

**DRAFT**

**LABOUR CODE,**

**2009**

No. of 2009

**VIRGIN ISLANDS**

**LABOUR ACT, 2009**

**ARRANGEMENT OF SECTIONS**

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### **SCHEDULE**

No. of 2009

Labour Code, 2009

Virgin  
Islands

I Assent

Governor

, 2009

**VIRGIN ISLANDS**

No. of 2009

A Bill for

An Act to prescribe minimum conditions of employment and to provide for the resolution of disputes between employees and employers, for the administration and observance of labour laws generally, for the repeal of the Labour Ordinance (Cap. 292), the Labour Code Ordinance (Cap. 293) and the Trade Disputes (Arbitration and Inquiry) Act (Cap. 299) and for other connected matters .

[Gazetted , 2009]

ENACTED by the Legislature of the Virgin Islands as follows:

**PRELIMINARY**

1. This Act (in this Act referred to as the “Code”) may be cited as the Labour Code, 2009 and shall come into force on a date the Governor may, by Proclamation published in the *Gazette*, appoint. Short title and commencement.
2. (1) The expressions of national policy provided in this section shall be used in interpreting this Code. National policy underlying Code.
  - (2) The legitimate employment interests of persons belonging to the Virgin Islands shall be paramount and shall override all competing concerns.
  - (3) There shall be the preservation of social balance, national cultural heritage, values and norms of the Virgin Islands.

(4) Standards for a competitive economy and efficient labour market shall be recognised and promoted, with due regard to basic minimum conditions of work, and respect for the fundamental principles of human rights and social justice.

(5) Standards and conditions of work shall be transparent in their implementation.

(6) There shall be a fair and equitable balance of rights, interests and obligations between employers on the one hand and employees on the other hand.

(7) Collaboration and co-operation among Government, employers and employees and social dialogue shall be promoted in the system of labour administration.

(8) Fundamental international principles and standards at work, adapted to the circumstances of the Virgin Islands, shall be respected and promoted.

(9) Labour legislation and Regulations shall be practical in terms of regulatory and administrative feasibility.

(10) There shall be an easily accessible system in place for the expeditious, fair and inexpensive settlement of disputes between employers and employees.

(11) Systems, procedures and institutional framework for the effective implementation, monitoring and enforcement of the provisions of this Code and the system of labour administration shall be given due attention.

(12) The interests of employees, employers and the public shall be taken into account and their representative organisations duly consulted in connection with the formulation and periodic revision of the law relating to labour and in connection with the resolution of issues arising in the enforcement of those laws.

(13) Employers and employees shall be free, through the processes of collective bargaining or otherwise, to agree on wages and other conditions of employment, provided the agreements do not infringe the minimum conditions prescribed in this Code.

(14) Employers and employees shall be free to associate with one another, or with their representative associations, in order to improve their economic situation, without interference, restraint or coercion.

(15) Employees shall enjoy decent work in accordance with the standards of the International Labour Organisation and suitable to the circumstances of the Virgin Islands.

(16) The employment conditions of employees shall be those which serve to preserve their health, safety and welfare and to prevent industrial accidents.

(17) There shall be non-discrimination and equal opportunity in employment and occupation.

(18) Employers shall aim to maximise profits by competing on the basis of managerial efficiency and use of entrepreneurial skills rather than by seeking to reduce or otherwise derogate from their employees' working conditions.

**3.** In this Act, unless the context otherwise requires,

Interpretation.

“bargaining agent” means a trade union that on behalf of employees;

“bargaining unit” means a group of employees on whose behalf collective bargaining may take place;

“basic wage” means that part of an employee's remuneration for services which is payable in money for his or her normal hours of work;

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

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

“commission agent” means an agent or employee who is remunerated by commission;

“Commissioner” means the person for the time being appointed to, or acting in, the post of Labour Commissioner pursuant to section 8;

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

“confinement” means labour resulting in the birth of a living child or labour, after not less than twenty-eight weeks of pregnancy, resulting in the birth of a child, whether alive or dead;

“continuous employment”, for the purposes of section 73(1) and Part VII, means an uninterrupted period of employment with an employer, and any predecessor-employer, provided that any break in employment not exceeding six months shall not be deemed to break continuity of employment, but in any case, the duration of breaks shall not count as employment for the purposes of calculating entitlements to severance pay or gratuities for long service as may be provided by Regulations made under section 113;

“dependent contractor” means a person, whether or not employed under a contract of employment, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor;

“dispute” or “complaint” means any difference between one or more employers or organisations representing employers and one or more employees or organisations representing employees relating in whole or in part to any matter covered by this Code or any law relating to labour or generally arising out of the relationship between the employer and the employee;

“employee” means any person who enters into or works under, or where a contract of employment has been terminated for any reason, a person who entered into or worked under, a contract with an employer, personally to perform any services or labour, whether the contract be oral or written, expressed or implied; and the term includes

- (a) a person whose services or labour have been interrupted by a suspension of work during a period of leave, temporary lay-off, strike or lockout;
- (b) an apprentice whose services or labour may be designed primarily to train such apprentice;
- (c) a commission agent;
- (d) a dependent contractor; and

- (e) a managerial employee who is not responsible for policy formulation or in effective control of a department or branch of the undertaking;

“employer” includes a person, body corporate, undertaking, association, public authority or body of persons who or which employed or employs a person under an employment contract, and includes the heirs, successors and assigns of an employer;

“employment contract” means any contract, whether expressed or implied and whether written or oral, under which it is agreed that one person (the employee) will perform certain services for another (the employer), and the term shall include any indenture or contract of apprenticeship or engagement as a commission agent;

“essential services” means the Police Service, Prison Service, Water and Sewerage Services, Fire and Rescue Services, Electricity Generation and Distribution Services, Telecommunication Services, Health Care Providers and Port Services;

“established employee” means a public officer or a person employed by the Government whose salary is paid from or out of funds allocated for the payment of the personal emoluments of persons on the permanent and pensionable establishment as included in the Official Estimates of the Virgin Islands;

“gratuities” means remuneration, in money, received by an employee from customers, whether directly or through an employer and whether individually or shared with fellow employees;

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

“hours of work” means the period during which an employee’s services are under the control of his or her employer, and includes break periods of fifteen minutes or less, rest periods, meal intervals, and hours of work earned on a public holiday for which the employee is not to suffer loss of pay;

“inspector” means any person appointed as Labour Inspector in accordance with the provisions of section 12;

“lockout” means

- (a) the exclusion by an employer of any or all of his or her employees from any premises on or in which work provided by the employer has been performed; or
- (b) the total or partial discontinuance by the employer of his or her business or the provision of work, with a view to inducing his or her employees, or any persons in the employ of any other employer or employers, to agree to, or to comply with, any demands or proposals relating to any dispute, or to abandon any demand or modification of any demand;

“long service gratuity” means the right to remuneration, or the amount of remuneration, which may be possessed by an employee in accordance with Regulations made under section 113;

“Minister” means the Minister responsible for Labour;

“night work” means work performed between the hours of 10:00 p.m. on one day and 5:00 a.m. on the following day;

“non-established employee” means a person who is employed by the Government and whose wage is paid from or out of funds allocated for the payment of the personal emoluments of persons who are not on the permanent and pensionable establishment as included in the Official Estimates of the Virgin Islands;

“normal hours of work” means those hours of work for which premium pay is not due under section 49;

“parent or guardian” means a parent or guardian of a child or young person and includes any person who is liable for the maintenance of, who has the custody of or who has control over, a child or young person, or who has or would have a direct benefit from the earnings of the child or young person;

“part-time employment” means an employment contract, or a succession of employment contracts, with the same employer or a successor-employer, in which an employee is required to provide his or her services at intervals, so that the employee is not, in any twelve month period, continuously employed by that employer, and the term includes casual employment;

“predecessor-employer”, in relation to the employment of a person, is one who, in consequence of a change occurring in the ownership or in the part of an undertaking in which that person is involved, is no longer the employer of that person;

“premium pay” refers to the form of payment mentioned in section 49;

“prescribed” means prescribed by Regulations under section 195;

“redundancy” means the loss of employment as defined in section 89 (3);

“Regulations” means Regulations made under this Act;

“requirements”, “obligations” or “provisions” include the requirements, obligations or provisions of any Regulations or Orders made under this Code;

“severance pay” means remuneration to which an employee whose employment is terminated under the circumstances described in Part VI is entitled;

“ship” means any seagoing ship or boat of any description registered in the Virgin Islands;

“Sister Islands” means the islands of the Virgin Islands other than Tortola;

“strike” means the refusal or failure in concert by two or more employees of an employer to continue, whether completely or partly, to work or to resume their work or to comply with the terms and conditions of employment applicable to them, or the retardation of the progress of work by them or the obstruction of work by them, with a view to inducing the employer or any other employer to agree to, or to comply with, any demands or proposals relating to any dispute or to abandon any demand or modification of any such demand;

“substantially equivalent employment” means employment at work which, although not identical to that which is the basis of comparison, requires similar skills, affords relatively similar prospects of progression and provides remuneration of relatively equal value;

“successor-employer”, in relation to the employment of a person, is one who, in consequence of a change occurring in the ownership of an undertaking or in that part of the undertaking in which the person is involved, has become the new employer of that person;

“undertaking” comprises public and private undertakings and any branch of that undertaking and includes

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (b) workplaces in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in ship-building or in the generation, transformation or transmission of electricity, gas or motive power of any kind;
- (c) building and civil engineering works, including constructional, repair, maintenance, alteration and demolition work;
- (d) enterprises engaged in the transport of passengers or goods by road, rail, sea, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports;
- (e) commercial establishments;
- (f) postal and telecommunication services;
- (g) establishments and administrative services in which the persons employed are mainly engaged in clerical work;
- (h) newspaper and printing establishments;
- (i) hotels, boarding houses, restaurants, clubs, cafés and other refreshment houses;
- (j) establishments for the treatment or care of the sick, infirm, destitute or orphans;
- (k) theatres and places of public entertainment;
- (l) utilities engaged in the provision of water, sewerage or waste disposal services;
- (m) enterprises engaged in farming, cropping, fishing or other forms of agriculture;

“unfair dismissal” refers to a termination of employment which may be an unfair dismissal under Part VI;

“Virgin Islander” means a person who belongs to the Virgin Islands as defined in section 2(2) of the Virgin Islands Constitution Order, 2007;

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“wages” means any money or other thing paid or contracted to be paid, delivered or given, at periodic intervals, as recompense, reward or remuneration for services rendered or labour done;

“workplace” means a place at which work is performed, and includes property belonging to or occupied by the Government;

“worst forms of child labour” means

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children and young persons, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child and young persons for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child and young persons for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties, or for activities which involve the unlawful carrying or use of firearms or other weapons; and
- (d) work deemed by the Minister to be hazardous to young persons.

“young person” means a person who has ceased to be a child and who is under the age of eighteen years.

**4.** (1) To the extent that this Code purports to apply to employers, it shall apply to employers operating or doing business in the Virgin Islands, including the statutory authorities and Government as the employer of its non-established employees, but it shall not bind the Government as the employer of its other employees, except that Part IX shall bind the Government in relation to all its employees.

Application of  
this Code.

(2) To the extent that this Code applies to employees, it shall apply to employees of employers operating or doing business in the Virgin Islands,

including employees statutory authorities and non-established employees of the Government, but they shall not apply to

- (a) established employees; and
- (b) members of the Royal Virgin Islands Police Force.

(3) This Code shall not apply to persons holding the status of diplomatic agents.

Enforcement against Government as an employer.

5. Where the Government as an employer is in contravention of a provision of this Code, any Regulations or Orders, which contravention constitutes an offence, criminal proceedings shall not be commenced against the Crown but instead civil proceedings, including arbitration in accordance with this Act may be commenced against the Crown by the aggrieved employee, and the court or arbitration tribunal may grant the relief claimed or other reliefs the court or arbitration tribunal considers appropriate, including any sum owing to the employee by way of wages, vacation leave pay or other sum owing to the employee arising out of his or her employment.

Establishment of working conditions above minimum standards in Code.

6. Nothing in this Code shall be construed as prohibiting an employer, either unilaterally by individual contract with an employee or with employees, or by collective agreement with employees' representatives, from establishing working conditions more advantageous to employees than those minimum standards which are set forth in this Code.

## **PART I ADMINISTRATION**

Principles of administration.

7. The following principles shall govern the administration of this Code:

- (a) responsibilities shall be fixed, so that administrators of this Code, employers and employees and their representatives, and the general public know the persons responsible for the administration of this Code;
- (b) uniform procedures, to the extent practicable, shall be established and publicised;
- (c) where standards or criteria are set forth in one or more provisions of this Code, they shall be adhered to in the administration of this Code;
- (d) administration of this Code shall be without undue delay.

- (e) to the extent practicable, all actions taken by administrators of this Code shall be recorded in writing and, except where they are self-evident, reasons for the actions shall be set forth in writing;
- (f) voluntary adjustment or settlement of issues, without formal action by the administrators, is to be encouraged, and any adjustment or settlement, unless clearly contrary to the purposes of this Code, shall be accepted as disposing of the issues adjusted or settled;
- (g) subject to this Code and the confidentiality of voluntary settlement proceedings, actions of administrators under this Code shall be publicised to the extent practicable; and
- (h) a persons to whom the administration of any provision of this Code is entrusted shall in the discharge of that duty, act impartially.

**8.** There shall be a Labour Commissioner who shall, subject to the general direction of the Minister, be in charge of the Labour Department.

Labour  
Commissioner.

**9.** The Commissioner shall

Duties and  
responsibilities  
of  
Commissioner.

- (a) be available to assist in the resolution of any question arising out of employer-employee relationships whether or not the question arose out of this Code;
- (b) participate in the preparation, co-ordination and administration of national employment policy;
- (c) provide technical advice to the Government in labour matters;
- (d) keep under review the situation of the unemployed, employed and under-employed, draw attention to the terms and conditions of employment and working life of the employed and under-employed and submit proposals for improvement;
- (e) make technical advice available to employers and employees and their respective organisations at their request;

- (f) make his or her services available to employers and their respective organisations with a view to promoting effective co-operation between the Government, employers and employees;
- (g) receive questions, complaints, petitions or notifications of differences regarding employment between employers and employees;
- (h) investigate and resolve disputes or complaints pursuant to Part III;
- (i) collect data and statistics in relation to
  - (i) applications for, and the granting of, work permits;
  - (ii) complaints received and settled;
  - (iii) inspections completed;
  - (iv) violations of this Code;
  - (v) accidents and injuries;
  - (vi) occupational diseases;
  - (vii) strikes and work days lost due to strikes; and
  - (viii) any other key indicators of the labour market;
- (j) provide job registration and placement services;
- (k) be responsible for
  - (i) work force planning and development;
  - (ii) occupational safety and health;
  - (iii) the promotion of productivity and labour standards; and
  - (iv) regional and international co-operation in labour matters and the preparation of International Labour Organisation reports;

- (1) prepare and furnish the Minister with the annual report referred to under section 24.

**10.** Subject to section 59 of the Virgin Islands Constitution Order, 2007, the Commissioner may commence proceedings in respect of any offence committed under the provisions of this Code and the proceedings may be prosecuted by the Commissioner or on his or her behalf by an inspector or a police officer or a Crown Prosecutor.

**11.** The Commissioner shall have the powers conferred upon an inspector. Commissioner to have powers of inspector.

**12.** (1) The Minister may, by Order published in the *Gazette*, designate a public officer as a labour inspector to assist the Commissioner in the execution of his or her duties. Designation of labour inspectors.

(2) An inspector shall be furnished with a certificate of appointment in the form prescribed and, when visiting any premises or questioning a person in connection with the exercise of his or her powers, shall produce the certificate.

**13.** An inspector shall, under the general directions of the Commissioner, Duties and responsibilities of inspectors.

- (a) ensure that the laws in force concerning conditions of employment and the protection of employees in their occupation are being duly applied;
- (b) give technical information and advice whenever necessary, to employers and employees as to the most effective means of complying with existing laws;
- (c) submit to the Commissioner inspection reports from time to time and indicate in those inspection reports difficulties or abuses not specifically covered by the existing laws;
- (d) compile such statistical data in the course of his or her duties as he or she may be instructed by the Commissioner to establish; and
- (e) assist, as required, in the resolution of disputes or complaints.

**14. (1)** An inspector may

- (a) enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
- (b) enter by day any premises which he or she may have reasonable cause to believe to be liable to inspection;
- (c) interrogate alone or in the presence of witnesses, the employer or any person in or at a workplace on any matter concerning the application of the requirements of the law relating to labour;
- (d) carry out any examination, test or enquiry which he or she may consider necessary in order to ensure that the requirements of the law are being observed;
- (e) require the production of any books, registers or documents, the keeping of which is required by any law relating to conditions of employment, in order to see that they are in conformity with the provisions of this Code, and copy such documents or make extracts from them;
- (f) enforce the posting of notices as required by law;
- (g) take or remove from any workplace for purposes of analysis, samples of materials and substances used or handled, subject to the employer or the employer's representative being notified at the time of such taking or removal of any such samples or substances;
- (h) require from any employer, information as the number of employees and the wages, hours and conditions of employment of the employees or returns consisting of that information; and
- (i) arrange to be accompanied by a police officer or any other employee of the Crown designated by the Minister into any place in or on which the inspector has reasonable cause to apprehend serious obstruction in the execution of his or her duty.

(2) A person aggrieved by the decision of an inspector in the exercise of a power under this section may apply to the High Court for judicial review.

**15.** Where an inspector has reasonable cause to believe that at any workplace, the building, the layout of machinery and equipment or working method constitutes a threat to the safety or health of any employee, he or she shall serve written notice upon the owner or person in charge of the workplace requiring the owner or the person in charge to carry out within a specified time, alterations to the workplace, the building, layout or working of machinery and equipment or working method as may be necessary to secure compliance with the law relating to the safety or health of the employees and if such owner or the person in charge does not comply with such directions, he or she commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Action of inspector in case of threat to safety or health.

**16.** Notwithstanding the provisions of paragraphs (a) and (b) of section 14, an inspector shall not visit or inspect any private premises where domestic servants are employed or believed to be employed except between the hours of 8:00 a.m. and 6:00 p.m.

Inspection of premises where domestic servants are employed.

**17.** On the occasion of an inspection or visit, an inspector shall notify the employer or his or her representative of his or her presence, unless he or she considers that such notification may be prejudicial to the performance of his or her duties.

Notification of presence.

**18.** (1) An inspector shall

Limitations and restrictions on inspectors.

- (a) not have a direct or indirect interest in any enterprise under his or her inspection or supervision;
- (b) not reveal at any time manufacturing or commercial secrets or working processes which may come to his or her knowledge in the course of his or her duties; and
- (c) treat as confidential, the source of any complaint bringing to his or her notice a defect or breach of the law and shall give no intimation to the employer or his or her representative that a visit of inspection was made in consequence of the receipt of such complaint.

(2) A person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

**19.** (1) An employer shall, at an address in the Virgin Islands, keep in such form as the Commissioner may approve,

Records and returns.

- (a) an accurate record in respect of each employee showing

- (i) the employee's name, address, occupation and hiring dates either by the employer or by a predecessor-employer,
  - (ii) the immigration status of the employee and, where applicable, the date of expiry of the employee's work permit,
  - (iii) the number of hours worked each day in each pay period,
  - (iv) the basic and other wages paid to the employee for each pay period,
  - (v) the leave taken by the employee by type, duration and date,
  - (vi) the protective gear issued to the employee, and
- (b) a register of all employees under the age of eighteen years,

and, where applicable, shall keep at that address a copy of each written statement furnished to an employee under section 45.

(2) Where an employee's services have been terminated for any reason, an employer shall preserve the employee's records and the written statements referred to in subsection (1) for a period not less than six years after the date of termination.

(3) Upon request by an employee, the employer shall make available his or her record for inspection and copying by such employee or his or her representative, in the presence of the employer or his or her representative.

(4) An employer who contravenes subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(5) Notwithstanding subsection (1), if there is not a present record of an employee's latest hiring date by virtue of the fact that the requirement of subsection (1) was not in effect on that date, the question of the employee's hiring date shall be one to be disposed of by the procedures set forth in section 26.

(6) The Commissioner may, within such period as he or she may specify by notice in the *Gazette*, or any local newspaper circulating in the

Territory, require employers to submit returns containing such particulars and information contained in the employers' records kept under subsection (1) as he or she may specify in the notice.

