

Pending applications for registration

3.–(1) Any pending application for registration, alteration of name or constitution in terms of the repealed laws shall be dealt with as if the application had been made under this Act.

(2) When dealing with an application referred to in subparagraph (1), the Registrar may-

(a) condone any technical non-compliance with this Act; and

(b) require the applicant to amend its application in order to comply with this Act.

Organisational rights and recognition

4.–(1) For purposes of this paragraph-

(a) organisational rights’ means any of the following rights:

(i) the right to trade union representation in the workplace including the right to a Committee or a field branch;

(ii) the right to facilities for trade union representatives in the workplace;

- (iii) the right to disclosure of information;
- (iv) the right to deduction of trade union dues and levies;
- (v) the right of access to the employer premises for purposes of recruitment of members, meeting with members and representing members; and

(b) “recognition” means any agreement or practice in terms of which a trade union is recognised under the repealed laws for purposes of negotiating terms and conditions of employment.

(2) A trade union shall retain any organisational rights conferred by-

- (a) any of the repealed laws for a period of three years; and
- (b) any collective agreement in force at the commencement of this Act until the agreement’s expiry, except that, if the agreement expires within two years of the commencement of this Act, the agreement shall be extended for a further year as if the repealed laws had not been repealed.

(3) A dispute referred to a labour officer under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(4) Where a trade union is recognised at the commencement of this Act, the employer shall continue to recognise the trade union for a period of three years unless another trade union is recognised as the exclusive bargaining agent under section 68.

(5) A dispute over any organisational rights or recognition conferred under the repealed laws shall be decided by the Labour Court as if the repealed laws had not been repealed.

Negotiated
or voluntary
agreements

5.–(1) A negotiated or voluntary agreement concluded before the commencement of this Act, whether or not the agreement has been registered by the Industrial Court under the repealed laws, shall be binding until its expiry provided that-

- (a) where the agreement is due to expire after a year from the commencement of this Act, the agreement expires at the end of the year; and
- (b) subject to paragraph 4(2)(b), any renewal of any such agreement shall be done in terms of this Act.

(2) A dispute arising from the application, interpretation or implementation of an agreement stipulated in subparagraph (1) shall be decided by the Labour Court as if the repealed laws had not been repealed.

The Employment
Ordinance No.
47 of 1955

6. Notwithstanding the repeal of the Employment Ordinance, the provisions of sections 100 and 102 relating to “provision of medicine and medical treatment” and “burial of deceased employees and dependants” shall continue to apply until they are repealed by another law.

Industrial Court awards	<p>7.—(1) Subject to subparagraph (3), a trade dispute stipulated in the repealed laws that arose before the commencement of this Act shall be dealt with as if those laws had not been repealed.</p> <p>(2) Subject to subparagraph (3), a trade dispute referred to the Industrial Court under section 4 of the Industrial Court of Tanzania Act or referred to the Court as a trade enquiry under section 8 of that Act before the commencement of this Act shall be dealt with as if those laws had not been repealed.</p> <p>(3) Notwithstanding subparagraphs (1) and (2), a strike or a lockout that commences after the commencement of this Act shall be dealt with in terms of this Act.</p> <p>(4) A revision or interpretation of an award made by the Industrial Court shall be done as if the repealed laws had not been repealed.</p> <p>(5) An award made by the Industrial Court under the repealed laws shall remain in force until the expiry of the award.</p>
References to conciliation boards	<p>8.—(1) A reference concerning a summary dismissal or disciplinary penalty that takes place before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p> <p>(2) A reference concerning a summary dismissal or disciplinary penalty that takes place before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p>
Disputes referred to labour officers	<p>9. A dispute contemplated in the repealed laws arising before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p>
References to Minister	<p>10. A reference to the Minister stipulated under the repealed laws shall be dealt with as if the repealed laws had not been repealed.</p>
Matters before ordinary courts	<p>11.—(1) An offence committed under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p> <p>(2) A claim arising under the repealed laws before the commencement of this Acts shall be dealt with as if the repealed laws had not been repealed.</p> <p>(3) Any suit or other civil proceedings commenced before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p>
Minister may authorise Commission to perform functions of conciliation board and Industrial Court	<p>12.—(1) The Minister may, after consultation with the Commission, authorise the Commission by notice in the <i>Gazette</i> to perform the functions of conciliation boards or the industrial court in terms of paragraph 7 or 8-</p> <p>(a) in respect of the whole or any specified part of Mainland Tanzania; and</p> <p>(b) with effect from a date specified in the <i>Gazette</i>.</p>

(2) The authorisation of the Commission under subparagraph (1) shall not affect the competence of a conciliation board or the industrial court in terms of paragraph 7 or 8 to decide or finalise any matter that is partly heard at the date specified in the *Gazette*.

Disputes
originating from
repealed laws
Acts Nos.
11 of 2010 s. 42
4 of 2016 s. 24

13.—(1) All disputes originating from the repealed laws shall be determined by the substantive laws applicable immediately before the commencement of this Act.

(2) All disputes pending and all applications for executions filed arising from the decision of the Minister in the subordinate courts prior to the commencement of this Act shall proceed to be determined by such courts.

(3) All disputes pending-

(a) revision of the defunct Industrial Court of Tanzania shall be determined by a panel of three Judges of the Labour Court; and

(b) hearing before the Industrial Court of Tanzania shall be determined by the Labour Court.

(4) All appeals and applications for judicial review originating from the industrial Court of Tanzania pending in the High Court shall be determined by the High Court.

(5) The Commission shall have powers to mediate and arbitrate all disputes originating from the repealed laws brought before the Commission and all such disputes shall be deemed to have been duly instituted under section 87 of the Act.

(6) All references pending decision of the Minister shall-

(a) in the case of references which were returned by the High Court to the Minister for retrial, be determined and finalised by the Minister; and

(b) in the case of references pending the decision of the Minister be forwarded together with their respective complete records to the Labour Court for determination.

(7) The date of the decision of the Minister shall be the date indicated in the prescribed form.

(8) Notwithstanding the provisions of any other written laws, for the purposes of computation of limitation of time, the period between the date of decision and the date of receipt of the decision shall be excluded.

(9) [Repealed by Act No. 4 of 2016, s. 24].

Minimum Wage
Ordinance
No. 15 of 1951

14. [Omitted].

Subsidiary
legislation

15. Any subsidiary legislation made under the repealed laws shall remain in force until they are-

(a) repealed by the Minister; or

(b) replaced by subsidiary legislation made under this Act.

Hours of work
domestic and
security workers

16. Notwithstanding the provisions of section 20, the hours of work of domestic workers and security workers shall be a maximum of-

- (a) 54 ordinary hours for the first year after the commencement of this Act;
- (b) 51 ordinary hours for the second year after the commencement of this Act;
- (c) 48 ordinary hours for the third year after the commencement of this Act; and
- (d) 45 hours thereafter.

Written
particulars

17. [Omitted].