(7) The Commissioner may from time to time compile, analyse and tabulate statistics collected by way of returns submitted under this section and, subject to the directions of the Minister, cause the statistics or abstracts to be published in a form determined by the Commissioner, without disclosing the identity of the employer, employee or agricultural or industrial undertaking.

**20.** An employer whose premises are being visited by an inspector shall Obligations of employers.

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

**21.** A person who Offences and penalties in relation to Commissioner and inspectors.

- (a) hinders or obstructs the Commissioner or an inspector in the exercise of the powers and duties conferred on him or her by this Code,
- (b) fails or refuses to permit his or her employees free access to and communication with an inspector while on a visit of inspection,
- (c) refuses or wilfully neglects to furnish the Commissioner or an inspector, any information or return or particular that may be required of the employer under this Code, or
- (d) knowingly furnishes, or causes, or allows to be furnished to the Commissioner or an inspector, any information or return which is false in any material particular,

commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

Liability of agent, etc..

**22.** Where any act or default is committed for which the owner or person in charge is liable under this Code, then the director, secretary, agent or servant of such owner or person in charge shall be deemed to have committed that offence unless such director, secretary, agent or servant proves that the offence was committed without his or her consent or connivance.

Victimisation.

**23.** (1) A person who commits an act of victimisation against another person commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

(2) For the purposes of subsection (1), a person shall be taken to commit an act of victimisation against an employee if the first-mentioned person subjects or threatens to subject the other person to any detriment

- (a) on the ground that the employee
  - (i) has made, or proposes to make, a complaint under this Code;
  - (ii) has brought, or proposes to bring, proceedings under this Code against any person;
  - (iii) has furnished or proposes to furnish any information, or has produced or proposes to produce any documents, to a person exercising or performing any power or function under this Code;
  - (iv) has attended or proposes to attend an inquiry under this Code or to provide evidence or testimony as a witness; or
  - (v) has made a good faith allegation that a person has committed an act of discrimination in contravention of this Code; or
- (b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in paragraph (a).

Annual reports.

**24.** The Commissioner shall, on or before 30<sup>th</sup> April in each year, prepare and furnish the Minister with a report, in such form as the Minister may approve, on the operations of the Labour Department during the preceding calendar year, including

- (a) unaudited revenue and expenditure statements,

- (b) the number of
  - (i) jobs created and jobs lost,
  - (ii) work permits granted,
  - (iii) workplace accidents,
  - (iv) work days lost due to industrial action,
  - (v) strikes,
  - (vi) inspections undertaken,
  - (vii) infringements of this Code,
  - (viii) complaints received from employees and employers,
  - (ix) disputes settled by the Minister, and
  - (x) general level of salary increases,during that year,
- (c) general level of salary increases,
- (d) a status report on occupational safety and health, and
- (e) other information as the Minister may specify in writing,

and the report shall be laid before the House of Assembly by the Minister.

**25.** Proceedings shall not be brought against, and compensation shall not be payable by, the Commissioner, an inspector or any other officer employed in carrying out this Code in respect of any act done in good faith under this Code.

Limitation of liability.

## **PART II SETTLEMENT OF DISPUTES**

**26. (1)** Any dispute or complaint arising out of any matter covered by this Code or any law relating to labour or generally out of the relationship between the employer and the employee may be referred by either party concerned or his representative to the Commissioner for settlement.

Procedure for the settlement of disputes.

(2) Upon receipt of the reference, the Commissioner shall investigate the matter and make every effort to dispose of the issue raised in the reference by voluntary settlement in accordance with industrial relations practice, and in pursuance thereof he or she may

- (a) request the parties to meet with him or her jointly or separately;
- (b) request the parties to state the facts as they know them and their respective positions on the issue;
- (c) request the parties to present witnesses and he or she may examine any person in relation to the issues, either alone or in the presence of others, at his or her discretion; and
- (d) utilise the process of conciliation or mediation or any other device designed to facilitate voluntary settlement.

(3) Where the Commissioner fails to achieve a settlement after thirty days from the date of reference on the basis of the provisions of subsection (2) or such longer period as the parties may agree, he or she shall transmit the matter, with a full report on the matter, to the Minister.

Action by  
Minister.

**27.** On receipt of a report transmitted by the Commissioner under section 26(3), the Minister may

- (a) himself or herself attempt to achieve a voluntary settlement of the issue, taking whatever steps he or she deems appropriate, including consultation with the Commissioner; or
- (b) refer the matter to a Board of Inquiry or an Arbitration Tribunal within twenty-one days in accordance with the provisions of section 28, as the case may be.

Referral to  
Arbitration  
Tribunal or  
Board of Inquiry.

**28.** (1) Where, after the expiration of a period of twenty-one days from the date of transmission in accordance with the provisions of section 26(3) or such longer period as the parties may agree, the Minister fails to achieve a settlement using the processes set out in section 27(a), he or she may

- (a) refer the matter to an Arbitration Tribunal for settlement where
  - (i) the dispute is one involving essential services;

- (ii) in the opinion of the Minister, the dispute is likely to endanger the health or safety of employees or the public; or
  - (iii) the dispute is one involving the application of a provision of an enactment, collective agreement or contract of employment;
- (b) in the case of a dispute other than a dispute mentioned in paragraph (a), refer the matter for recommendation to a Board of Inquiry, if the parties agree in advance to accept the recommendation of the Board; or
  - (c) in the case of a dispute other than a dispute mentioned in paragraphs (a) and (b), give notice in writing to the parties concerned that he or she intends to refer the dispute to an Arbitration Tribunal for settlement.

(2) Where the Minister has given notice under paragraph (c) of subsection (1), he or she shall refer the dispute to an Arbitration Tribunal for settlement unless, within fourteen days from the date on which he or she gave the notice, he or she receives written notice from either the complainants' representative, or in the absence of the complainants' representative, from a majority of the complainants involved in the dispute, that the majority of the complainants objects to the reference of the dispute to arbitration and agrees to withdraw the complaint.

(3) A strike shall not take place

- (a) if the employees are in essential services; and
- (b) unless
  - (i) the Commissioner has failed to achieve a settlement within the period specified under section 26(3);
  - (ii) fifty percent plus one, of the employees voted in favour of a resolution for that action; and
  - (iii) at least one day written notice is given to the Minister and any other interested party, of an intention to embark on that action.

(4) A lockout shall not take place

(a) if the employees are in essential services; and

(b) unless

(i) at least one day written notice is given to the Minister and any other interested party, of an intention to embark on that action; and

(ii) the Commissioner has failed to achieve a settlement within the period specified under section 26(3).

(5) The strike or lockout shall cease on reference of the matter to the Arbitration Tribunal.

Appointment of  
Arbitration  
Tribunal.

**29.** (1) In accordance with the provisions of section 27 or subsection (1)(a) of section 28, the Minister may appoint an Arbitration Tribunal (hereinafter referred to as “a Tribunal”) to settle any dispute or complaint transmitted to him under subsection (3) of section 26.

(2) A Tribunal shall consist of a chairperson and two other persons appointed by the Minister, by Order, on terms and conditions as the Minister may determine.

(3) The chairperson shall be an attorney-at-law of at least ten years’ standing and the two other members shall be selected from among employers and employees, respectively.

(4) A person appointed to a Tribunal under subsection (2) shall not be removed while being in charge of a case or before the expiry of his or her term, except for stated misbehaviour or incapacity, whether arising from infirmity of body or mind, to perform his or her duties.

Findings of  
Tribunal binding.

**30.** (1) The findings of a Tribunal shall be binding upon the parties to the dispute and may only be appealed to the High Court on a point of law.

(2) Notwithstanding any enactment to the contrary, the Tribunal shall in the exercise of its powers shall

(a) make an order or award as it considers fair and just having regard to the interests of the persons concerned and the community as a whole; and

(b) act in accordance with equity, good conscience and the substantial merits of the case before it having regard to the principles and practices of good industrial relations.

(3) The Tribunal shall not make an order as to cost except for exceptional reasons the Tribunal considers appropriate to other otherwise.

(4) For the purposes of enforcement of any orders of the Tribunal, they shall be treated as if they were orders, by whatever name called, of the High Court.

**31.** (1) For the purpose of inquiring into, reporting on and making recommendations for the settlement of any dispute or complaint which has been transmitted to him under subsection (3) of section 26, the Minister, in accordance with the provisions of section 27 or subsection (1)(b) of section 28, may appoint a Board of Inquiry (in this Act referred to as “a Board”).

Appointment of Board of Inquiry.

(2) A Board shall consist of such number of members, who shall be appointed by the Minister, as he may determine.

(3) Where the number of members is more than one, an equal number shall be appointed to represent employers and employees respectively on their nomination or on the nomination of their respective organisations, where such organisations exist.

(4) The Minister shall appoint a person who does not represent the interests of employers or employees to be chairperson of a Board.

(5) A Board shall enquire into any matter referred to it and shall, within sixty days or a longer period as the Minister may approve in writing, submit its report and recommendations to the Minister, who shall release the report and recommendations to the parties to the dispute within fourteen days of his or her receipt of the report.

**32.** (1) A Tribunal or a Board may summon any person to attend before such Tribunal or Board, as the case may be, and to give evidence or to produce any document or other record in the possession or under the control of such person.

Powers of Tribunal and Board to summon witnesses and administer oaths.

(2) A summons under this section may be served either personally or by registered post.

(3) A Tribunal or a Board may administer oaths or take the affirmation of any witness appearing before them.

(4) A person who makes a false statement under oath or affirmation commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

Summons of Tribunal and Board to be obeyed.

**33.** Any party appearing or any person summoned pursuant to section 32(1) to attend and give evidence or to produce any document or other record before a Tribunal or a Board shall be

- (a) bound to obey the summons served upon him or her;
- (b) entitled to the same right or privilege as he or she would have before a court.

Failure to obey summons of Tribunal or Board.

**34.** A person who fails to obey a summons served upon him or her pursuant to section 32(1) commits an offence and is liable on summary conviction to a fine not exceeding **seven** thousand dollars.

Tribunal and Board to regulate own proceedings.

**35.** A Board or Tribunal, as the case may be, shall regulate its own proceedings.

Arbitration Ordinance not to apply.  
Cap. 6

**36.** The Arbitration Ordinance shall not apply to any proceedings of a Tribunal under this Code or to any award made by it.

### **PART III ADVISORY COMMITTEES**

Tripartite consultation.

**37.** The Minister shall consult with employers and employees or their respective representatives, if any, from time to time in such manner as he or she may think fit, on any matter affecting the relationship between employers and employees and conditions of employment in general.

Advisory Committees.

**38.** (1) The Minister may appoint an Advisory Committee to investigate or review

- (a) the conditions of employment in general or of a particular trade or occupation,
- (b) the extent of unemployment,
- (c) the cost of living and the basic minimum wage,
- (d) the general conditions of the economy of the Virgin Islands,
- (e) the minimum basic wage rate which should be payable in respect of any trade or occupation or employment in general,

- (f) the application of International Labour Organisation Conventions extended to the Virgin islands and requests by the Government of the United Kingdom for International Labour Organisation Conventions to be extended to the Virgin Islands,
- (g) employment policies and laws, or
- (h) general questions relating to migration for employment,

and to make recommendations to the Minister on those matters.

(2) Subject to subsection (3), a Committee shall consist of an equal number of employers and employees and representatives of such other interest groups as the Minister deems appropriate.

(3) The Minister shall appoint a person who does not represent the interests of employers or employees to be chairperson of a Committee.

(4) The members representing employers and employees shall be appointed after consultation with representatives of the employers and employees concerned.

(5) A Committee may hold public meetings before which it may, by public notice, invite employers and employees and their representatives to appear and make recommendations.

(6) A Committee may engage the services of one or more assessors who, in the opinion of the Committee, is or are qualified in the matter under investigation.

(7) All questions arising at any meeting of a Committee shall be determined by a majority of votes of all members, including the chairperson, who are present, and no such determination of the Committee shall be considered invalid by reason of any vacancy or absence among the members.

**39. (1)** A Committee shall

- (a) issue interim reports with recommendations upon request by the Minister; and
- (b) issue a final report with recommendations within one month of completing its investigation.

Reports of  
Committee.

(2) The reports referred to in subsection (1) shall be addressed and delivered to the Minister, along with the specially concurring, minority and dissenting reports, if any.

Orders.

**40.** (1) Having regard to the recommendations of the Committee, the Minister may make an Order prescribing the conditions of employment, or the minimum basic wage rate payable for employment, in any industry, trade, occupation or employment.

(2) For the purposes of this Act, the reference to minimum basic wage shall be construed to mean minimum basic wage in monetary terms.

Variation of Orders.

**41.** The Minister may vary the provisions of an Order made under this Part, but only with like advice and in the manner set out in this Part.

#### **PART IV BASIC CONDITIONS OF EMPLOYMENT**

Public policy.

**42.** The following expressions of public policy underlie and shall be used in the interpretation of this Part:

- (a) an employee should know what his or her job consists of, what his or her employment conditions are, and, if his or her employment is terminated, the reason for the termination;
- (b) an employee is entitled to reasonable breaks in employment, whether because of physical disability or for rest and rehabilitation;
- (c) in the interests of spreading employment opportunities and of preventing industrial accidents, there shall be a reasonable limitation upon working hours of employees;
- (d) to the extent that circumstances dictate that working hours be reasonably extended, premium pay ought to be received.

Conformity with Code generally.

**43.** An employer shall not provide employment, nor is an employee obliged to accept employment, under terms and conditions which do not conform generally to the provisions of this Code.

**44.** (1) An employer and employee may enter into an individual employment contract, either written or oral, which specifies conditions of employment, but any provision which

Forms of  
employment  
contracts.

- (a) establishes conditions which fall below the minimum employment standards established by this Code shall be void;
- (b) requires that the employee refrain from associating with other employees or with a trade union for collective bargaining purposes shall be void.

(2) Subject to any applicable work permit, where an employment contract for a fixed term is renewed on one or more occasions so that the total period involved is twelve months or more, such contract shall, for the purposes of this Code, be deemed to be for an indefinite period.

(3) When it appears to a Tribunal appointed in accordance with section 29 that a fixed term employment contract is renewed in such a way as to evade the provisions of this Code, the Tribunal shall subject to any applicable work permit, determine such contract to be for an indefinite period.

(4) It shall be lawful for an employer, or group of employers, to enter into a written collective agreement with two or more employees or their representatives, and the collective agreement shall

- (a) be signed by the parties to the agreement; and
- (b) be for a period of not less than three years and not more than five years.

(5) A copy of a collective agreement reached under subsection (4) shall be lodged in the prescribed manner with the Commissioner within seven days of being signed by the parties, for registration as a collective agreement, and the collective agreement shall, upon being so registered, be binding on the parties.

(6) A collective agreement lodged for registration under this section which, in the opinion of the Commissioner, is in conflict with the requirements of section 43 shall be returned to the parties for amendment, and shall not be registered by the Commissioner until he or she is satisfied that the provisions of that section have been met.

**45.** (1) Where an employee is engaged by an employer for a term of employment exceeding four months, the employer shall furnish the employee with a written statement within ten days of engagement containing at least

Statement of  
working  
conditions.

- (a) the name and address of the employer and employee and the general responsibilities and related duties for which the employee is being hired;
- (b) the regular hours of work and rest periods;
- (c) the starting pay and methods of computing the same;
- (d) the interval between payment of wages;
- (e) the term of employment, if other than indefinite;
- (f) the period of probation, if any; and
- (g) the employee's leave and vacation entitlement.

(2) With respect to persons currently employed for periods exceeding four months on the date of the coming into force of this Code, each employer shall, if he or she has not already done so, within twenty days after that date, furnish each person with a written statement which shall set forth

- (a) the name and address of the employer and employee and the general responsibilities and related duties of the employee;
- (b) the regular hours of work and rest periods;
- (c) the employee's pay and methods of computing the same;
- (d) the interval between payment of wages;
- (e) the term of employment, if other than indefinite;
- (f) the period of probation, if any; and
- (g) the employee's leave and vacation entitlement.

(3) Where, subsequent to the giving of a statement under subsection (1) or (2), the employer desires to change the responsibilities and related duties of an employee as set forth in such statement, he or she shall at the time he or she effectuates any such change, furnish such employee with a new written statement.

(4) Notwithstanding subsection (3), where there is no organisation representing an employee who is employed for an indefinite period, the employer shall in consultation with the employee review the employee's wages and other terms and conditions of employment at least once every two years.

**46.** (1) The probationary period of any employee shall not exceed four months, except in the case of an employee of the rank of a supervisor or above, where the probationary period shall not exceed six months. Probationary period.

(2) During the probationary period the employee shall be given reasonable training and general orientation in the duties and responsibilities of the position for which he or she was hired and the employee shall be informed on a monthly basis of his or her progress.

(3) Notwithstanding subsection (1),

(a) where the contract of employment does not exceed four months, probationary period need not be included in the contract of employment, but if the a contract does not specify a probationary period, the provisions of section 45(1) shall apply; and

(b) the employer may, after consultation with the employee or his or her representative extend the probationary period for a further period not exceeding the duration of the original probationary period, where it is in the interest of the employee to do so.

(4) An employer shall, within fourteen days of the expiry of the probationary period, inform the employee in writing of whether the employee has satisfactorily completed the probationary period, failing which the employee is deemed to have satisfactorily completed the probationary period.

(5) An employer who has informed an employee that the employee has satisfactorily completed the probationary period shall, not place the employee on any further period of probation for the same job.

**47.** (1) Except where otherwise provided by a collective agreement, every employer shall permit each of his employees to enjoy in every period of seven consecutive days a period of rest comprising at least twenty-four consecutive hours. Rest periods and standard working hours.

(2) The standard work day, inclusive of meal and other agreed intervals, shall be eight hours and the standard work week shall be forty hours.

(3) The Minister may, after considering the recommendations of an Advisory Committee appointed under Part IV, vary the standards prescribed in this section by issuing an Order to that effect.

Meal intervals.

**48.** (1) An employer shall not require or permit an employee

- (a) to work for more than five hours continuously without a meal interval of not less than one hour or, where subsection (2) has been applied, of not less than the agreed time;
- (b) to perform any work during his or her meal interval.

(2) An employer may agree with his or her employee to reduce the employee's meal interval to not less than thirty minutes.

(3) For the purposes of this section, a period shorter than that specified under subsections (1)(a) or (2) shall not be considered as a meal interval.

Premium pay.

**49.** (1) Subject to subsections (3) and (4), for any hours of work accrued by an employee for his or her employer at the employer's request on a rest day, or in excess of eight hours on any work day or in excess of forty hours in any week, the employer shall pay the employee at the rate of at least one and one half times his or her basic rate of pay.

(2) The Minister may, after considering the recommendations of an Advisory Committee appointed under Part IV, and after approval of the Governor in Cabinet, vary the standards prescribed in this section by issuing an Order to that effect.

(3) In arranging for overtime work, the employer shall take into account the special circumstances of young persons under eighteen years of age, pregnant women, nursing mothers and disabled persons, and for the purposes of this subsection "disabled person" has the meaning assigned to it by section 115.

(4) The provisions of subsection (1) shall not apply to salaried employees holding positions of supervision or management whose terms and conditions of employment shall be fixed at a level which adequately compensates them.

(5) An employer shall not classify an employee as holding a position of supervision or management under subsection (4) if his or her duties and compensation are not commensurate with such status and a Tribunal appointed under this Act or a court may inquire into the matter and make a

determination giving due regard to this section and to the right of an employer to manage his or her business.

**50.** (1) Except as provided in subsection (2), an employer shall not employ any person in excess of twelve hours in any period of twenty-four hours or in excess of sixty hours in any period of one hundred and sixty-eight hours.

Limitation on overtime.

(2) The Commissioner may, in his or her discretion, approve in writing a temporary increase in the hours of work authorised by this Code in any establishment in the following circumstances:

- (a) in the case of an actual or apparent accident, or urgent work to the plant or equipment, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment,
- (b) in the event of abnormal pressure of work due to special circumstances in so far as the employer could not be expected to resort to other measures, or
- (c) in order to prevent the loss of perishable goods,

but in no case shall the night rest period or, for employees working at night, the day rest period be less than eight hours.

**51.** (1) Where an employee is required to report for work and does so but is prevented from working by an act of God or force *majeure*, or is stopped from working by his or her employer or anyone lawfully acting for him or her, payment to that employee shall be made on the following basis:

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

- (a) where the employee has worked for more than half a day, the employer shall pay the employee wages for a full day, or where the employee works for half a day or less than half a day, so however that the total number of hours worked is not less than two and one half hours, the employer shall pay the employee wages for half a day;
- (b) where the employee has worked on a shift basis and the employee has worked more than half of the shift, the employer shall pay the employee wages for a full shift, or where the employee has worked half of the shift or less than half of the shift, so however that the total number of hours worked is not less than two and one

half hours, the employer shall pay the employee wages for half a shift;

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

Pay for period of stand-by or being on call.

**52.** (1) Where an employee is required by his or her employer to remain on stand-by or on call for any period on a scheduled work-day, he or she shall be regarded as being on duty for that period and be paid wages accordingly.

(2) Where an employee is required by his or her employer to remain on stand-by or on call for any period in excess of eight hours on a scheduled work-day, the employer shall pay to the employee, wages at the rate of at least one and one-half times his or her basic hourly rate for the period that the employee is on stand-by or on call and any period that he or her is required to be on the job.

(3) Where an employee is required by his or her employer to remain on stand-by or on call for any period on a rest day, the employer shall pay to the employee, wages at the rate of at least one and one-half times his or her basic hourly rate of pay for the period that the employee is on stand-by or on-call and any period that he or she is required to be on the job.

(4) Where an employee is required by his or her employer to remain on stand-by or on call on a public holiday, the employer shall pay to the employee, in addition to any wage which he or she would have received had the employee not worked on that public holiday, an hourly wage at the rate of at least one and one-half times his or her basic hourly rate of pay for the period that the employee is on stand-by or on-call and any period that he or she is required to be on the job.

(5) Where the employer provides the employee with a cellular phone, beeper or other telecommunication equipment for the stand-by or on-call period, the employer shall only pay to the employee wages at the rate of his or her basic hourly rate for the period during the stand-by or on-call period that he or she is required to be on the job, plus two hours.

Payment in respect of public holidays.

**53.** Where an employee does not work for his or her employer on a public holiday, he or she shall not suffer loss of pay, that is to say, he or she shall be paid the basic wage he or she would have received for the work performed on that day, had it not been a public holiday, provided that

- (a) he or she worked on his or her scheduled work-day immediately before and his or her scheduled work day immediately after the said public holiday; and
- (b) the public holiday was not one of his or her scheduled work-days.

**54.** (1) Where an employer causes an employee to work on a public holiday, the employer shall pay to the employee, in addition to the basic wage the employee is entitled to by virtue of section 53, a basic hourly rate of at least one and one-half times his or her basic wage for each hour worked on that day.

Payment for work on public holidays.

(2) In the case of employees remunerated on a piece work basis or by the task, the expression “basic rate of pay” shall, for the purposes of this section, be deemed to be equal to the employee’s earnings over the period of thirteen weeks immediately preceding the date payment is made, divided by the number of days worked during that period.

(3) The provisions of this section shall not apply to

- (a) persons holding positions of supervision or management whose basic rate of pay and other terms and conditions of employment shall be fixed by their employers at a level which adequately compensates them;
- (b) employees who are remunerated on a piece work basis or by the task and are not subject to continuous supervision.

**55.** (1) The money wages of an employee shall be payable in legal tender, provided that the payment of wages by cheque on a bank in the Virgin Islands or by direct deposit or by postal order shall be deemed to be payment in legal tender in cases in which payment in such manner is customary or necessary or is consented to by the employee.

Form of wages.

(2) Where an employer pays an employee’s wages by cheque drawn on a bank in the Virgin Islands and the cheque is dishonoured by non-acceptance upon presentation for payment, and upon subsequent presentation the same occurs, the employer is liable to pay to the employee, in addition to the employee’s wages,

- (a) one-tenth of the value of the employee’s cheque; and

- (b) any charges the employee may have suffered upon presentation of the cheque, whether for the first time or a subsequent time.

(3) Nothing contained in subsection (1) shall be construed as prohibiting the giving of food, a dwelling-place or other allowances and privileges in addition to money wages as a remuneration for services, except that

- (a) the allowances and privileges shall not include any alcoholic beverage or any noxious drugs;
- (b) the allowances are appropriate for the personal use and benefit of the employee and his or her family; and
- (c) the allowances and privileges are fairly evaluated at cost to the employer.

(4) Nothing in this section shall be construed as prohibiting the distributing to an employee of gratuities received from customers of the employer as part of remuneration for services, and the amount distributed in gratuities shall not be considered a part of any basic wage which has been fixed by an Order made under section 40.

Wages to be paid to employee.

**56.** Wages shall be paid directly to the employee to whom they are due or to a person specified by him or her in writing except as provided in section 58.

Deductions.

**57.** (1) Subject to subsection (2), an employer may deduct from remuneration payable to an employee under any contract of employment the following:

- (a) any tax, rate or other deduction imposed by any law;
- (b) any money advanced by the employer by way of loan, provided the amount deducted accords with the agreement made between the employer and the employee at the time of the loan, and that no interest, discount or similar charge may be imposed on such loan;
- (c) any sum of money which an employee has authorised in writing to be deducted for other purposes, except for the purpose of obtaining or retaining employment or for or in respect of any fine, or for bad or negligent work or for damage to the materials or other property of the

employer, except when the damage is occasioned by the willful misconduct of the employee.

(2) The total sum which may be deducted or stopped in any pay period shall not exceed one-third of the gross wage, excluding the value of any payments in kind, of the employee in the applicable pay period.

(3) Nothing in this section shall prevent an employer from recovering from an employee, whose employment has been terminated, the outstanding balance of a loan granted by the employer to the employee, which loan may be deducted from any accrued gross wages due to the employee.

(4) An employee charged with the handling of cash shall not be required to reimburse the employer for any portion of any shortages thereof, unless, upon a thorough internal investigation, such employee was found to be dishonest, negligent or reckless in the performances of his or her duty, or has admitted to theft.

**58.** Where an employer makes a deduction from an employee's wages, he or she shall, simultaneously with the payment made, furnish the employee with an accurate statement of wages earned and describe the deduction made. Statement of deductions.

**59.** (1) Notwithstanding anything to the contrary contained in any other law, the remuneration of an employee shall be liable to attachment or seizure within the following limits only: Limitation on attachment or seizure of wages.

(a) up to one-half in respect of maintenance payments;

(b) up to one-third in respect of all debts of any kind and however contracted.

(2) The proportion specified in subsection (1)(b) shall not be applicable cumulatively on the ground that there are several debts or several creditors.

(3) The aggregate of the sums attached and seized under subsection (1)(a) and (b) shall not, in the case of any employee, exceed fifty percent of his or her remuneration.

(4) The sums attached or seized shall be divided among the claimants in proportion to their established claims.

**60.** (1) In an establishment in which a customer pays a gratuity which is a specified percentage of the customer's bill, the employer shall cause the gratuity to be pooled and distributed among his or her employees in a period of four weeks in accordance with this section. Gratuities.

(2) Where an establishment to which subsection (1) applies has at least five employees, the employer shall establish a gratuities committee (in this section called the “Committee”) for the periodic distribution of the gratuity.

(3) The Committee shall consist of three representatives as follows:

- (a) one person appointed by the employer to represent the employer;
- (b) two persons representing the employees to be elected by the employees within the first six weeks of each year to serve for a term of one year and the results of such election shall be filed with the Labour Department by the 28<sup>th</sup> day of February each year, provided that where any person so elected is unable for any reason to serve his or her full term, the employees may elect another person to represent them in his or her stead and for the remainder of his or her term and shall file the result of the election with the Labour Department within fourteen days of obtaining that result.

(4) From the total amount of gratuity accumulated over every period of four weeks there shall be deducted by the employer the Government tax, if any, on gratuities.

(5) A further amount to be agreed by the employer and employee or if there is a Committee, the Committee but not exceeding seven and a half percent of the balance after the Government tax, if any, has been deducted may be retained by the employer for administrative expenses.

(6) The employer shall distribute the remainder of the gratuity among the employees of the establishment on such basis as may be agreed in writing from time to time by the employer and employees or if there is Committee, by the Committee.

(7) The employer prepared a record showing the total amount of gratuity accumulated in each period of four weeks, the total amount of Government tax which has been deducted, the amount retained by the employer for administrative expenses, the list of employees to whom the balance has been distributed and the amount paid to each of those employees.

(8) Within seven days after the close of the period to which the record relates, one copy, along with the amount of tax deducted, if any, shall be forwarded by the employer to the Commissioner of Inland Revenue who shall

issue a receipt for the amount received, and one copy shall be sent by the employer to the Commissioner for his or her information.

(9) An employer who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

**61.** (1) Wages shall be paid at regular time intervals of

Periods and place  
of wage  
payments.

- (a) not more than two weeks, in the case of employees whose wages are fixed by the hour, day, week or fortnight, or by the piece of work performed,
- (b) not more than one month, in the case of employees whose wages are fixed on a monthly or annual basis, or
- (c) in the case of employees employed to perform a task the completion of which requires two weeks or more, not more than one fortnight in proportion to the amount of work completed,

but the provisions of this section shall not apply where a collective agreement is entered into fixing other intervals for the payment of wages.

(2) Payment of wages shall be made at or near the work place and on ordinary working days only, but where, for practical reasons, this requirement cannot apply, the employer shall allow the employee reasonable time off with pay to enable him or her to receive his or her wages.

(3) Any arrangement under subsection (2) shall be approved in writing by the Commissioner.

(4) An employer shall not pay wages to any employee at or within any retail shop or place engaged in the sale of spirits, wine, beer or other spirituous or fermented liquor, except where such wages are paid by the owner or occupier of such shop or place to any employee *bona fide* employed by him in that shop or place.

**62.** An employer shall not, in any employment contract or in any other manner, coerce or require, or attempt to coerce or require, an employee to

Employee not to  
be required or  
coerced  
regarding  
manner of  
spending wages,  
or to use stores  
or services.

- (a) spend any part of his or her wages at any place or in a particular manner, or with any person; or

- (b) purchase or make use of stores or services which may be available from shops or stores established at or in connection with any workplace.

Employees' leave rights generally.

**63.** Every employee shall be entitled to leave privileges during the course of his or her employment.

Vacation leave.

**64.** (1) Subject to subsection (2), every employee who has successfully completed his or her probationary period shall be entitled to be granted vacation leave at the rates set out below in respect of each year of service:

- (a) employees with less than ten years service, to a minimum of twelve normal working days; and
- (b) employees with ten years service and above, to a minimum of fifteen normal working days.

(2) Where the employment contract provides for periodic employment, an employee shall qualify for the grant of vacation leave if he or she has worked with the same employer for an aggregate of not less than four months in any period of twelve months.

(3) An employee to whom subsection (2) applies shall be entitled to be granted one day of vacation leave for every twenty-six days worked in any period of twelve months, and any fraction of a day which is obtained by dividing the number of days worked by twenty-six shall be reckoned as one day.

(4) Where the employment contract provides for part-time employment, an employee shall qualify for the grant of vacation leave in accordance with subsection (1).

Vacation leave pay.

**65.** (1) An employee to whom subsection (1) or (4) of section 64 applies shall be paid vacation leave pay at the basic wage rate, along with all allowances, at which he or she was paid in respect of the last normal working week immediately prior to the commencement of such vacation leave.

(2) An employee to whom subsections (2) and (3) of section 64 apply shall be paid vacation leave pay by his or her employer at the basic daily wage rate for each day of his or her vacation leave.

(3) An employee who is employed on a piece work basis or by the task shall, in respect of each day of his or her vacation leave, be paid vacation leave pay at the rate of  $1/65^{\text{th}}$  of the total basic wage, and the cash equivalent of any form of payment earned, in respect of the last thirteen weeks of employment (which need not be consecutive) immediately preceding the commencement of his or her vacation leave.

**66.** The payment of vacation leave pay shall be made not later than the last working day prior to the commencement of such vacation leave, unless the employer and the employee, or their representatives, agree otherwise.

When vacation leave pay to be paid.

**67.** (1) Public holidays, whether or not they fall during the period of vacation leave, and agreed regular days of rest shall not be counted as a part of the annual vacation leave provided in section 64.

Public holidays, etc. not to affect vacation leave.

(2) Periods of absence from work due to maternity leave, or to illness or injury for a period not exceeding three months, shall not be deducted from the period of an employee's service for the purpose of the calculation of vacation leave entitlement.

**68.** (1) The dates of the taking of earned vacation leave shall be fixed by agreement between the employer and the employee or their representatives and, by similar agreement, the employer may advance leave not yet earned.

Mutual agreement affecting vacation leave.

(2) By mutual agreement between the employer and the employee or their representatives, the vacation leave earned by the employee may be allowed to accumulate for a period of two years:

(3) Where vacation leave is allowed to accumulate under subsection (2), such leave shall be granted and taken not later than six months after the end of the second year, and at least two weeks uninterrupted leave shall be taken before the end of the year following that in respect of which entitlement arises.

(4) Any agreement between the employer and the employee by which the employee would forego the taking of earned leave, shall be unlawful, notwithstanding that the employee would be paid by the employer the vacation leave remuneration to which he or she would be entitled if the leave were taken.

**69.** Any person whose employment is for any reason terminated shall receive vacation leave pay in respect of vacation leave earned but not yet taken, and such vacation leave pay shall be calculated in accordance with section 65 and, where applicable, as though a reference in that section to the commencement of vacation leave were a reference to the date on which the person's employment is terminated.

Vacation leave pay upon termination of employment.

**70.** (1) Except as is provided for by section 71, an employee who becomes ill shall, where service with his or her employer has been for a continuous period of not less than four months, be eligible for sick leave with pay for a period of not less than twelve working days in any one year.

Sick leave.

(2) Where the employment contract provides for part-time employment, an employee shall be eligible for sick leave in accordance with subsection (1).

(3) An employee to whom this section applies shall not be eligible for to sick leave with pay unless that employee

(a) notifies the employer of the illness on the first day of his or her absence; and

(b) submits a medical certificate, signed by a medical practitioner or, where a medical practitioner is not available, in the Sister Islands only, by a qualified registered nurse employed by the Government, the BVI Health Services Authority or other public authority on or before the third day of illness.

Sick leave for periodic employees.

**71.** (1) An employee whose employment is periodic, and who has worked for the same employer for a total of not less than four months in that year, is entitled to sick leave with pay in that year, at the rate of one day for every twenty-six days worked.

(2) Any fraction of a day which is obtained by dividing the number of days worked by twenty-six shall be reckoned as one day.

(3) An employee to whom this section applies shall not be granted sick leave with pay unless he or she fulfils the conditions set out in section 70 (3) as regards notification and the submission of a medical certificate.

Sick leave pay and social security benefit.

**72.** (1) Subject to sections 70 and 71 in respect of sick leave taken in any period of twelve consecutive months, the employer shall pay to the employee the basic wages which he or she would have received had the employee worked on each of those days.

(2) The minimum daily rate of sick leave pay payable to an employee to whom section 71 applies shall be the total basic wage paid to the employee in respect of the normal working week nearest, preceding that in which the illness occurred divided by the number of working days in the employee's normal working week.

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(3) Subject to the Social Security Ordinance, an employee who is entitled to sick leave pay under this section as well as sickness benefit under the Social Security Ordinance shall receive pay under that Ordinance, and in addition the employer shall pay

- (a) sick leave pay at the basic rate of pay in respect of any waiting period not paid under the Social Security Ordinance; and
- (b) the difference by which the daily basic rate of pay exceeds the daily rate of sickness benefit paid under the Social Security Ordinance for any day in respect of which sickness benefit is paid under that Ordinance.

(4) Subject to the Social Security Ordinance, an employee who is entitled to any injury benefit under the Social Security Ordinance shall not simultaneously be entitled to full pay for a period of sick leave under this section and any sick leave pay to which he or she is entitled shall be reduced by any amount due under that Ordinance.

(5) The reference in this section and section 75 to the Social Security Ordinance includes the Regulations made the Ordinance.

**73.** (1) On the production of a certificate from a medical practitioner stating the presumed date of confinement, a female employee who has completed twelve months continuous employment shall be granted a period of maternity leave by her employer.

Entitlement to maternity and paternity leave.

(2) The period of maternity leave shall not be less than thirteen weeks of which not less than six weeks shall be taken after the date of confinement.

(3) The remainder of the period of maternity leave may be taken before the presumed date of confinement or following the period of compulsory leave, or partly before the presumed date of confinement and partly following the period of compulsory leave.

(4) The leave before the presumed date of confinement shall be extended by any period elapsing between that date and the actual date of confinement, and the period of compulsory leave to be taken after confinement shall not be reduced on that account.

(5) Where a female employee is granted maternity leave under this section, the husband of the employee shall, upon application, be granted paternity leave without pay for such period as requested in the application, but in any case not exceeding one month, to be taken during the period his wife is on confinement or not later than six months from the birth of the child.

(6) The Minister may make Regulations for the granting of leave to the adoptive parent of a child.

Additional period of leave.

**74.** Where a female employee to whom section 73 applies has been granted maternity leave under that section, and a medical practitioner certifies that any illness necessitating absence from work arises out of pregnancy or confinement or both, the employer shall grant the employee an additional period of leave not exceeding three months.

Payment of  
maternity  
benefits.

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**75.** Where a female employee has been granted leave in accordance with sections 73 and 74, she shall be entitled to any benefits as may be prescribed under the Social Security Ordinance or any other law for the time being amending or replacing it.

Employee not to  
be given notice  
of dismissal  
while on  
maternity leave.

**76.** While a female employee is absent from work on maternity leave in accordance with sections 73 and 74 it shall not be lawful for an employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence.

Special leave for  
jury service and  
other purposes.

**77.** (1) An employee required to attend court for jury service shall be granted leave with full pay by his or her employer for that purpose.

(2) An employee who is required to attend any hearing of a Tribunal or Board constituted in accordance with Part II shall be granted leave on full pay by his or her employer for the purpose of attending such hearing.

Penalties and  
employee's right  
to recover.

**78.** (1) An employer who

- (a) enters into any agreement or contract or gives any remuneration for employment contrary to section 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 or 62,
- (b) makes any deduction from the wages of an employee, or receives any payment from an employee, contrary to the sections mentioned in paragraph (a), or
- (c) otherwise contravenes any of the sections mentioned in paragraph (a),

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, and for each subsequent offence to a fine not exceeding seven thousand dollars.

(2) An employee shall be entitled to recover in a court so much of his or her wages as have not been paid to him or her, including any entitlement under section 55(2) but exclusive of sums lawfully deducted, plus interest at the rate to be determined by the court.

(3) An employer who contravenes section 47 and 48 commits an offence.

(4) An employer who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding five thousand dollars, and in addition, the court may order the employer to pay the employee such sum as the court thinks fit.

(5) An employer who

- (a) refuses or fails to allow an employee to take paid vacation leave to which he or she is entitled under the provisions of this Part, or
- (b) fails to pay an employee any vacation leave pay, sick leave pay or special leave pay to which he or she is entitled under the provisions of this Part,

commits an offence and is liable on summary conviction to a fine not exceeding **one** thousand dollars, and in addition, if the court is satisfied that by reason of the offence the employer owes the employee a sum of money, it may order the payment of such sum, with or without interest, to the employee as the court thinks fit.

**79.** (1) Where a minimum basic wage rate has been fixed under section 40, an employer who fails to pay wages at or above such wage rate commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars;

Penalty for not paying minimum basic wage rate.

(2) Where an employer has been convicted of failure to pay wages at or above the minimum basic wage rate to an employee, then, if notice of intention so to do had been served upon the employer with the summons, warrant or complaint, evidence may be given of any failure on the part of the employer to pay wages at or above the minimum basic wage rate to that employee during the two years immediately preceding the date on which the information was laid or the complaint was served and, on proof of the failure, the court may order the employer to pay to the employee such sum as in the opinion of the court represents the difference between the amount which should have been paid during those years and that which was actually paid, plus ten percent interest per annum or part thereof from the date any wage was due until it is paid.

(3) The power given in subsection (2) shall not be in derogation of any right of the employee to recover wages in any other proceeding, but the employee shall not be entitled, by a combination of this and any other

proceeding, to recover more than the sum of the difference referred to in subsection (2).

(4) Where an employer who is charged with an offence under this section proves to the satisfaction of the court that he or she used due diligence to enforce the execution of an Order made under section 40 and that the offence was in fact committed by an agent or some other person without the employer's knowledge, consent or connivance, he or she shall not be convicted of the offence, but this is without prejudice to the power of the court

- (a) to proceed against the agent or other person for the offence; and
- (b) to order the employer to pay the sum due under subsection (2)

(5) On prosecution of an employer for failing to pay wages at or above the minimum basic wage rate, the onus shall lie on that employer to prove that he or she has not paid wages at less than the minimum basic wage rate.

Penalties where person other than employer may be violator.

**80.** (1) Where an employer is charged with an offence under the provisions of this Part, the employer shall be entitled upon information duly laid by him or her, to have any other person whom the employer claims to be the actual offender brought before the court and if, after the commission of the offence is proved, the employer proves to the satisfaction of the court that he or she has used due diligence to comply with the provisions of this Part and that the other person has committed the offence in question without his or her knowledge, consent or connivance, the other person shall be summarily convicted of the offence.

(2) If an offence is proved under subsection (1), the court may order the employer or the other person convicted thereunder to pay to the employee any sums found to have been lawfully owed to the employee under the provisions of this Part, and the order may be enforced in the same manner as a judgement or order in a civil case.

(3) The power of the court to issue an order under subsection (2) shall not be in derogation of any right of the employee to recover the sum by any other proceeding provided that no employee shall be entitled in any other proceeding to recover any amount which the court has ordered to be paid under subsection (2).

**PART V**  
**TERMINATION OF EMPLOYMENT, DISCIPLINARY ACTION,**  
**AND CONTINUITY OF EMPLOYMENT**

**81.** (1) The employment contract of an employee shall not be terminated by an employer without a valid and fair reason for such termination connected with the capacity or conduct of the employee, or with the operational requirements of the undertaking, establishment or service, pursuant to section 88, 89, 102 or 104, and unless the notice requirements in section 90 are complied with.

Limitation on termination of employment by employer.

(2). An employer may not terminate the appointment of an employee unless employer has informed the employee in writing of the nature and particulars of the complaint against the employee and has given the employee or his or her representative a fair opportunity to defend himself or herself.

**82.** (1) Without derogating from the generality of section 81, the termination of the employment contract of an employee on any of the following grounds is deemed to be unfair:

Meaning of unfair dismissal.

- (a) trade union membership or participation in union activities outside working hours or, with the consent of the employer, during working hours;
- (b) seeking office as, or acting or having acted in the capacity of, an employees' representative;
- (c) making a complaint or participating in proceedings against the employer involving an alleged contravention of any enactment or having recourse to competent administrative authorities;
- (d) participation, or proposed participation in industrial action including a strike, which takes place in conformity with the provisions of this Code or any other labour relations law;
- (e) race, colour, sex, religion, ethnic origin, nationality, political opinion or affiliation, disability, HIV status, or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;
- (f) marital status, family responsibilities, pregnancy or absence from work during maternity leave as certified by a medical practitioner;
- (g) temporary absence from work due to illness or injury as certified in accordance with section 70(3)(b), provided that the employee informs the employer on the first day

of absence and submits the certificate to his or her employer on or before the third day of absence;

- (h) absence from work due to compulsory military service or other civil obligation in accordance with law;
- (i) the exercise or proposed exercise of the right to remove himself from a work situation which he reasonably believes presents an imminent or serious danger to life or health.

(2) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Constructive dismissal.

**83.** (1) An employee is entitled to terminate his or her employment contract without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term, where the employer's conduct has made it unreasonable to expect the employee to continue the employment contract.

(2) Where the employment contract is terminated by the employee pursuant to subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer for purposes of this Code.

Appeals against unfair dismissal.

**84.** In any case where an employee or his or her representative alleges that such employee has been unfairly dismissed and no settlement of the allegation is reached in direct discussion with the employer, the allegation may be referred to the Commissioner in accordance with the provisions of section 26, by either the employer or the employee, or by their representatives.

Burden of proof.

**85.** (1) In any claim or complaint arising out of the dismissal of an employee, it shall be for the employer to prove the reason for the dismissal and, if the employer fails to do so, there shall be a conclusive presumption that the dismissal was unfair.

(2) In the circumstances referred to in section 83, it shall be for the employee to prove the reason which made the continuation of the employment contract unreasonable.

(3) The test as to whether or not a dismissal was unfair under section 82 or 83 is whether or not, under the circumstances the employer acted reasonably or unreasonably but even though he or she acted reasonably if he or she is mistaken as to the factual basis for the dismissal, his or her reasonableness shall be no defence, and the test shall be whether the actual

circumstances which existed, if known to the employer, would have reasonably led to the employee's dismissal.

**86.** (1) Where a Tribunal determines upon a dispute referred to it under section 27 that the dismissal was unfair or illegal, the Tribunal

Remedies for unfair dismissal.

- (a) may order either that
  - (i) the employee be reinstated,;
  - (ii) the employee be re-engaged in a position that is substantially equivalent if the post held by the employee is not immediately available; or
  - (iii) compensation be paid in lieu of reinstatement or re-engagement

if this remedy is acceptable to both parties; or

- (b) may order the employer to pay the employee such punitive sum as it thinks fit.

(2) Where the Tribunal orders that compensation be paid, it shall take into account, among other things,

- (a) any holiday pay earned, but not taken;
- (b) any wages lost by the employee, on account of the dispute, up to the date of determination of the issue by the Tribunal;
- (c) the termination notice to which the employee would have been entitled;
- (d) the employment category of the employee, his or her seniority and the ease or difficulty with which he or she can secure alternative employment; and
- (e) the duty of the employee to seek to mitigate his or her losses.

Retirement of employee entitled to age benefit under Social Security Ordinance Cap 266.

**87.** (1) Where an employee reaches the age at which he or she becomes entitled to an age benefit under the Social Security Ordinance, the employer and employee may agree on a date upon which the employee's services shall be terminated.

(2) Any date agreed upon pursuant to subsection (1) shall take into account the notice periods specified in section 90.

Termination of employment contract within probationary period and short term contracts.

**88.** (1) The employment contract of any employee may be terminated by the employer at any time during the probationary period for any valid and fair reason with twenty-four hours notice.

(2) Where an employment contract is for a specified term not exceeding four months, an employer may terminate the employee's services for any valid and fair reason with twenty-four hours notice.

Termination of employment contract with notice.

**89.** (1) The employment contract of an employee may be terminated with notice, or with pay in lieu of notice, for any valid and fair reason connected with the capacity or conduct of the employee, or the operational requirements of the undertaking, establishment or service.

(2) Without derogating from the generality of subsection (1), notice of termination may be given by an employer in any of the following circumstances:

- (a) where two medical practitioners certify that the employee is unfit to continue in employment because of an incapacity of the mind or body which has lasted for at least six months and which is likely to be permanent;
- (b) where the employee could not continue to work in the position held without contravention of a provision of a law; or
- (c) where the employee is made redundant.

(3) For the purposes of this Code,

“redundancy” means where the work required of the employee has been affected because

- (a) the employer has modernised, automated or mechanised all or part of his or her business;
- (b) the employer has discontinued or ceased to carry on all or part of his or her business;

- (c) the employer has reorganised or relocated his or her business to improve efficiency;
- (d) the employer's need for employees in a particular category has ceased or diminished;
- (e) it has become impossible or impracticable for the employer to carry on his or her business at its usual rate or level or at all, due to a shortage of material, a mechanical breakdown, a *force majeure* or an act of God; or
- (f) a reduced operation in the employer's business has been made necessary by economic conditions including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

**90.** (1) Where an employer is required by section 89 to give an employee notice of termination of the employment contract, such notice shall be determined on the following basis unless a written contract provides more favourable terms: Notice periods.

- (a) where the employee's length of service does not exceed seven years, the period of notice shall be at least equivalent to the interval of time between the affected employee's pay days;
- (b) where the employee's length of service exceeds seven years but does not exceed fifteen years, the period of notice shall be at least one month;
- (c) where the employee's length of service exceeds fifteen years, the period of notice shall be at least two months.

(2) The periods of notice under subsection (1) shall not apply where the employer is entitled to summarily dismiss an employee under this Part.

(3) A notice of termination under subsection (1) shall not be given by an employer during an employee's period of absence on any leave granted under this Code.

**91.** (1) In lieu of providing notice of termination, the employer may, at his or her discretion, pay the employee a sum equal to the wages and other Payment in lieu of notice.

remuneration and confer on the employee all other benefits that would have been due to the employee at the expiry of any required period of notice.

(2) An employer, having given notice to terminate employment, and not having exercised the option provided in subsection (1), shall not be required to pay the employee's wages if that employee voluntarily quits his or her employment prior to the effective date of termination specified in the notice.

Time off to seek alternative employment.

**92.** Where an employee has been given notice to terminate his or her employment contract as provided in section 90, he or she shall, if he or she so requests, be granted reasonable time off with pay by the employer to seek alternative employment.

Recovery of r and notice pay.

**93.** (1) Any amount due to an employee whose service has been terminated shall be paid to the employee by the employer not later than the last working day before the termination becomes effective.

(2) Without prejudice to any other method of recovery, an amount due as pay for a period of notice may be recovered by civil proceedings in a court.

Winding up of employer's business, etc.

**94.** (1) The winding up of, or appointment of a receiver with respect to an employer's business shall cause the employment contract of any employee to terminate one month from the date of winding up or the appointment of a receiver, unless it is otherwise terminated within that period pursuant to section 87, 88, 89, 102 or 104.

(2) This section shall not apply where, notwithstanding the winding up or appointment of a receiver, the business continues to operate or has been transformed.

(3) Notwithstanding any enactment to the contrary, on the winding up of, or appointment of a receiver with respect to, an employer's business, the claim of an employee, or those claiming on his or her behalf, to the following payments to which he or she is entitled under this Code or any contract shall have priority over other creditors, including the Government and the social security system:

- (a) wages, overtime pay, commissions and other forms of remuneration including gratuities relating to work performed during the twenty-six weeks preceding the date of winding up or appointment of a receiver;
- (b) holiday pay due;

- (c) amounts due in respect of other types of paid absence accrued during the twelve months preceding the date of winding up or appointment of a receiver; and
- (d) severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment.

**95.** When the employer's personal or legal position formed the basis of the contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless the contract is otherwise terminated in accordance with section 87, 88, 89, 102 or 104. Death of employer.

**96.** (1) Where on the termination of an employee's employment contract the employee requests a certificate of employment, the employer shall provide the employee with that certificate. Certificate of employment.

(2) The certificate of employment referred to in subsection (1) shall include

- (a) the name and address of the employer;
- (b) the nature of the employer's business;
- (c) the length of the employee's continuous service;
- (d) the duties upon which the employee was employed during the employment contract; and
- (e) the wages and other remuneration payable at the date of termination of the contract.

(3) A certificate of employment shall not contain the reason for termination of the employment contract or an evaluation of the employee's work, unless requested by the employee.

**97.** A temporary cessation of work on any of the following grounds shall not constitute a break in an employee's continuity of employment: Continuity of employment.

- (a) an industrial dispute;
- (b) illness for two days or illness certified in accordance with section 70(3)(b) where the absence from work exceeds two days;

- (c) industrial injury;
- (d) maternity leave certified by a medical practitioner;
- (e) the operation of any law;
- (f) an act of God or *force majeure*;
- (g) absence permitted or condoned by the employer;
- (h) temporary lay-off;
- (i) suspension;
- (j) leave without pay.

Rights of employees on change of ownership.

**98.** (1) Where there is a change of ownership of a business or undertaking, the predecessor employer shall

- (a) give at least one month's notice of that change in ownership to an employee who is affected by the change of ownership; and
- (b) upon the change of ownership, pay to that employee wages, holiday pay, severance pay and any other entitlements due to him or her.

(2) Where there is a change of ownership and the successor-employer offers any or all involved employees continued employment with the business, the employees, if they have not been paid service benefits in accordance with subsection (1) shall carry forward their service and accrued rights to the successor-employer.

(3) Where the employee accepts continued employment with the successor-employer, and the employee takes up the option referred to in subsection (2)(b), the arrangements made at the time of the change of ownership in respect of the employee, including details of the employee's length of service and accrued rights, shall be notified to the Commissioner by the successor-employer in a statement signed by the employee and jointly by the predecessor-employer and successor-employer.

(4) Where the employer is a body corporate and there is a change in its corporate identity due to any merger and acquisition, amalgamation, restructuring or other similar circumstance, the employer is deemed to have changed ownership for purposes of subsections (1) and (2).

**99.** Where a person for any reason sells or disposes of a business, all of the obligations under this Code of the person selling or otherwise disposing of the business are binding on the person acquiring the business.

Effect of sale of business.

**100.** (1) Where an employer intends to terminate simultaneously the employment contract of three or more employees on the grounds of redundancy, he or she shall notify the Commissioner as soon as practicable and, except in exceptional circumstances, not less than one month before the effective date of termination.

Commissioner to be informed of intended multiple terminations for reasons of redundancy.

(2) The notification to the Commissioner shall state the number and categories of employees to be terminated, the reasons for that action, the period over which the termination is to take place, whether there has been any consultation with a trade union, any other representative of the employees or with the employees themselves to mitigate the effects of the redundancy and the results of that consultation.

(3) The Commissioner shall, as soon as possible after receipt of the notification under subsection (1), inform the Minister of its contents.

(4) An employer who terminates the employment of a employee on the grounds of redundancy shall give preference to the re-employment of that employee if he or she decides to hire a person, within a period of six months from the date of the termination, to perform duties that are the same or substantially the same as those that were formerly performed by the employee, and shall make every reasonable effort to notify the employee who is entitled to the preference.

**101.** (1) An employee who has been engaged for a specified term of employment and who intends to quit his or her employment at the end of the specified term is not required to give advance notice of such intention unless the terms of his or her employment contract specify otherwise.

Employee's notice of termination.

(2) An employee, other than an employee mentioned in subsection (1), shall give advance notice to his or her employer of an intention voluntarily to terminate his or her employment, which shall correspond to the periods of notice required of employers specified in sections 88 and 90 and where the contract of employment is not in writing, the period of notice to be given by the employee shall not be less than two weeks.

(3) Where an employee has given notice in accordance with subsection (2), the employer may, at his or her discretion, require the employee to cease employment at the commencement of the period of notice and simultaneously pay the employee a sum equal to the wages and other remuneration and all

other benefits that would have been due to the employee at the expiry of the required period of notice.

(4) Where an employee fails to give the employer notice as required in subsection (2), the employee shall be liable to pay to the employer an amount equal to the single time pay which the employee would have received had he she worked for such part of the notice period as was not served.

(5) Where an employee is liable to make any payment under subsection (4), the employer may deduct the amount payable from monies, if any, due to the employee from the employer.

Summary  
dismissal for  
serious  
misconduct.

**102.** (1) An employer is entitled to dismiss summarily, without notice, an employee who is guilty of serious misconduct of a nature that it would be unreasonable to require the employer to continue the employment contract.

(2) The serious misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment contract and has a detrimental effect on the business and it includes, but is not limited to, situations in which the employee has

- (a) conducted himself or herself in a manner as to clearly demonstrate that the employment contract cannot reasonably be expected to continue;
- (b) been convicted of an offence in the course of his or her employment, the penalty for which prevents the employee from meeting his or her obligations under his or her employment contract for twelve working days or more.

(3) When terminating an employment contract under the provisions of this section, the employer shall provide the employee with a written statement of the precise reason for the action and the employer shall be conclusively bound by the contents of the statement in any proceeding testing the fairness of the dismissal.

(4) An employer who fails to provide the statement referred to in subsection (3) shall be stopped from introducing testimony as to facts which might have been included in the statement, in any proceeding testing the fairness of the dismissal.

Disciplinary  
action.

**103.** (1) An employer shall be entitled to take disciplinary action other than dismissal when it is reasonable to do so under the circumstances.

(2) For purposes of this section,

“disciplinary action” includes in order of severity -

- (a) a written warning;
- (b) suspension from duty for a period not exceeding one week without pay.

(3) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard for the nature of the violation, the terms of the employment contract, the employee’s duties, the pattern and practice of the employer in similar situations, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

(4) Where action is taken by an employer in accordance with this section, he or she shall advise the employee concerned in writing of the misconduct or action in breach of the employment contract and of what steps the employer is likely to take in the event of any repetition of the behaviour in respect of which the disciplinary action is being taken.

(5) A complaint that any disciplinary action taken against an employee was unfair or unreasonable may be made by the employee to the Commissioner pursuant to section 26.

**104.** (1) Where an employee has been guilty of an offence in breach of his or her employment contract, or of any misconduct such that the employer cannot reasonably be expected to continue to employ him or her if it is repeated, the employer may, when taking disciplinary action in accordance with section 103, warn the employee that repetition of the behaviour will result in summary dismissal.

Termination for repeated misconduct, breach of contract or unsatisfactory performance.

(2) If the employee, after being warned pursuant to subsection (1), is guilty of the same or similar offence or misconduct in the following six months, the employer may terminate the employee’s employment without further notice.

(3) An employer who dismisses an employee under subsection (2) shall provide the employee with a written statement of the reasons for the action and the principles set out in subsections (3) and (4) of section 102 shall apply to the provision of, or failure to provide, such statements.

(4) The employer shall be deemed to have waived his or her right to terminate the employment of an employee for misconduct if he or she has failed to do so within a reasonable period of time after having knowledge of the misconduct.

(5) Where, after the probationary period has expired, the employee is not performing his or her duties in a satisfactory manner, the employer may give him or her a written warning to that effect.

(6) If the employee, after being warned pursuant to subsection (5) and in compliance with subsection (7), does not, during the following three-month period, demonstrate that he or she is able to perform and has performed duties in a satisfactory manner, the employer may terminate the employment contract.

(7) The employment of an employee shall not be terminated for unsatisfactory performance unless the employer has given the employee written warning pursuant to subsection (5) and appropriate instructions to correct the unsatisfactory performance and the employee continues to perform his or her duties unsatisfactorily for a period of three months.

## **PART VI SEVERANCE PAYMENTS AND GRATUITIES FOR LONG SERVICE**

Right of  
severance pay.

**105.** (1) An employee whose period of continuous employment is at least twelve months is entitled to severance pay upon termination of such employment on any of the grounds specified in paragraphs (a), (b) or (c) of section 89(2) or in section 94 or 95.

(2) An employee whose employment contract provides for periodic employment shall be deemed to satisfy the conditions as to length of service if he had worked with the same employer and any predecessor-employer in at least four consecutive twelve-month periods and had gained an entitlement to vacation leave under section 64 (2) in each of those periods.

(3) An employee who resigns or whose employment is terminated on or after the age of sixty years after ten years of continuous employment with an employer shall, if a pension plan or similar scheme is not provided by his or her employer from which he or she will benefit, be entitled to severance pay.

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(4) An employer who fails, without reasonable excuse, to pay severance pay within two months of the date on which payment of severance pay becomes due commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars.

(5) Where an employer is convicted of an offence under subsection (4), the Magistrate shall, in addition to any penalty under subsection (4), order

him to pay the employee an additional ten per cent of the amount of severance pay to which the employee is entitled.

**106.** (1) In the case of an employee who is not a periodic employee and who is not paid on a piece-work basis, severance payment shall consist of three-quarters of one day's pay, at the employee's latest basic rate of pay, for each month or major fraction thereof of his or her period of employment with his or her employer and any predecessor-employer.

Methods of calculation of severance pay.

(2) In the case of an employee who is not a periodic employee and

- (a) who is paid on a piece-work basis, or
- (b) whose employment contract provides for part-time employment,

severance payment shall consist of three-quarters of one day's pay, at the employee's latest basic rate of pay, for each month or major fraction thereof of his or her period of employment with his or her employer and any predecessor-employer, and for the purposes of this subsection one day's pay shall be equal to his or her earnings over the period of thirteen weeks immediately preceding the date of termination, divided by the number of days worked.

(3) In the case of a periodic employee,

- (a) severance payment shall consist of three-quarters of one day's pay for each twenty-nine days worked;
- (b) any fraction of a day which is obtained by dividing the number of days worked by twenty-nine shall be reckoned as one day; and
- (c) one day's pay shall be calculated as equal to the total of his or her basic wage in the last twelve-month period worked divided by the number of days worked.

**107.** The payment of severance pay under section 105 shall not affect, nor shall it be affected by, the employee's entitlement, if any, to payment in lieu of notice under section 91 or to any compensatory award made under section 86.

Entitlement to severance pay not to be affected by other payments.

Severance pay, when payable; temporary termination; payment of interest.

**108.** (1) On the date of termination of employment of an employee entitled to severance pay under section 105, the employer shall pay severance pay computed in accordance with section 106.

(2) If the termination is stated as temporary, no severance pay need be paid to the terminated employee at the time of termination, provided that

- (a) if the date of re-employment is more than three months immediately following the date of termination, the employee may choose to receive severance pay from the employer on the date of termination,
- (b) where the employer has stated a date for re-employment but is unable to do so on or before that stated date, severance pay shall be payable on the stated date,
- (c) if no date of re-employment is given and three months have elapsed without the employee being re-employed, severance pay shall be payable immediately upon the expiration of the three-month period,

and, in which case, interest at the rate of ten percent per annum on the amount of severance pay due shall be payable for the interval between the original termination date and the date of actual payment.

(3) If after severance pay has been paid in accordance with subsection (1) or (2) the employee is again employed by the same employer, he or she shall, for subsequent severance pay purposes, be considered to be newly hired and the term of employment shall be considered to have commenced on the date of re-employment.

Reduction in pay because of redundancy.

**109.** If an employee's employment contract in his or her last occupation is terminated because of redundancy but he or she is offered other employment by the employer at a reduced wage, the employee may accept the offered employment without forfeiture of severance pay, but if he or she accepts the offered employment after having received severance pay, the employee shall be considered newly hired for the purposes of subsequent severance pay.

Limitation on severance pay.

**110.** (1) Subject to the provisions of section 105, where the employment contract of an employee is terminated on the grounds set out in section 98, he or she shall be eligible for severance pay, unless

- (a) he or she has otherwise elected in accordance with the provisions of that section; and

- (b) he or she has been offered by a successor-employer an employment contract which is the same as that held prior to the disposal of the business and he or she has accepted that offer.

(2) Where the employment contract of the employee continues either on the basis of an election made in accordance with the provisions of section 98 or on the basis of subsection (1) of this section, details of the employee's length of service and entitlements shall be communicated to the Commissioner in a statement signed by the employee and jointly by the predecessor-employer and successor-employer.

(3) Severance pay shall not apply where the employee

- (a) is fairly dismissed;
- (b) unreasonably refuses to accept an offer of re-employment by the employer at the same place of work, under no less favourable terms than he or she was employed immediately prior to the termination;
- (c) is employed by a partnership and his or her employment ceases on the dissolution of the partnership, and he or she either enters into employment with one or more of the partners immediately after such dissolution, or unreasonably refuses to accept an offer of employment by any such person on no less favourable terms than he or she was employed immediately prior to the dissolution;
- (d) is employed by an employer who dies, and the employee either enters into the employment of the personal representative, widow, or any heir of the deceased employer immediately after such death, or he or she unreasonably refuses to accept an offer of employment by any such person on no less favourable terms than he or she was employed immediately prior to the death.

**111.** An employee may, without prejudice to any other remedy available to him or her, recover by civil proceedings in a court of competent jurisdiction the severance payment to which he or she is entitled under this Part.

Recovery of  
severance pay.

Liability of predecessor and successor employers.

**112.** If an employee's employment contract is terminated because of redundancy with a date of re-employment less than six months after the date of termination, or with no date of re-employment given, and if the employer, prior to three months after the termination, sells his or her undertaking to a successor-employer, then using the standards set forth in section 98 if severance pay becomes due, the predecessor-employer and the successor-employer shall be jointly liable for the payment of the severance pay, plus interest at the rate of ten percent per annum for the interval between the original termination date and the date of actual payment.

Long service gratuity and retirement benefits.

**113.** (1) An employer with fifty or more employees shall, no later than one year from the commencement of this Act, provide a pension or other retirement scheme for his or her employees.

(2) Where the business of the employer with fifty or more employees is of a predetermined fixed duration, the employer shall, in lieu of a pension or other retirement scheme, provide a gratuity equivalent to severance pay under this Part for his or her employees who have served his or her business for five or more years.

(3) An employee, in a workplace with more than fifty employees, who, for actuarial purposes is not deemed to be in pensionable employment, shall be entitled to a payment equivalent to severance pay, provided that they have worked with the employer for a minimum of five years.

(4) Employees, who were in employment with the employer prior to the establishment of the pension and or similar retirement scheme and become members of the pension or other retirement scheme, shall be entitled in addition to their pension benefit to a payment equivalent to severance pay in respect of any non-pensionable service.

(5) Notwithstanding the rights of an employee to severance pay under section 105, the Minister may, after consultation with the Commissioner and employees' and employers' organisations or representatives as he or she considers necessary, make Regulations in relation to an employee's entitlement to, and an employer's obligation to pay, long service gratuity upon the termination of the employee's employment contract.

(6) Regulations made under subsection (5) may make provision in relation to

- (a) the methods by which long service gratuity is to be calculated;

- (b) an employee's entitlement, if any, to payment in lieu of notice under section 91 or to any compensatory award made under section 86;
- (c) an employee's right to recover payment for long service gratuity by legal action;
- (d) whether an employee who is qualified to be paid long service gratuity is entitled to such payment if he or she has been dismissed under section 102 or 104;
- (e) whether, in relation to paragraph (d), any criteria should be identified in effecting a payment, if any;
- (f) an employee's right, if any, to long service gratuity payment where the employee is made redundant but subsequently rehired by the same employer; and
- (g) any other factor considered necessary to ensure the institution and proper administration of long service gratuity.

(7) An employer shall make provision for retirement benefits to be paid to his or her permanent employees by means of a pension plan, an annuity or provident fund or other form of retirement plan.

(8) An employer that does not comply with subsection (3) shall pay to an employee who retires after at least ten years of service, retirement benefits in an amount equal to severance pay calculated on the basis of section 106.

(9) A pension plan, an annuity or provident fund or other form of retirement plan referred to in subsection (7) may be contributory with the employers' contribution being twice that of employees.

## **PART VII EQUALITY OF TREATMENT IN EMPLOYMENT**

**114.** The objectives of this Part are

Objectives.

- (a) to eliminate discrimination against persons with respect to employment and occupation;

(b) to promote recognition and acceptance of the principle of equal opportunity and treatment in employment and occupation; and

(c) to promote gender equity and equality.

Interpretation.

**115.** In this Part,

“*de facto* spouse” means a single person who lives with a single person of the opposite sex as husband or wife for a period not less than two years, as the case may be, although not married to that person;

“disabled person” means an individual whose prospects of securing, retaining and advancing in suitable employment are reduced as a result of a physical or mental impairment;

“family responsibility” means responsibilities in respect of any dependent family member;

“marital status” means the status or condition of being

(a) single;

(b) married;

(c) married but living separately and apart from one’s spouse;

(d) divorced;

(e) widowed; or

(f) the *de facto* spouse of a person.

“sexual harassment” means unwanted conduct of a sexual nature in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee.

Definition of “discrimination”.

**116.** (1) For the purposes of this Part, a person discriminates against another person if the first-mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) are

- (a) race, colour, sex, religion, ethnic origin, political opinion or affiliation, indigenous population, social origin, national extraction, disability, HIV or other medical status, family responsibility, pregnancy, marital status or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;
- (b) any characteristic which pertains generally or is generally imputed to persons of a particular race, sex, religion, colour, ethnic origin, indigenous population, nationality, political opinion, disability, HIV or other medical status, family responsibility, pregnant state, marital status or, except for purposes of retirement and restrictions on work and employment of young persons and children, age.

(3) Discrimination on the grounds of HIV includes the requirement by an employer to have an applicant for a job or an employee subjected to an HIV test.

(4) Discrimination on the grounds of pregnancy includes the requirement to have an applicant for a job subjected to a pregnancy test.

**117.** (1) Subject to sections 118, 119 and 120, an employer, or any person acting or purporting to act on behalf of a person who is an employer, shall not, in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment, discriminate against that other person in

Prohibition of discrimination.

- (a) the advertisement of a job;
- (b) the procedures used for the purpose of determining who should be offered that employment;
- (c) determining who should be offered employment;
- (d) the terms or conditions on which employment is offered;
- (e) the creation, classification or abolition of jobs.

(2) Subject to sections 118, 119 and 120, an employer shall not discriminate against an employee

- (a) in the terms or conditions of employment afforded to that employee by the employer;
- (b) in the conditions of work or occupational safety and health measures;
- (c) in the provision of facilities related to or connected with employment;
- (d) by denying access, or limiting access, to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
- (e) by retrenching or dismissing the employee; or
- (f) by subjecting the employee to any other disadvantage.

Bona fide  
occupational  
qualifications.

**118.** (1) Nothing in section 117 shall apply to any distinction, exclusion or preference based on the grounds listed in section 116(2) where a genuine occupational qualification exists.

(2) For the purposes of this Part, a genuine occupational qualification for a job exists where

- (a) the essential nature of the job calls for a particular race, sex, religion, national extraction, indigenous population, ethnic origin, social origin, disability, HIV status, pregnancy, family responsibility, marital status or age, in dramatic performances or other entertainment for reasons of authenticity;
- (b) in a religious institution, the essential nature of the job calls for a particular religious affiliation or belief, and the essential nature of the job would be materially different or unable to be carried out if performed by a person of a different religious affiliation or belief;
- (c) the job needs to be held by a man or a woman to preserve privacy or to comply with recognised cultural practices;
- (d) the nature of the location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer and

- (i) the only such premises which are available for persons holding that kind of job are occupied or normally occupied, by persons of the same sex and are not equipped with separate sleeping accommodation and sanitary facilities for persons of the opposite sex; and
  - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for persons of the opposite sex or to work out a practicable solution or usage of such facilities for members of both sexes;
- (e) the job requires a married couple; or
- (f) on the grounds of disability it is shown that
- (i) the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned and the performance of the job would not be able to be carried out as a result of the disability; or
  - (ii) special facilities or modifications, whether physical, administrative or otherwise, are required to be made at the work place to accommodate the disabled person which the employer cannot reasonably be expected to perform.

**119.** (1) An employer shall

Virgin Islander's preference.

- (a) seek to employ a Virgin Islander in preference to a non-Virgin Islander where such Virgin Islander is found to be qualified; and
- (b) not terminate the employment of a Virgin Islander in preference to a non-Virgin Islander.

(2) Subsection (1) shall not be construed as forbidding the taking of personnel actions genuinely related to an employee's capacity or conduct in relation to the employment in question.

**120.** Special measures taken by, or required of, employers of a temporary nature to promote equality of opportunity in employment based on

Special positive action.

the grounds set out in section 116(1) shall not be deemed to be unlawful discrimination within the meaning of section 117.

Sexual harassment

**121.** Any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, shall constitute unlawful discrimination based on sex within the meaning of section 116.

Equal remuneration.

**122.** (1) An employer shall pay equal remuneration to men and women performing work of equal value for the employer.

(2) For the purposes of subsection (1),

(a) “equal remuneration” means rates of remuneration that have been established without differentiation based on the grounds of sex; and

(b) “work of equal value” means work equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work.

(3) The burden of proof to establish that equal remuneration has been paid shall rest on the employer.

Partnerships.

**123.** (1) Where employment in a particular occupation is largely provided through partnership firms, it shall be an offence for such firms, or for persons proposing to form themselves into such a partnership firm, to discriminate against any person on the grounds set out in section 116 (2)

(a) in the arrangements they make for the purpose of determining who should be offered a position as partner in the firm; or

(b) by expelling persons from, or subjecting persons in the firm to, detrimental treatment.

(2) Subsections (1)(a) and (b) do not apply if the treatment afforded to the partner or potential partner is based on an essential occupational qualification.

Employer and employee organisations.

**124.** It is an offence for an organisation of employers, trade unions or other organisations of employees, or any other organisation whose members carry on a particular profession or trade for the purpose of which the organisation exists, to discriminate against any person on the grounds set out in section 116 (2)

- (a) by refusing or failing to accept that person's application for membership;
- (b) in the terms on which it is prepared to admit that person to membership; or
- (c) in the case of a person who is a member of the organisation,
  - (i) by denying or deliberately omitting to afford him or her, or limiting his or her access to any benefits, facilities or services provided by the organisation;
  - (ii) by depriving him or her of membership or varying the terms of membership;
  - (iii) by limiting his, or her access to, or depriving him or her of, access to, or the acquisition of, leadership positions within the organisation; or
  - (iv) by subjecting him or her to any other detriment.

**125.** (1) It is an offence to induce, or attempt to induce, a person to do any act which contravenes this Part by Inducement to discriminate.

- (a) providing, or offering to provide, the person with any benefit; or
- (b) subjecting, or threatening to subject, the person to any detriment.

(2) An attempted inducement is not prevented from falling within subsection (1) because it is not made directly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.

**126.** Except where otherwise provided in this Part, the person alleging a violation of this Part shall bear the burden of proving discrimination, inducement or attempted inducement, as the case may be. Burden of proof.

**127.** Where by any provision of this Part, conduct is excepted from conduct that is a contravention of this Part, the onus of proving the exception lies upon the party claiming the exception. Proof of exceptions.

**128.** (1) Any person who Offences and penalties under this Part.

- (a) commits an offence under section 124 or 125, or
- (b) otherwise contravenes the provisions of this Part commits an offence and,

is liable on summary conviction to a fine not exceeding seven thousand dollars, and for a second or subsequent offence, to a fine not exceeding ten thousand dollars.

(2) Where any partnership, or group of persons proposing to form themselves into a partnership, contravenes the provisions of section 123 (1), the individual partners shall, upon the contravention being proved, be each liable to a fine not exceeding two thousand dollars, and for a second or subsequent offence, to a fine not exceeding five thousand dollars.

(3) Where an offence under this Part has been proved to have been committed by an employer who is not a natural person, and is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, chairman, manager or other officer, they shall each be liable to be proceeded against accordingly.

Remedies.

**129.** (1) Without prejudice to any other remedy that may be available in any competent court, where any person who is aggrieved by any act or omission of an employer in contravention of the provisions of this Part, and no settlement of the issue is reached in direct discussion with the employer, the dispute may be referred for settlement to the Commissioner in accordance with the provisions of section 26.

(2) Where any dispute referred to the Commissioner in accordance with subsection (1) is subsequently referred to a Tribunal by the Minister in accordance with the provisions of section 27, the Tribunal may, if an offence be proven, make an order or orders

- (a) directing the payment of compensation by the employer, or any other person or body covered under the provisions of this Part, to the aggrieved employee for any loss caused directly or indirectly as a result of the contravention;
- (b) directing the employer or other relevant person or body covered under this Part to redress the contravention including an order to employ, re-employ or reinstate any person, notwithstanding that the vacancy in question has already been filled and notwithstanding that the employer may be liable to any claim arising

from the need to dismiss or terminate the services of any other employee who has been engaged;

- (c) making any decision found to have been based on unlawful discrimination void;
- (d) prescribing any other remedy the Tribunal may deem fair and just to remedy the cause and effect of the act or omission of the employer.

## **PART VIII PROTECTION OF CHILDREN AND YOUNG PERSONS**

**130.** (1) A person shall not employ, or permit a child to be employed, as an employee, and a person who employs a child or permits him or her to work in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

Prohibition of employment of children.

(2) This section shall not apply to

- (a) light work approved by the Minister for children not below the age of fourteen years and subject to the number of hours and other conditions determined by the Minister after consultation with employers' and employees' representative organisations;
- (b) artistic performances approved by the Minister and subject to conditions determined by the Minister after consultation with employers' and employees' representative organisations; or
- (c) the exercise of manual labour by a child under order of detention in a reformatory or industrial school, or by a child receiving instruction in manual labour in a school, provided that such work is approved and supervised by a public authority.

**131.** Subject to section 132 (8), where a child is found to be employed in contravention of this Part, the parent or guardian of that child is deemed to have committed an offence unless he or she proves that the employment occurred without his or her knowledge, consent, acquiescence or connivance and is liable on summary conviction to a fine not exceeding eight thousand

Liability of parent or guardian.

dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

Restrictions on  
employment of  
young persons.

**132.** (1) A person shall not employ a young person unless that young person has been found fit for the work he or she is expected to perform after a thorough medical examination, and the employer of a young person shall ensure that the young person is medically examined every six months and that he or she is fit for the work that he or she is expected to perform.

(2) A person shall not, without the prior written consent of the Minister responsible for Education, employ during school hours, a young person who is within the compulsory school age.

(3) A person shall not employ a young person on night work, and for the purpose of this subsection “night work” means work performed between the hours of 8:00 p.m. on one day and 5:00 a.m. on the following day.

(4) A person shall not employ a young person in any form of work which the Minister may, by Order, declare to be hazardous work for the purposes of this section.

(5) Where the Commissioner is aware of the involvement of a child or young person in a worst form of child labour, the Commissioner shall, communicate and collaborate with other agencies of the Crown to ensure that the child or young person is removed from that kind of labour and rehabilitated.

(6) For purposes of subsection (5), “rehabilitation” shall include access to education, training and social welfare.

(7) A person who contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

(8) A person who employs or induces another to employ or procures the employment of a child or young person in the worst form of child labour, commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars.

(9) For purposes of subsection (6), a child or young person is considered employed whether or not he or she is in an employment contract or is paid or not paid for his or her services.

Registers to be  
kept.

**133.** (1) An employer shall keep a register of young persons employed by him or her.

(2) The register referred to in subsection (1) shall contain particulars of the names, addresses and dates of birth of young persons, and of the dates on which they enter and leave the employment, and the employer shall on request at any reasonable time, produce that register for inspection by any authorised public officer.

(3) An employer who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

**134.** (1) The prohibitions and restrictions under this Part on the employment of children and young persons, save section 132 (3), shall not apply to students who participate in the Government's vacation work programme for students, except that a student shall not be engaged to perform any work which by its nature or the circumstances in which it is carried out is, in the opinion of the Commissioner, likely to jeopardise the health, safety or morals of the student.

Government's  
vacation work  
programme for  
students.

(2) For the purposes of subsection (1),

- (a) the Chief Education Officer shall, where students are required to participate in a vacation work programme, prepare and submit a report to the Commissioner
  - (i) in respect of the institutions in which the students are expected to work;
  - (ii) on the type of work the students will be engaged in;
  - (iii) on the duration of the work concerned; and
  - (iv) on the number of hours to be worked by the students;
- (b) the Commissioner may, after consultation with such persons as he considers necessary, prepare guidelines on the engagement of students to perform work under the vacation work programme.

**135.** A person who misrepresents the age of a child or young person for the purposes of contravening a provision of this Part commits an offence and is liable on summary conviction to a fine not exceeding eight thousand

False  
representation as  
to age.

dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

## **PART IX HEALTH, SAFETY AND WELFARE**

Interpretation.

**136.** In this Part, unless the context otherwise requires,

“building operation” includes the construction, alteration, repair, maintenance or demolition of a structure, harbour facility, bridge, viaduct, waterworks, reservoir, pipeline, aqueduct, sewer or sewage system;

“employee” includes a person performing duties in a workplace with the expressed or implied permission of the operator of the workplace, on a part-time or full-time basis, whether or not the person is receiving remuneration for his or her services, and the expression “to employ” shall be construed accordingly;

“employer” means any person or undertaking, corporation, company, public authority or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker; and may be an operator, principal contractor, contractor or sub-contractor; and includes the heirs, successors and assigns of an employer;

“factory” includes the premises in which manufacturing takes place, and the term includes any warehouse or storage place, building operation, harbour operation, mine or quarry;

“fumes” includes gases or vapours;

“harbour operation” includes any work performed at a harbour, whether natural or artificial or at a pier, jetty or other installation in or at which ships can dock, obtain shelter or ship, or unship, goods or passengers;

“machinery” includes all manufacturing equipment, machines whether operated manually or mechanically, prime movers of machines, units designed to transmit power or motion, units designed to transport items or persons in connection with a manufacturing process, appliances used in the process, and all the parts of the appliances;

“occupier” means the person who has the ultimate control over the affairs of an industrial establishment or any other place of employment or work;

“operator of a workplace” includes the owner of a building containing a workplace, the owner or hirer of a machine or implement used in a

workplace other than the principal operator thereof to the extent that any obligation under this Part relates to persons who are employed in or about or in connection with such machine and who are in the employment or pay of such owner or hirer;

“owner” includes a trustee, receiver, mortgagee in possession, tenant, lessees, or occupier of any lands or premises used or to be used as a workplace, and a person who acts for or on behalf of an owner as an agent or delegate; and an owner does not become an employer at a construction site by virtue only of the fact that the owner has engaged an architect, professional engineer or other person solely oversee quality control at a construction site;

“prime mover” includes an engine, motor or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel or other source of energy;

“sanitary conveniences” include urinals, water closets, earth closets, privies, ash-pits and any similar conveniences.

**137.** (1) An employer at any work place including a construction site shall ensure that,

Duties of employers.

- (a) a safe, sound, healthy and secure working environment is provided as far as is reasonably practicable;
- (b) the measures and procedures prescribed by this Act and the Regulations are carried out;
- (c) every supervisor and every employee performing work complies with this Act and the Regulations;
- (d) every reasonable precaution is taken in the circumstances for the protection of a worker;
- (e) reasonable precaution is taken in the circumstances to protect the general public who comes into contact with the work site;
- (f) a written occupational safety and health policy is prepared and reviewed at least annually in consultation with the committee or safety and health representative, if any, or a worker selected by the workers to represent them, and develop and maintain a program to implement that policy;
- (g) a copy of the occupational safety and health policy is posted

at a conspicuous location in the workplace;

- (h) the equipment, materials and protective devices and clothing as prescribed are provided;
- (i) the equipment, materials and protective devices and clothing provided by the employer are suitable and adequate and maintained in good condition;
- (j) the equipment, materials and protective devices and clothing provided by the employer are used as prescribed;
- (k) the workplace, machinery, equipment and processes under his or her or control are safe and without risk to safety and health as far as is reasonably practicable;
- (l) that the machine, device, tool or equipment is in good condition; and
- (m) that the machine, device, tool or equipment complies with this Act and the Regulations.

Registration of workplaces.

**138.** (1) The employer and operator of a workplace shall, within one month of this Code coming into force, file with the Commissioner a notice stating

- (a) the hazardous chemicals, the hazardous physical agents and the hazardous biological agents present in the workplace and indicating whether the workplace is a major hazard installation, and
- (b) other particulars as are prescribed by Regulations,

and a person who commences to operate a workplace subsequent to the coming into force of this Code shall, within one month from the commencement date, file a similar notice.

(2) When there is a material change in any of the particulars appearing in the notice filed in accordance with subsection (1), the employer and operator of that workplace shall, within one month of that change, file with the Commissioner a notice setting forth the details of the change.

Risk assessment.

**139.** (1) Every employer shall make a suitable and sufficient assessment of

- (a) the risks to the safety and health of his or her employees to which they are exposed whilst they are at work; and
- (b) the risks to the safety and health of persons not in his or her employment arising out of or in connection with the conduct by him or her of his or her undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him or her by or under the relevant statutory provisions.

(2) Any assessment referred to in subsection (1) or (2) shall be reviewed by the employer who made it if

- (a) there is reason to suspect that it is no longer valid; or
- (b) there has been a significant change in the matters to which it relates,

and where as a result of any review, changes to an assessment are required, the employer or self-employed person concerned shall make them.

(3) Where the employer employs twenty-five or more employees, he or she shall record

- (a) the significant findings of the assessment; and
- (b) any group of his or her employees identified by it as being especially at risk.

**140.** (1) An employer of a workplace where twenty-five or more employees are employed shall prepare or revise, in consultation with the employees' representatives

Safety and health policy and emergency plan.

- (a) a written statement of his or her general policy with respect to the safety and health of the employees, specifying the organisation and arrangements for the time being in force for carrying out that policy and the provisions of this Act; and
- (b) an emergency plan in writing based on a risk assessment made in accordance with section 140 which shall include

- (i) suitable and rapid means of obtaining first aid help and transportation from the industrial establishment to a hospital for injured workers; and
- (ii) measures and procedures to be used to control a major fire, to react to serious damage to the industrial establishment, to evacuate the industrial establishment and to notify rescue personnel,

and the employer of the workplace shall submit the statement or the emergency plan, as the case may be, and any revision thereof to the Commissioner and bring them to the notice of all persons employed in the workplace.

(2) The Commissioner may, having regard to the statement or the emergency plan submitted under subsection (1), direct the employer of the workplace to appoint at his or her own expense, a Safety Practitioner who shall assist in ensuring that the policy and the provisions of this Act or the requirements of the emergency plan, as the case may be, are complied with.

(3) An employer of a workplace shall ensure, as far as is reasonably practicable, that no unsafe structure exists in the workplace that is likely to expose persons to risks to bodily injury.

Health.

**141.** The employer and operator of a workplace shall, as the particular circumstances require,

- (a) keep the workplace in a clean state;
- (b) keep it from becoming overcrowded;
- (c) maintain a reasonable temperature in the workplace;
- (d) provide adequate ventilation in the workplace;
- (e) provide adequate lighting;
- (f) provide effective means for draining floors; and
- (g) provide adequate sanitary conveniences.

Safety.

**142.** (1) The employer and operator of a workplace shall, as the particular circumstances require,

- (a) take adequate measures for the prevention of fire and for adequate means of escape for employees;
- (b) ensure that all machinery used is operated and maintained in a manner as to be safe for employees;
- (c) ensure that the workplace is properly maintained;
- (d) ensure that a steam boiler is not put into use in any workplace unless he or she has obtained from the manufacturer of the boiler or from a competent person a certificate specifying the maximum permissible working pressure;
- (e) ensure that a steam boiler is examined by a competent person at least once every fourteen months and, after any such examination, procure from the examiner a certificate of the results; and
- (f) file the certificates required under paragraphs (d) and (e) with the Commissioner within twenty-eight days of the completion of the examination.

(2) The Minister, by issuing an Order with or without conditions, may exempt from any of the provisions of subsection (2) (d), (e) and (f) any class or type of steam boiler as to which he or she is satisfied that the provisions cannot be applied.

**143.** The employer of a workplace shall, as the particular Welfare. circumstances require,

- (a) make available adequate supply of wholesome drinking water;
- (b) provide and maintain suitable washing facilities;
- (c) provide accommodation for clothing not worn during working hours and for the drying of work clothing;
- (d) provide and maintain suitable facilities for employees to sit during the course of their employment;
- (e) provide and maintain readily accessible first aid equipment; and

- (f) provide and maintain other facilities such as canteen, mess rooms and rest rooms, as are reasonable under the circumstances.

Special protective measures.

**144.** It shall be the responsibility of the employer of any workplace, as the particular circumstances may require, to ensure that

- (a) a person is not permitted to take any food or drink into any room where any lead, arsenic or other poisonous substance is used;
- (b) suitable goggles or protective screens are provided to protect the eyes of any persons employed in a process involving a special risk of injury to the eyes;
- (c) where a work process involves a reasonable possibility of injury to other parts of an employee's body, suitable protective equipment is furnished;
- (d) an employee is not required manually to lift, carry or move anything in excess of the maximum weight specified by any Regulations made under this Part;
- (e) where a person is employed in any process involving exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances are provided and maintained;
- (f) where a process involves heat or steam, facilities adequate to protect employees from the heat or steam are provided and maintained;
- (g) no person is required to use white phosphorous (sometimes called "yellow phosphorous") in any process; and
- (h) with respect to any process involving the use of, or exposure to, products containing benzene (which term, as used in this Act, means the aromatic hydrocarbon  $C_6H_6$  itself or any product the benzene content of which exceeds one percent by volume), harmless or less harmful substitutes are used if they are available but, if substitutes are not available then
  - (i) the process shall be, as far as is practicable, carried out in an enclosed system or where an

enclosed system is not practicable, the place of work in which the process is carried out shall be equipped with effective means to ensure the removal of benzene fumes to the extent necessary for the protection of the health of the employees;

- (ii) the word “benzene” and appropriate danger signals shall be clearly visible on any container holding benzene; and
- (iii) an employee who may be exposed to benzene shall receive appropriate instructions about safeguarding health and preventing accidents, as well as about action to be taken if there is any evidence of poison.

**145.** (1) Persons entering an area in a workplace where they are likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury, shall be provided with suitable protective clothing or devices of an approved standard and adequate instructions in the use of the protective clothing or devices, and a person shall not be permitted to be in that area unless he or she is wearing the protective clothing or device.

Protective clothing and devices.

(2) The employer and operator of a workplace shall conspicuously display in areas where protective clothing or devices are required to be worn, a notice to that effect.

**146.** (1) An employer shall

Hazardous chemicals.

- (a) ensure that all hazardous chemicals present in the industrial establishment are labelled in a way easily understandable to the employees, or are identified in the prescribed manner;
- (b) obtain or prepare, as may be prescribed, an unexpired chemical safety data sheet for all hazardous chemicals present in the workplace;
- (c) ensure that the identification required by paragraph (a) and chemical safety data sheets required by paragraph (b) are available in English and other languages as may be prescribed;

- (d) ensure that when hazardous chemicals are transferred into other containers or equipment, the contents are indicated in a manner which will make known to employees, their identity, any hazards associated with their use, and any safety precautions to be observed; and
- (e) ensure that information is provided on the handling and disposal of hazardous chemicals which are no longer required and containers which have been emptied but which may contain residues of hazardous chemicals, so that the risk to safety and health and to the environment is eliminated or minimized.

(2) An employer shall ensure that a hazardous chemical is not used, handled or stored in the industrial establishment unless the prescribed requirements concerning identification, chemical safety data sheets and worker instruction and training are met.

(3) An employer shall advise the Chief Inspector in writing if the employer, after making reasonable efforts, is unable to obtain a label or chemical safety data sheet required by subsection (1).

(4) A copy of the most recent version of the inventory and of every unexpired chemical safety data sheet required by this Part in respect of hazardous chemicals in a workplace shall be

- (a) made available by the employer in such a manner as to allow examination by the employees;
- (b) furnished by the employer to a representative of health and safety committee, if any, or to an employee selected by the employees to represent them, if there is no health and safety committee or if there is no trade union, an employee selected by the employees to represent them;
- (c) filed by the employer with the Commissioner on request or if so prescribed.

(5) A person shall not remove or deface the identification referred to in subsection (1)(a), for a hazardous chemical.

**147.** (1) An employer shall, after being notified by a female employee that she is pregnant and upon production of a medical certificate to

that effect, adapt the working conditions of the female employee to ensure that she is not

- (a) involved in the use of, or exposed to, chemicals, substances or anything dangerous to the health of the unborn child; or
- (b) subjected to working conditions dangerous to the health of the unborn child, and where appropriate, the employer may assign alternative work, where available, to her without prejudice to her right to return to her previous job.

(2) Where a female employee who has notified her employer of her pregnancy under subsection (1) is no longer pregnant she shall immediately upon discovery of this fact notify her employer and shall produce a medical certificate to that effect.

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

(4) Notwithstanding any other law, during an employee's pregnancy, and for a period of six months after birth of her child, her employer shall offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of work, where the employee is required to perform work that poses a danger to her safety or health or that of her child, unless there is no other available suitable alternative employment or that in doing so the employer will incur costs greater than ordinary administrative costs.

**148.** (1) In every industrial establishment, a young person shall not work at a machine to which this section applies, unless he or she has been fully instructed as to the dangers arising in connection with its operation, and the precautions to be observed, and

Employment of young persons or dangerous machines.

- (a) has received sufficient training in work at the machine; or
- (b) is under adequate supervision by a person who has special knowledge and experience in the operation of the machine.

(2) This section applies to machines as may be prescribed, being machines which are of a dangerous character that a young person ought not to

work at them unless the requirements of subsection (1) are complied with.

Disposal of  
waste.

**149.** An employer shall, before the expiration of one year from the date on which this Act comes into force or a longer period as the Minister may, upon application in writing by an employer, approve, make arrangements for the safe and efficient disposal of wastes and effluents resulting from any processes carried on and the arrangements shall be designed so as to ensure that the disposal does not result in any danger to persons, property or to the environment.

Noise and  
vibration.

**150.** (1) An employer shall take adequate steps to prevent hearing impairment caused by noise, and diseases caused by vibration, from occurring to persons in, or in the vicinity of, his or her workplace and shall comply with directives as

- (a) an inspector may issue, in order to reduce the level of noise or vibration generated by a machine, device or process; and
- (b) the Chief Medical Officer may issue, in order to protect persons employed from hearing impairment caused by noise or from diseases caused by vibration.

(2) An employer shall

- (a) ensure that protective equipment necessary for compliance with subsection (1) is worn or used by employees at all appropriate times;
- (b) arrange for the initial and periodic medical examination and assessment of those employees who are exposed to the risk of injury to their hearing or of contracting a disease caused by vibration;
- (c) keep a record of the results of examinations and assessments under paragraph (b) which shall include audiometric tests and the monitoring of the work environment; and
- (d) arrange programmes for hearing conservation.

Obligations of  
persons  
employed.

**151.** (1) An employee to whom this Part applies shall make use of all means, appliances, conveniences or other things provided under this Code for the health, safety and welfare of employees, to the extent that his or her employment involves their use.

(2) An employee shall not

- (a) willfully interfere with, misuse or damage any means, appliance, convenience or other thing;
- (b) willfully and without reasonable cause do anything likely to endanger himself or herself or others; or
- (c) enter, or remain, at a workplace, when under the influence of alcohol, addictive drugs or any other substance which may adversely affect the health and safety of himself or herself or other persons in or about that workplace.

(3) An employee shall report to his or her employer or supervisor

- (a) the absence of, or defect in, any equipment or protective device and clothing of which he or she is aware and which may endanger himself or herself or another employee or person; and
- (b) any contravention of this Code or any Regulations of which he or she is aware.

**152.** The operator of a workplace shall not, in respect of the cost of anything done or to be done by him or her in pursuance of this Part or any Regulations or Order issued under this Act, make any deduction from the sum contracted to be paid by him or her to any person employed, nor shall he or she receive or allow any other person to exact or to receive any payment in lieu of such deduction.

Prohibition of deduction of wages.

**153.** (1) The Minister may make Regulations prescribing the standards to be achieved in respect of any of the obligations set forth in this Part and the methods required to attain them, and he or she may establish advisory committees on which employers and employees are represented to assist him or her in this function.

Regulations and Orders.

(2) The Minister may, by Order,

- (a) require the operator of a workplace to take special measures bearing on the health, safety or welfare of employees;
- (b) require the operator of a workplace to take specified measures bearing on the health, safety or welfare of employees whose duties relate to the business of the

workplace and are performed, in whole or in part, outside the workplace;

- (c) require arrangements to be made for medical supervision in any workplace;
- (d) require medical examinations of employees in any workplace at the expense of the operator of the workplace to ascertain whether their health has been or is being adversely affected by their employment.

Safety and health representatives.

**154.** (1) At a construction site or other workplace where a committee is not required under section 156 and where the number of employees regularly exceeds five, the employer shall cause the employees to select at least one safety and health representative from among the employees at the workplace who do not exercise managerial functions.

(2) If a safety and health representative is not required under subsection (1) and a committee is not required under section 156 for a workplace, the Minister may, by Order, require an employer to cause the employees to select one or more safety and health representatives from among the employees at the workplace who do not exercise managerial functions, and may provide in the Order for the qualifications of the representatives.

(3) An Order made under subsection (2) may contain directions as the Minister considers advisable concerning the carrying out of the functions of a safety and health representative.

(4) The Minister shall in exercising the power conferred by subsection (2), consider the matters set out in subsection (5).

(5) The selection of a safety and health representative shall be made by those employees who do not exercise managerial functions and who will be represented by the safety and health representative in the workplace.

(6) Where there is a trade union or trade unions representing the employees referred to in subsection (5), the selection of a safety and health representative may be delegated by a majority of the employees to the trade union or trade unions.

(7) Unless otherwise required by Regulations or by an order by an inspector, a safety and health representative shall inspect the physical conditions of the workplace at least once a month.

(8) If it is not practical to inspect the workplace at least once a month, the safety and health representative shall inspect the physical condition of the

workplace at least once a year, inspecting at least a part of the workplace in each month.

(9) The inspection required by subsection (8) shall be undertaken in accordance with a schedule agreed upon by the employer and the safety and health representative.

(10) The employer and employees shall provide a safety and health representative with information and assistance as the representative may require for the purpose of carrying out an inspection of the workplace.

(11) A safety and health representative shall have power to identify situations that may be a source of danger or hazard to employees and to make recommendations or report his or her findings to the employer, the employees and the trade union or trade unions representing the employees.

(12) A safety and health representative has the power

- (a) to obtain information from the employer concerning the conducting or taking of tests of any equipment, machine, device, article, material, chemical, physical agent or biological agent in or about a workplace for the purpose of occupational safety and health;
- (b) to be consulted about, and be present at the beginning of testing referred to in paragraph (a) conducted in or about the workplace if the representative believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid; and
- (c) to obtain information from the employer respecting
  - (i) the identification of potential or existing hazards or materials, processes or equipment; and
  - (ii) safety and health experience and work practices and standards in similar or other industries of which the employer has knowledge.

(13) An employer who receives written recommendations from a safety and health representative shall respond in writing within twenty-one days.

(14) A response of an employer under subsection (13) shall contain a timetable for implementing the recommendations the employer agrees with

and give reasons why the employer disagrees with any recommendations that the employer does not accept.

(15) A safety and health representative is entitled to take such time from work as is necessary to carry out his or her duties under subsection (7) and the time so spent is deemed to be work time for which the representative shall be paid by his or her employer at the representative's regular or premium rate as may be proper.

(16) A safety and health representative or representatives of like nature appointed or selected under the provisions of a collective agreement or other agreement or arrangement between the employer and the employees, has in addition to his or her functions and the powers under the provisions of the collective agreement or other agreement or arrangement, the functions and powers conferred upon a safety and health representative by this section.

(17) A safety and health representative shall maintain and keep a record of the performance of his or her functions and exercise of powers conferred upon him or her by this section and shall make the same available for examination by an inspector.

Joint workplace  
safety and health  
committees.

**155.** (1) A joint workplace safety and health committee is required at a workplace at which twenty or more employees are regularly employed.

(2) Subject to subsection (3), this section does not apply

- (a) to an employer at a construction site at which work is expected to last less than three months; or
- (b) to a prescribed employer or workplace or class of employers or workplaces.

(3) Notwithstanding subsections (1) and (2), the Minister may, by Order, require an employer to establish and maintain one or more joint workplace safety and health committees for a workplace and may, in the Order, provide for the composition, practice and procedure of any committee so established.

(4) The employer shall cause a joint workplace safety and health committee to be established and maintained at the workplace unless the Minister is satisfied that a committee of like nature or an arrangement, programme or system in which the employees participate was, on the appointed day, established and maintained under a collective agreement or other agreement or arrangement and that the committee, arrangement, programme or system provides benefits for the safety and health of the

employees equal to, or greater than, the benefits to be derived under a committee established under this section.

(5) The Minister shall in exercising the power conferred by subsection (3), consider

- (a) the nature of the work being done;
- (b) the request of an employer, a group of the employees or the trade union or trade unions representing the employees in a workplace;
- (c) the frequency of occupational disease or injury in the workplace or in the industry of which the employer is a part;
- (d) the existence of safety and health programmes and procedures in the workplace and their effectiveness; and
- (e) other matters as the Minister considers advisable.

(6) A committee shall consist of

- (a) at least four persons, for a workplace where fewer than fifty employees are regularly employed; or
- (b) at least six persons or such greater number of persons as may be prescribed, for a workplace where fifty or more employees are regularly employed.

(7) At least half the members of a committee shall be employees employed at the workplace who do not exercise managerial functions.

(8) The members of a committee who represent employees shall be selected by the employees who do not exercise managerial functions and who will be represented by those members of the committee in the workplace.

(9) Where there is a trade union or trade unions representing the employees referred to in subsection (8), the selection of the members of a committee referred to in subsection (8) may be delegated by a majority of such employees to the trade union or trade unions.

(10) The employer shall select the remaining members of a committee from among persons who exercise managerial functions for the employer and, to the extent possible, who do so at the workplace.

(11) A member of the committee who ceases to be employed at the workplace ceases to be a member of the committee.

(12) Two of the members of a committee shall, on a rotating basis, co-chair the committee, one of whom shall be selected by the members who represent employees and the other of whom shall be selected by the members who exercise managerial functions.

(13) It is the function of a committee and it has power to

- (a) identify situations that may be a source of danger or hazard to employees;
- (b) make recommendations to the employer and the employees for the improvement of the health and welfare of employees;
- (c) recommend to the employer and the employees the establishment, maintenance and monitoring of programmes, measures and procedures respecting the safety of employees;
- (d) obtain information from the employer respecting
  - (i) the identification of potential or existing hazards of materials, processes or equipment; and
  - (ii) safety and health experience and work practices and standards in similar or other industries of which the employer has knowledge;
- (e) obtain information from the employer concerning the conducting or taking of tests of any equipment, machine device, article, material, chemical, physical agent or biological agent in or about a workplace for the purpose of occupational safety and health; and
- (f) be consulted about, and have a designated member representing employees be present at the beginning of testing referred to in paragraph (e) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

(14) The members of the committee who represent employees shall designate one of them who is entitled to be present at the beginning of testing described in subsection (13)(f).

(15) An employer who receives written recommendations from a committee shall respond in writing within twenty-one days.

(16) A response of an employer under subsection (15) shall contain a time table for implementing the recommendations the employer agrees with and give reasons why the employer disagrees with any recommendations that the employer does not accept.

(17) A committee shall maintain and keep minutes of its proceedings and make the same available for examination and review by an inspector.

(18) The members of a committee who represent employees shall designate a member representing employees to inspect the physical condition of the workplace.

(19) The members of a committee are not required to designate the same member to perform all inspections or to perform all of a particular inspection.

(20) Unless otherwise required by Regulations or by an Order by an inspector, a member designated under subsection (18) shall inspect the physical condition of the entire workplace at least once a month.

(21) If it is not practical to inspect the entire workplace in any one day in a month, in accordance with subsection (20), the member designated under subsection (18) shall continue for any one or several remaining days of the month to inspect at least a part of the workplace until the entire workplace is inspected in that month.

(22) The inspection required by subsection (21) shall be undertaken in accordance with a schedule established by the committee.

(23) The employer and the employees shall provide a member designated under subsection (18) with information and assistance as the member may require for the purpose of carrying out an inspection of the workplace.

(24) The member designated under subsection (18), shall inform the committee of situations that may be a source of danger or hazard to employees and the committee shall consider the information within a reasonable period of time.

(25) An employer required to establish a committee under this section shall post and keep posted at the workplace the names and work locations of the committee members in a conspicuous place or places where they are most likely to come to the attention of the employees.

(26) A committee shall meet at least once every three months at the workplace and may be required to meet by order of the Minister.

(27) A member of a committee is entitled to

- (a) one hour or a longer period of time as the committee determines is necessary to prepare for each committee meeting;
- (b) time as is necessary to carry out the member's duties under subsections (20) and (21).

(28) A member of a committee shall be deemed to be at work during the times mentioned in subsection (27) and the member's employer shall pay the member for those times at the member's regular or premium rate as may be proper.

(29) Any committee of a like nature to a committee established under this section in existence in a workplace under the provisions of a collective agreement or other agreement or arrangement between an employer and the employees has, in addition to its functions and powers under the provisions of the collective agreement or arrangement, the functions and powers conferred upon a committee by this section.

(30) Where a dispute arises as to the application of subsection (2), or the compliance or purported compliance with subsection (2) by an employer, the dispute shall be decided by the Commissioner after consulting the employer and the employees or trade union or trade unions representing the employees.

**156.** The Commissioner may, with the approval of the Minister, undertake

- (a) research into the cause of, and the means of preventing, employment injury, and
- (b) programmes to reduce or prevent employment injury,

in the course of which he or she may cooperate with any other department of Government or any other organisation undertaking similar programmes.

**157.** (1) An inspector may take for analysis samples of material used or intended to be used in a workplace which he or she thinks may prove on analysis to be likely to cause bodily injury to employees.

Special powers of inspector.

(2) An inspector who has reasonable cause to believe that a condition exists at a workplace which is likely to cause bodily harm to any persons employed or performing duties, shall serve written notice upon the operator thereof of an intention to recommend that the Minister issue an appropriate Order under section 154.

(3) When an inspector is of the opinion that the employment of any young person in a workplace or any process or part is or may be prejudicial to that young person's health, he or she may serve written notice on the operator of the workplace requiring the cessation of, or the imposition of specified limitations upon, that young person's employment and the requirements of the notice shall become an obligation under this Part.

**158.** An employer shall, within forty-eight hours of an accident or death referred to in this section, report to

Reports by employer.

(a) the Commissioner, the joint workplace safety and health committee, the employees' safety representative and the recognised trade union accidents involving an employee, or any other person present in the workplace, which result in disability for more than three days or death;

(b) the Commissioner

(i) other accidents, fires and explosions;

(ii) the collapse or failure of any building or structure; and

(iii) any accident to machinery or plant which results in the cessation of work beyond the shift or day on which the accident took place.

**159.** The owner of a workplace that is not a construction site shall ensure that,

Duties of an owner.

(a) the facilities prescribed are provided;

(b) the facilities prescribed to be provided are maintained as prescribed;

(c) the workplace complies with the Regulations, and that the

workplace is not constructed, developed, reconstructed, altered or added to, except in compliance with this Act and the Regulations.

Exemptions and extensions.

**160.** (1) The Minister may, by Order, exempt a workplace from the application of one or more of the provisions of this Part .

(2) An Order made under subsection (1) shall set forth the reasons and terms of the exemption.

(3) The exemption shall be effective for not more than six months in the absence of an Order of extension by the Minister which shall set forth the reason for the extension.

(4) Any extension made under subsection (3) shall be effective for not more than six months in the absence of an order of further extension by the Minister which shall set forth the reason for further extension.

(5) An Order of exemption or extension may contain conditions which shall be met in order to qualify for the exemption or extension.

Non exclusivity of this Part.

Non-exclusivity of provisions of this Part.

**161.** Except where otherwise expressly provided, the provisions of this Part shall be in addition to, and not in substitution for or diminution of, the provisions of any other Part.

Offences.

**162.** (1) A person who contravenes an obligation created under this Part, or any Regulations or Order, commits an offence.

(2) If the contravention is by an employee, the operator of the workplace shall also be liable if it is proved that the operator failed to take reasonable steps to prevent the contravention.

(3) Where an offence committed by the operator of a workplace under this Part, or any Order or Regulations, is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, chairman, manager, other officer or person other than the operator, he or she, as well as the operator, is deemed to have committed the offence and is liable to be proceeded against.

Multiple offences.

**163.** Where an employer employs persons in a workplace other than in accordance with this Part or any Regulations or Order, there shall be deemed to be a separate contravention in respect of each person so employed.

Penalties for specific offences.

**164.** (1) A person who fails to comply with section 139 commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

(2) A person who

- (a) forges or counterfeits any certificate required by, under or for the purposes of this Part or any Regulations or Order,
- (b) gives or signs any certificate knowing it to be false in any material particular,
- (c) knowingly utters or makes use of any certificate so forged or counterfeited, or which is false as mentioned in paragraph (b),
- (d) knowingly utters or makes use of any certificate as applying to a person to whom it does not apply;
- (e) falsely pretends to be an inspector,
- (f) willfully connives in any forging, counterfeiting, giving, signing, uttering, making use, personating or pretending referred to in this subsection,
- (g) willfully makes a false entry in any register, notice, certificate or document required by, under or for the purposes of this Part or any Regulations or Order,
- (h) willfully makes or signs a false declaration required by, under or for the purposes of this Part or any Regulations or Order, or
- (i) knowingly makes use of any false entry or declaration referred to in paragraph (g) or (h),

commits an offence and is liable on summary conviction to a fine not exceeding seven thousand dollars.

(3) The operator of a workplace who

- (a) obstructs or delays an inspector in the due exercise of any power conferred on him or her by or under this Part,

- (b) refuses to answer or falsely answers, any inquiry authorised by or under this Part,
- (c) fails to produce any register, book, document or other record he or she is required by or under this Part to produce, or
- (d) conceals or prevents, or attempts to conceal or prevent, any person from appearing before or being examined by an inspector,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(4) If the offence described in subsection (3) is committed in a workplace by a person other than the operator, both the person and the operator shall be deemed to have committed the offence.

(5) If any person suffers personal injury or dies in consequence of the operator of the workplace having contravened any provision of this Part or any Regulations or Order, the operator commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

Penalties for offences for which no express penalty is provided.

**165.** A person who commits an offence, for which express penalty is not provided, shall be liable on summary conviction to a fine not exceeding five thousand dollars, and on a second or subsequent conviction to a fine not exceeding eight thousand dollars.

Power of court to order cause of contravention to be remedied.

**166.** Where the employer or operator of a workplace is convicted of an offence under this Part, the court may, in addition to or instead of imposing a fine, order him or her, within the time specified in the order, to take steps as may be specified for remedying the matters in respect of which the contravention occurred, and may, on application, extend the time specified.

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

**167.** Where an act or default for which the employer or operator of a workplace is liable is in fact the act or default of some agent of the operator or other person, that agent or other person commits an offence and is liable on summary conviction to the penalty prescribed for the offence as if he or she were the employer or operator.

Proceedings where inspector or operator believes the offender to be other than operator.

**168.** (1) When it is made to appear to an inspector at the time of discovering an offence

- (a) that an employer or operator of the workplace has used due diligence to enforce the execution of this Part,

- (b) that the offence has been committed by a person other than the operator, and
- (c) that the offence has been committed without the consent, connivance or willful fault of the operator,

the inspector shall proceed against the person whom he or she believes to be the actual offender.

(2) Where proceedings are brought against the employer or operator, the employer or operator shall be entitled, upon information laid by him or her and on giving the prosecution not less than three days' notice in writing of his or her intention, to have any other person whom he or she charges as the actual offender brought before the court at the time appointed for hearing the charge.

(3) Where, under subsection (2), a person is brought before the court, the operator may seek to prove

- (a) that he or she used due diligence to enforce the execution of this Part and of any relevant Regulations and Order issued; and
- (b) that the person brought before the court has committed that offence in question without his or her consent, connivance or willful default.

(4) If the employer or operator proves his or her case under subsection (3) to the satisfaction of the court, the other person shall be summarily convicted of the offence, instead of the employer or operator.

(5) Where under this Part a person is substituted for the employer or operator with respect to any provision of this Part, any order, summons, notice or proceeding, which for the purpose of the provision is, by or under this Part, required or authorised to be served on or taken in relation to the employer or operator, shall be required or authorised to be served on or taken in relation to that person.

**169.** (1) In any proceedings under this Part it shall be sufficient in the information to allege that the workplace is a workplace within the meaning of this Part and to state the name of the ostensible employer or operator of the workplace.

Prosecution of offences and recovery and applications of fines.

(2) Where an offence is committed under this Part by reason of a failure to make an examination, enter a report or do any other thing at or within a time specified by this Part or by any Regulations or Order, the offence shall be

deemed to continue until the examination is made, the report is entered or the other thing is done.

Special provisions as to evidence.

**170.** (1) Where an entry in a register or record is required to be made by this Part or any Regulations or Order,

- (a) an entry made in the register or record by or on behalf of the operator of a workplace shall be admissible against him or her as evidence of the facts stated in the register or record; and
- (b) the absence of the entry shall be admissible as evidence that the requirement has not been observed.

(2) Where, in any proceedings under this Part with respect to a young person, it appears to the court that the young person is of or below the age alleged by the defendant, the onus lies on the defendant to prove that the young person is not of or below that age.

Service of documents.

**171.** (1) Any document, including a summons or order, required or authorised to be served under this Part may be served

- (a) on any person by delivering it to him or her or by leaving it at, or sending it by post to, his or her last known address;
- (b) on any firm by delivering it to a partner, or by leaving it at, or sending it by post to, the registered office of the firm; or
- (c) on the employer or operator of a workplace in the manner prescribed in paragraph (a) or (b), or by delivering it, or a true copy of it, to any person apparently not under the age of sixteen years at the workplace.

(2) A document intended to be served upon the operator of the workplace may be addressed to the operator at the proper address of the workplace without further name or description.

Power of court to modify agreement and apportion expenses.

**172.** In the case of premises the whole or any part of which has been let as a workplace,

- (a) where an agreement between the owner and the employer or operator of the workplace prevents one or other from making alterations in the premises which are

necessary to conform to any requirement or standard imposed by or under this Part or any Regulations or Order, the court, upon the application of either party in an action joining the other, may after a hearing issue an order setting aside or modifying the agreement to permit the making of the necessary alterations; and

- (b) where alterations in the premises are necessary to conform to any requirement or standard imposed by any provisions of this Part or any Regulations or Order, the court, upon the application of the owner or the operator of the workplace in an action joining the other, may, after a hearing, issue an order apportioning the expenses of those alterations.

**173.** The fact that an employer or employee has complied with or failed to comply with this Part shall not dispose of any right of an employee to compensation, or of the liability or obligation of an employer or employee, under any enactment relating to compensation for employment injury, and with respect to the rights, liabilities or obligations of an employer or employee, the provisions of that enactment shall prevail. Savings.

## **PART X WORK PERMITS**

**174.** In this Part, unless the context otherwise requires, Interpretation.

“engage in employment” means

- (a) take or continue in any employment,
- (b) practise any profession,
- (c) engage in any trade or business, or
- (d) engage or be employed in any form of occupation,

whether or not such employment, profession, trade, business or occupation is taken, continued, engaged in, practised or carried on for reward, profit or gain;

“key employee” means a person who fulfills one or more of the following requirements:

- (a) he or she is recognized as having particular expertise in his or her field of practice, trade or employment and there is difficulty in attracting persons to the Virgin Islands or retaining such persons within the Virgin Islands;
- (b) he or she is or will be directly involved in training locals or developing their skills in the field in which he or she is employed or practises and his or her expertise in this regard is important to the effective continuation of such training or development;
- (c) he or she is a professional employee whose expertise and skills are in short supply globally and are not available in adequate measure in the Virgin Islands and it is of economic and social benefit to the business of the Virgin Islands to attract such skills to the Virgin Islands;
- (d) his or her absence from the Virgin Islands will cause serious hardship to his or her employer, to Virgin Islanders, or be detrimental to the Virgin Islands;
- (e) his or her business contacts are, or will be, of importance to the continued success of the business or its contribution to the Virgin Islands;
- (f) there exist other economic or social benefits to the Virgin Islands by virtue of securing or retaining his or her specialist skills or expertise; or
- (g) the circumstances of his or her particular case are considered to be exceptional and to justify a special reason to employ him or her to allow him or her to be designated as a key employee;

“qualified investor” means a person who has invested at least five million dollars in the domestic economy of the Virgin Islands;

“self-employment” means employment on one’s own behalf and not under a contract of employment, express or implied; and

“work permit” means a work permit issued under the provisions of this Part.

Prohibition  
against  
employment.

**175.** Subject to section 175(1), a person who does not belong to the Virgin Islands shall not engage in employment or self-employment in the Virgin Islands unless he or she has obtained a work permit issued by the Minister.

**176.** (1) An application for a work permit shall be made by the intended employer on behalf of the person for whom the permit is sought, by filing with the Labour Department an application in triplicate, in the prescribed form and, unless the applicant is a self-employed person, that application shall be accompanied by a statement in the prescribed form, completed by the intended employer.

Applications for work permit and interim work permit.

(2) An application for renewal or extension of a work permit shall be made by, or on behalf of the person for whom the permit is sought, by filing with the Labour Department an application in the prescribed form and, unless the applicant intends to be self-employed, the application shall be accompanied by a statement in the prescribed form completed by the intended employer.

(3) An application for a work permit to engage a person in employment as the employee of another person who is himself or herself an expatriate employee shall be made by the employer, or intended employer, of that expatriate employee, on behalf of the person for whom the permit is sought, by filing with the Labour Department an application in the prescribed form and, the application shall be accompanied by a statement in the prescribed form completed by the intended employer of that expatriate employee.

(4) The wages payable by, and all other responsibilities normal to, an employer shall be the responsibility of the expatriate employer with regard to a person granted a work permit in accordance with the provisions of subsection (3).

(5) An application for an interim work permit, or its renewal, shall be made by the person for whom the permit is sought, by filing directly with the Minister, an application in the prescribed form.

(6) A work permit holder shall neither seek employment nor be given a work permit to work with another employer during the currency of the work permit, unless he or she proves to the Labour Commissioner that the current employer's conduct towards the him or her has made it unreasonable for him or her to remain in that job.

**177.** (1) This Part shall not apply to an employee who

Application.

- (a) is holder of a certificate of residence;
- (b) is a member of Her Majesty's regular naval, military or air forces;

- (c) is duly accredited to the Virgin Islands by or under Her Majesty or the Government of any Commonwealth or foreign state; or
- (d) is a person or belongs to a class of persons exempted by an Order made by the Minister.

(2) Section 176(6) shall apply to a work permit issued to a person entering, or who entered, the Territory for employment purposes for the first time less than five years before the commencement of this Act.

Action upon application for work permit.

**178.** (1) The Minister may, by Order, delegate any of his or her functions under section 173 or this section to the Commissioner, provided that the delegation of the function shall not prevent the Minister from performing that function in any case that he or she thinks fit.

(2) In determining whether a work permit should be granted, renewed or extended, the Minister shall

- (a) take into consideration, among other things, the effect of the grant upon employment opportunities open to Virgin Islanders; and
- (b) consider whether the grant, renewal or extension of the work permit should be subject to any conditions, including the conditions that
  - (i) there be assigned, from among those who are Virgin Islanders, a counterpart-trainee to the position for which the work permit is being granted, renewed or extended; and
  - (ii) as a condition of renewal, there shall be filed periodic reports on the progress of the counterpart-trainee.

(3) The Minister shall decide whether or not, and under what conditions, the work permit should be granted, renewed or extended.

(4) A statement in a work permit stating the conditions upon which the permit is granted, renewed or extended shall be conclusive evidence of those conditions.

(5) Where a work permit is granted, renewed or extended, it shall be in the prescribed form and its validity shall be dependent upon compliance with section 180.

(6) Subject to section 175(2), a work permit shall be effective for a period not exceeding three years at a time and the permit may, upon application duly filed under section 174, be renewed or extended by the Minister from time to time, subject to a maximum term of seven years, except as provided for under subsection (9).

(7) Where it is shown that a person who was the holder of a work permit referred to in subsection (6) has, during or after the seven year period referred to in that subsection, lived outside the Virgin Islands for a period of at least two years or such other period as the Governor in Cabinet may, by Order, determine, that person may, upon application duly filed under section 174, be granted a new work permit and subsection (6) shall not apply to that new work permit.

(8) A work permit to which subsection (6) does not apply may, upon application duly filed under section 174, be renewed or extended by the Minister for a period not exceeding three years at a time.

(9) Notwithstanding subsection (6), the work permit of the person who

- (a) has held a work permit for at least five consecutive years at the time of the commencement of this Code,
- (b) is a qualified investor, or
- (c) is a key employee,

may be renewed or extended after the expiration of seven years from the date on which the work permit was first issued, for a period not exceeding three years at a time.

**179.** (1) A person who fails to comply with section 173 or 176 commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars, and any work permit granted to him or her shall be cancelled.

Penalty applicable to employees or self-employed persons.

(2) For the purpose of enforcing this Act, the Commissioner and any other officer of the Labour Department designated by him or her by Order shall have the powers of a police officer.

**180.** (1) An employer who employs a person

Penalty applicable to employers.

- (a) who requires a work permit without that person having first obtained the work permit,
- (b) in non-compliance with the conditions attaching to that person's work permit,

commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(2) Where an offence under subsection (1) is committed by a body corporate, the chairman and every director and every officer of the body corporate who knowingly authorises or permits the offence is liable on summary conviction to the same penalty as if they were individual employers.

False statements  
in application,  
etc.

**181.** A person who makes a false statement in any prescribed form which is filed under section 174 with the Labour Department or the Minister, or in response to any queries put to him or her in the course of an investigation made under section 176(1), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Fees.

**182.** (1) For every application for, or grant or renewal or extension of, a permit under this Part, there shall be paid a fee specified by the Minister by Order.

(2) The Minister may specify different fees for different persons or categories of persons and for persons receiving different wages or salaries.

(3) Fees for applications, work permits and exemptions shall be paid into the Consolidated Fund.

(4) Where a work permit is granted for any period less than one year, the amount of fees payable shall be pro-rated as may by Order be determined by the Minister from time to time.

Government  
policy on  
international  
migration for  
employment.

**183.** (1) The Minister shall cause to be prepared, and reviewed annually, a comprehensive policy on international migration for employment that

- (a) is based on the economic and social needs of the Virgin Islands; and
- (b) takes into account
  - (i) the short-term need of human resources;

- (ii) the short-term availability of human resources in the Virgin Islands;
- (iii) the long-term social and economic consequences of migration for Virgin Islanders and migrant employees.

(2) The Minister shall submit the policy prepared under subsection (1), and each revision, to the Cabinet for its approval.

**184.** (1) An employee who leaves the Virgin Islands upon the termination of his or her employment is entitled to

Provisions re. termination of employment.

- (a) any outstanding remuneration for work performed, including severance payments where due; and
- (b) benefits which may be due in respect of injury suffered in the course of his or her employment.

(2) Notwithstanding the the Immigration and Passport Ordinance, an employee who has initiated legal proceedings in respect of the termination of his or her employment shall be permitted to remain in the Virgin Islands until he or she has obtained a final decision.

Cap. 130

## **PART XI RECOGNITION OF BARGAINING AGENTS FOR BARGAINING UNITS**

**185.** Subject to section 186, a trade union claiming to represent at least fifty per cent of the employees in a bargaining unit may make a claim to the employer of those employees to be recognised as the bargaining agent for the bargaining unit.

Claim for recognition.

**186.** (1) A claim for recognition made to an employer by a trade union under section 185 in respect of a bargaining unit may

When claim for recognition may be made.

- (a) where a collective agreement is not in force and a trade union is not recognised as the bargaining agent in respect of the bargaining unit, be made at any time;
- (b) where a collective agreement is in force in respect of the bargaining unit, be made not earlier than four months and not later than three months prior to the expiration of the term of the collective agreement;

- (c) where another trade union is recognised as the bargaining agent for the bargaining unit but that trade union and the employer have failed to conclude a collective agreement in respect of the bargaining unit within a period of twelve months from the date on which that trade union was recognised, be made after the expiration of that period and until such a collective agreement is concluded; and
- (d) where a collective agreement respecting the bargaining unit has expired and a new collective agreement respecting the bargaining unit has not been concluded, be made after the expiration of six months from the date on which the collective agreement expired.

(2) Where a trade union makes a claim for recognition respecting a bargaining unit and fails to establish that claim as a result of a poll held, the trade union shall not make a further claim for recognition respecting that bargaining unit until after the expiration of six months from the date on which the previous claim for recognition failed.

(3) A trade union that is recognised by an employer as the bargaining agent for a managerial employee employed by that employer shall not claim to be also recognised, and shall not be recognised, by the employer as the bargaining agent for the bargaining unit comprised of or including other employees of that employer.

Requirements.

**187.** (1) A claim for recognition made pursuant to section 185 shall be in writing and shall describe the bargaining unit that the trade union considers appropriate.

Employer to recognise trade union or give notice.

**188.** (1) Where an employer receives from a trade union a claim from recognition in respect of a bargaining unit for which a trade union is not recognised as the bargaining agent, he or she shall, within fourteen days of the date on which he or she received the claim for recognition

- (a) recognise the trade union as the bargaining agent for that bargaining unit; or
- (b) give notice to the trade union and the Commissioner that he or she doubts that the trade union is entitled to be recognised as the bargaining agent for that bargaining unit.

(2) A notice from an employer to a trade union and the Commissioner that the employer doubts that the trade union is entitled to be recognised as the bargaining agent for a bargaining unit shall

- (a) be in writing;
- (b) specify the employer's reasons for doubting that the trade union is entitled to be so recognised; and
- (c) describe, where he or she disagrees with the description of the bargaining unit set out in the trade union's claim for recognition, the bargaining unit that he or she considers to be appropriate.

(3) Where an employer receives from a trade union a claim for recognition in respect of a bargaining unit for which another trade union is recognised as the bargaining agent, the employer

- (a) shall immediately give to the bargaining agent and the Commissioner a notice in writing
  - (i) stating that he or she has received the claim for recognition; and
  - (ii) describing, where he or she disagrees with the description of the bargaining unit set out in the claim for recognition, the bargaining unit that he or she considers to be appropriate; and
- (b) shall not recognise the trade union making the claim for recognition as the bargaining agent for the bargaining unit unless required to do so as a result of a poll held pursuant to section 191.

(4) Where an employer receives claims from two or more trade unions to be recognised as the bargaining agent for the same or a similar bargaining unit in respect of which no trade union is recognised as the bargaining agent

- (a) he or she shall immediately give to those trade unions and the Commissioner a notice in writing
  - (i) stating that he or she has received the claims for recognition; and
  - (ii) describing, where he or she disagrees with the description of the bargaining unit set out in any

or all of the claims for recognition, the bargaining unit that he or she considers to be appropriate; and

- (b) he or she shall not recognise any of those trade unions as the bargaining agent for the bargaining unit unless required to do so by the Commissioner as a result of a poll held pursuant to section 191.

(5) In determining the claims of trade unions for recognition as the bargaining agent for a bargaining unit, the Commissioner may order separate polls, and in that event the trade union whose claim was first received shall be entitled to have its claim determined first.

Where an employer fails to give notice.

**189.** Where

- (a) a trade union makes a claim to an employer to be recognised as the bargaining agent for a bargaining unit in respect of which a trade union is not recognised as the bargaining agent, and
- (b) the employer does not, within fourteen days of the date on which he or she has received the claim for recognition, give notice pursuant to section 188(1) that he or she doubts that the trade union is entitled to be recognised,

he or she shall be deemed to have recognised the trade union as the bargaining agent for the bargaining unit.

Commissioner to determine appropriate bargaining unit.

**190.** (1) Where the Commissioner receives a notice from an employer given under section 188(1), (3) or (4) that raises the question of the description of the appropriate bargaining unit, the Commissioner shall determine the question after hearing the representations and evidence and requiring the production of the documents as he or she considers necessary or as may be prescribed.

(2) If any party feels aggrieved by a determination of the Commissioner made under subsection (1) that party may, within seven days from the determination, appeal the determination to the High Court.

(3) The Commissioner in making a determination under subsection (1) and the High Court in hearing an appeal under subsection (2), may

- (a) determine whether any person is an employee for the purposes of this Act;

- (b) add persons to or exclude persons from the bargaining unit; and
- (c) amend the description of the bargaining unit in a manner as may seem appropriate.

(4) Where a claim for recognition made by a trade union is in respect of a bargaining unit that includes employees of more than one employer and the Commissioner is required to determine the question of the description of the appropriate bargaining unit pursuant to subsection (1), the Commissioner may determine that all or some of the employees constitute an appropriate bargaining unit if he is satisfied that

- (a) the employers are under common ownership, control or management;
- (b) the employees have a sufficient community of interest to justify their inclusion in one bargaining unit; and
- (c) collective bargaining with respect to that bargaining unit is likely to be efficient and effective.

**191.** (1) Where he or she receives a notice from an employer under section 188(1), the Commissioner shall cause a poll to be held among the employees in the bargaining unit to determine whether they wish the trade union making the claim for recognition to be their bargaining agent.

Commissioner to hold poll.

(2) Where

- (a) the Commissioner receives a notice from an employer to whom section 188(3) applies, or
- (b) an employer to whom section 188(3) applies fails to give to the Commissioner the notice required thereby, but the claim for recognition otherwise comes to his or her attention,

the Commissioner shall cause a poll to be held among the employees in the bargaining unit to determine whether the employees wish the trade union making the claim for recognition to be their bargaining agent.

(3) Where

- (a) the Commissioner receives a notice from an employer to whom section 188(4) applies, or

- (b) an employer to whom section 188(4) applies fails to give to the Commissioner the notice required thereby, but the claim for recognition otherwise comes to his or her attention,

the Commissioner shall cause a poll to be held among the employees in the bargaining unit to determine which trade union, if any, the employees wish to be their bargaining agent.

(4) Where

- (a) a poll is held under subsection (3) to determine which trade union, if any, the employees in a bargaining unit wish to be their bargaining agent, and
- (b) the employees, by the poll, do not give fifty per cent support to any one trade union, but have cast ballots in favour of trade unions involved in the poll totalling at least forty per cent of the number of employees eligible to vote in the poll,

the Commissioner shall cause a second poll to be held among the employees.

(5) Where, pursuant to subsection (4), the Commissioner causes a second poll to be held among employees in a bargaining unit, the ballot in that poll shall give the employees a choice as to whether they wish the trade union for which the largest number of votes was cast in the first poll to be their bargaining agent.

Regulations.

**192.** (1) The Minister may make Regulations respecting the organisation and conduct of polls including, without limiting the generality of the foregoing, Regulations respecting

- (a) the holding of meetings with the parties for the purpose of settling any matters relating to a poll;
- (b) the documents and information that the Commissioner may require the parties to produce;
- (c) the manner in which any question raised by any challenge shall be determined;
- (d) the determination and certification of lists of employees eligible to vote in a poll;

- (e) any forms to be used in respect of a poll;
- (f) any notices to be given to the parties and the contents of the notices;
- (g) the posting of any notice by an employer or trade union;
- (h) the authorisation of any public officer to conduct the poll and the duties of that public officer;
- (i) the taking of the poll;
- (j) the form of the ballot;
- (k) the casting of ballots;
- (l) the persons permitted to be present at the taking of the poll;
- (m) the counting of votes;
- (n) the ground upon which a person attempting to vote in the poll may be challenged and the procedure to be followed in those cases;
- (o) the manner in which the parties are to be notified on the result of the poll; and
- (p) the time within which any of the steps to be taken or things to be done in connection with the poll shall be taken or done.

## **PART XII MISCELLANEOUS**

**193.** (1) A person shall refer a dispute or complaint to the Commissioner within six months of the ground for the dispute or complaint coming to the knowledge of that person. Limitation upon referring dispute or complaint.

(2) The Commissioner shall not investigate or resolve a dispute or complaint referred to him or her after the six-month period mentioned in subsection (1).

Limitation upon prosecution.

**194.** Prosecution for an offence under this Code shall not be commenced after the expiration of one year from the date on which the Commissioner becomes aware of the offence.

Labour clauses in  
public contracts.  
Schedule

**195.** (1) A public contract shall be deemed to incorporate the Rules set out in the Schedule as if the Rules were expressly set out in that contract.

(2) Every contractor under a public contract shall keep displayed in a conspicuous place in his or her establishment and workplace for the information of the employees, a notice containing the conditions of their employment so printed that it may be read by all employees.

(3) In this section, a “public contract” arises where

- (a) at least one of the parties to the contract is the Government or a statutory board;
- (b) the execution of the contract involves
  - (i) the expenditure of funds by the Government or a statutory board; and
  - (ii) the employment of employees by the other party to the contract; and
- (c) the contract is for
  - (i) the construction, alteration, repair or demolition of public works;
  - (ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment; or
  - (iii) the performance or supply of services.

Conflict between  
this Code and  
other law.

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

**197.** Where a person contravenes a provision of this Act for which a penalty has not been specified, the person is liable on summary conviction to a fine not exceeding five thousand dollars.

Regulations.

**197.** (1) The Minister may make Regulations

- (a) prohibiting smoking in the workplace; and

- (b) giving effect to the principles and provisions of this Code.

(2) Regulations made under this section may provide that any breach of any regulation shall be punished by the imposition of a fine not exceeding five thousand dollars.

(3) Regulations made by the Minister shall be published in the *Gazette*.

(4) Regulations made by the Minister shall, as soon as convenient after its publication in the *Gazette*, be laid before the House of Assembly.

**198.** (1) The Labour Ordinance, the Labour Code Ordinance and the Trade Disputes (Arbitration and Inquiry) Act are repealed.

(2) Notwithstanding the repeal of the enactments mentioned in subsection (1),

(a) any Rule, Order or Regulations made under the repealed enactments shall, until revoked, continue to be in force to the extent that the Rule, Order or Regulations is not inconsistent with this Code;

(b) any requirement performed, table of fees, licenses or certificates issued, notice, decision, determination, direction or approval given, application made, or thing done, under any of the repealed enactments, shall, if in force on the date immediately prior to the coming into force of this Code, continue in force, or in the case of a license or certificate, continue in force until the date of expiry of the license or certificate as set out in the license or certificate, and shall, so far as it could have been made, issued, given or done under this Code have effect as if made, issued, given or done under the corresponding provisions of this Code.

Repeals and  
savings.  
Caps. 292, 293  
and 299

## **SCHEDULE**

[Section 195]

### **LABOUR CLAUSES IN PUBLIC CONTRACTS RULES**

1. The contractor shall pay rates of wages and observe hours and conditions of employment, not less favourable than those established in the trade or industry in the district where the work is carried out, by collective agreement, other recognised machinery of negotiation or arbitration, between organisations of employers and employees which are representative respectively of substantial proportions of the employers and employees engaged in the trade or industry concerned (hereinafter referred to as “established rates and conditions”), or failing such established rates and conditions in the trade or industry in the district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.
2. In the absence of any established rates and conditions as defined in paragraph 1 the contractor shall pay rates of wages and observe hours and conditions of employment not less favourable than those which are or would be paid and observed in the trade or industry in which the contractor is engaged, by employers whose general circumstances are similar.
3. Before being placed on any list of Government contractors, the contractor shall certify that to the best of his or her knowledge and belief the wages, hours of work and other conditions of employment of all employees employed by him or her in the trade or industry in which he is offering himself as a contractor are fair and reasonable having regard to paragraphs 1 and 2.
4. In the event of any dispute or complaint arising as to what wages ought to be paid or what hours or other conditions of employment ought to be observed in accordance with the requirements of paragraphs 1 and 2, it shall, if not otherwise disposed of, be referred by the Labour Commissioner to the Minister who may, if he or she thinks fit, refer the matter to an Arbitration Tribunal in accordance with the provisions of the Labour Code, 2005. In arriving at its decision, the Tribunal, in the

absence of any established rates and conditions in the trade or industry concerned as specified in paragraph 1, shall have regard to any agreement, custom, practice or award that may be brought to its notice relating to the wages, hours or conditions of employment of employees employed in a capacity similar to that of the employees to whom the dispute relates in trades or industries carried on under similar circumstances.

5. The contractor shall keep proper wages books and time sheets showing the wages paid to and times worked by employees in the execution of the contract, and he or she shall, whenever required, produce wage books and time sheets for inspection by any person authorised by the Labour Commissioner.
6.
  - (1) A sub-contractor shall be bound in all cases to conform to the conditions of the main contract and the main contractor shall be responsible for the observance of all contract conditions on the part of the sub-contractors.
  - (2) The contractor shall not transfer or assign a contract or any portion thereof without the written permission of the Labour Commissioner.
  - (3) No portion of the work to be performed on a contract shall be done at the homes of the employees, except in so far as work is so performed by practice or custom.
7. Contractors and sub-contractors shall recognise the freedom of their employees to be members of registered trade unions.
8. A contractor shall not be entitled to payment of any money which would otherwise be payable under the terms of contract in respect of the work and labour performed in the execution of the contract unless and until he has filed together with his or her claims for payment a certificate
  - (a) showing the rates of wages and hours of employment of the various classes of employees employed in the execution of the contract;
  - (b) stating whether any wages in respect of the work and labour remain in arrears; and
  - (c) that all the labour conditions of the contract have been duly complied with.
9. The contractor shall also from time to time furnish to the Labour Commissioner further detailed information and evidence as the Labour

Commissioner may require in order to satisfy himself or herself that the conditions of these Rules are being complied with.

10. In the event of default being made in payment of any money in respect of wages of employees employed on the contract and if claim thereafter is filed with the Labour Commissioner and satisfactory proof is furnished to the Labour Commissioner, the Labour Commissioner may, failing payment by the contractor, arrange for the payment of the claim out of the moneys at any time payable under the contract and the amount so paid shall be deemed payments to the contractor.
11. A contractor or sub-contractor who fails to comply with any of these Rules shall cease to be approved as a contractor or sub-contractor for a period as the Labour Commissioner may determine.

Passed by the House of Assembly this                      day of                      , 2009.

Speaker.

Clerk of the House of Assembly.

## **OBJECTS AND REASONS**

Currently in the British Virgin Islands, employment conditions and relations between employers and employees are governed by the Labour Ordinance (Cap. 292), Labour Code Ordinance (Cap. 293) and the Trade Disputes (Arbitration and Inquiry) Act (Cap. 299). These enactments have over the years revealed serious shortcomings in relation to labour matters and therefore need to be comprehensively addressed. Minimum conditions of employment for employees in the Territory compare unfavourably with those which obtain in other Caribbean countries and with relevant international standards. Furthermore, provisions for the resolution of industrial disputes and the prevention of discrimination in the workplace are quite inadequate. Hence the Bill aims to codify the labour laws in a single comprehensive Code, taking into account the new and emerging developments in this area of the law.

Essentially the objective of the Bill is to create standards to ensure that fair and reasonable minimum working conditions are available to employees and that relationships between employers and employees are conducted equitably. Towards this end, the Bill clarifies and brings into line with present requirements relevant administrative arrangements as clearly outlined in Part I. It also greatly improves the dispute settlement procedures and upgrades to acceptable standards the basic conditions of employment for long-term employees.

The Bill is divided into twelve Parts, with each Part addressing a different though related subject. The Bill begins with preliminary matters relating to the policy underlying the Bill, the scope of its application, the extent to which it may be enforced against the Government as an employer and the employer's right to establish working conditions that are more advantageous to employees than those minimum standards set out in the Bill.

Part I of the Bill addresses administration matters by outlining the related principles and providing for the office of Labour Commissioner and the appointment, powers and duties of labour inspectors to assist in the enforcement of the provisions of the Bill.

Matters pertaining to the settlement of disputes generally are covered under Part II of the Bill. This Part outlines the procedures for the settlement of disputes and the powers exercisable by the Minister in relation to such

disputes. It also allows for the establishment of an Arbitration Tribunal and a Board of Inquiry to aid the dispute settlement process. The Tribunal and Board

(when established) will wield quasi-judicial powers and regulate their own proceedings.

Part III of the Bill further allows for the establishment of advisory committees for purposes of investigating, amongst other things, the conditions of employment generally or of a particular trade or occupation, the extent of unemployment and the minimum basic wage rate which should be payable in respect of any trade or occupation, or employment in general.

Part IV of the Bill deals generally with the basic conditions of employment. It outlines key public policy issues which govern the administration of the Bill as they relate to conditions of employment. It also seeks to regulate probationary periods in employment, rest periods and standard working hours, meal intervals, wages and payments in respect of public holidays, leave rights including sick leave, maternity leave and other matters which are germane to a healthy working environment as between employers and employees.

With respect to the termination of employment, the commencement and conduct of disciplinary proceedings and the continuity of employment, these are dealt with under Part V of the Bill. This Part, amongst other things, defines the scope of unfair and constructive dismissals and appeals against those dismissals.

Matters relating to severance payments and gratuities for long service are dealt with in Part VI of the Bill. This Part also defines the methods applicable in the calculation of severance pay and long service gratuity.

Part VII of the Bill also addresses issues of discrimination in the employment field by providing for equality of treatment irrespective of an employee's race, colour, sex, religious belief, ethnic origin, nationality, political opinion or affiliation, disability, family responsibility, pregnancy, marital status or age. However, discrimination on the ground of age does not extend to lawful retirement and where restrictions exist in relation to the employment of children and young persons. In a similar vein, discrimination does not exist where the nature of a job is such that it requires a genuine occupational qualification. This Part also prohibits acts designed to induce discrimination. Furthermore, any act of sexual harassment against an employee constitutes unlawful discrimination based on sex.

Part VIII of the Bill seeks to protect children and young persons by prohibiting or restricting their employment and defining the scope of their parents' or guardians' liabilities.

The health, safety and welfare of employees in the workplace are dealt with under Part IX of the Bill. This Part makes it imperative for employers to register their workplaces and ensure sanitary and healthy conditions at all times and to adopt measures that are necessary to ensure safety. It also requires

employers to provide certain facilities to ensure the adequate welfare of their employees.

Parts X, XI and XI of the Bill deal with work permits, recognition of bargaining agents for bargaining units and miscellaneous matters respectively. Applications for the grant, renewal or extension of work permits will be determined by the Minister, but the Minister may, by Order, delegate any of those functions to the Commissioner. Work permits issued to persons entering, or who entered, the Territory for employment purposes for the first time on or after four years and six months before the commencement of the proposed Act will not be effective after the expiration of four years and six months from the date on which the work permit was first issued. The holders of those work permits will be required to live outside the Virgin Islands for a period of at least six months before becoming eligible for another work permit.

In order to ensure the proper and efficient administration of the provisions of the Bill, limitation periods are provided on the referral of disputes or complaints and on prosecution. Generally, penalties for contravention of the provisions of the Bill have been enhanced to reflect current realities and promote maximum compliance.

*Minister responsible for Natural Resources and Labour.*

*Date:*