

EMPLOYMENT AND LABOUR RELATIONS ACT, 2025

No. 27



of 2025

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An Act to establish the labour institutions; to provide for the fundamental rights of employment and labour standards; to provide for a framework to promote sound labour relations and orderly collective bargaining; to provide for a framework for the prevention and settlement of disputes; and for matters incidental thereto and connected therewith.

Date of Assent: 27.11.2025

Date of Commencement: ON NOTICE

ENACTED by the Parliament of Botswana.

PART I — *Preliminary*

1. This Act may be cited as the Employment and Labour Relations Act, 2025 and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and
commencement

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

Interpretation

“accommodation” means any building provided or intended to be provided for a worker to live and sleep in either temporarily or permanently, and any additional, room or building used or intended to be used by a worker, whether communally or privately, for the purposes of cooking, eating, washing or bathing, and any latrines or urinals used or intended to be used by a worker;

“action short of a strike” means any method of working, other than the method of working commonly known as working to rule, undertaken by a group of workers in any trade or industry acting in combination or under a common understanding, which method of working slows down normal production or the execution of the normal function under their contracts of employment, of the workers undertaking such method of working;

“agricultural undertaking” means any undertaking or part of an undertaking engaged in cultivation, animal husbandry, including livestock production and care, forestry, horticulture, plantations, the primary processing of agricultural products by the operator of a holding or any other form of agricultural activity other than such an undertaking or part of an undertaking in which members of the same family alone are employed;

“**arbitration**” means a dispute resolution involving one neutral third party or more agreed to by the disputing parties, or appointed in terms of the provisions of this Act, and whose decision is binding on such disputing parties;

“**basic pay**” means the rate of payment, including any payment in kind, made by an employer for work done or services performed during an hourly, weekly, fortnightly or monthly period except any other remuneration;

“**branch**” includes a sub-branch;

“**casual worker**” means a person engaged to perform work on a one-off basis and for a short period of time, which is irregular and is limited to not more than three days’ work, or more than 22 and a half hours’ work per week, and for a period of not more than 12 months;

“**child**” means a person under the age of 18 years;

“**child labour**” means work performed by a child that is likely to interfere with the child’s right to education, or that is likely to be harmful to the child’s health or physical, mental, spiritual, moral or social development;

“**collective bargaining**” includes negotiations which take place between an employer, a group of employers or one or more employers’ organisations and one or more workers’ organisations to —

- (a) determine the working conditions and terms of employment;
- (b) regulate the relations between an employer and worker; and
- (c) regulate the relations between an employer or employer’s organisation and worker’s organisation;

“**collective agreement**” means an agreement relating to the terms and conditions of employment concluded between —

- (a) a trade union and an employer or associations of the employer; or
- (b) in the absence of a recognised trade union, a representative of workers concerned duly elected and authorised by such workers and one or more employers or employer’s organisation;

“**Commission**” means the Independent Mediation and Arbitration Commission established under section 57;

“**Commissioner General**” means the Commissioner General of the Commission appointed as such in section 66;

“**constitution**” includes rules of a trade union, federation of trade unions, employers’ organisation or federation of employers’ organisation made in terms of section 83;

“**construction work**” means any building or civil engineering work, including repair, maintenance, alteration and demolition work;

- “consultation” means a process of informed dialogue between parties on matters of mutual concern, not within the scope of collective bargaining, before a decision is taken;
- “continuous employment” means employment, including employment during a probationary period, with the same employer, whether such employment commenced before, at, or after the commencement of this Act, which employment is uninterrupted except by a period of absence from work for which provision is made by this Act or which is —
- (a) authorised by an employer;
 - (b) due to injury caused to or disease suffered by a worker in respect of which compensation is payable in accordance with such law as may, for the time being, be in force governing workmen’s compensation;
 - (c) occasioned by a lawful industrial action;
 - (d) due to unforeseeable circumstances that may prevent a worker from adhering to the terms and conditions of a contract of employment; or
 - (e) due to a natural and unavoidable disaster that interrupts the expected course of events;
- “contract of employment” means an agreement, whether oral or in writing, expressed or implied, whereby the parties agree that one person will perform work personally for a wage or other benefit or both, under the direction of the other person;
- “contractor” means a person who contracts with a principal to supply labour or to carry out the whole or any part of any work undertaken by the principal in the course of or for the purposes of the principal’s trade or business;
- “Council” means the Employment and Labour Relations Council continued in section 41;
- “day” means any period of 24 hours commencing at midnight;
- “Director of Employment Services” means the Director of Employment Services appointed as such in section 29;
- “Director of Labour” means the Director of Labour appointed as such under section 28 or any person acting in or lawfully performing the functions of the office of the Director of Labour;
- “dispute” means a trade dispute, and includes —
- (a) an alleged dispute;
 - (b) a dispute between trade unions;
 - (c) a grievance;
 - (d) a dispute of interest; or
 - (e) any dispute over —

- (i) the application or the interpretation of any law relating to employment,
- (ii) the terms and conditions of employment of any worker or any class of workers, or the physical conditions under which such worker or class of workers may be required to work,
- (iii) the entitlement of any person or group of persons to any benefit under an existing collective agreement,
- (iv) the existence or non-existence of any collective agreement,
- (v) the dismissal, employment, suspension from employment, retrenchment, re-employment or reinstatement of any person or group of persons,
- (vi) the recognition or non-recognition of a trade union seeking to represent workers in the determination of their terms and conditions of employment, or
- (vii) whether a dispute exists or does not exist;

“dispute of interest” means a dispute concerning the creation of new terms and conditions of employment or the variation of existing terms and conditions of employment;

“dispute of right” means a dispute concerning an alleged infringement of a right provided under any law, collective agreement or employment contract, or the conferment of a benefit to which the claimant is legally entitled;

“domestic worker” means any person engaged in work performed in or for a household within an employment relationship;

“employed” and “employment” have meanings corresponding to that of “worker” and “employer” regardless of the form of contract concluded between the parties;

“employer” means any person who —

- (a) has entered into a contract of employment for the hire of the labour of any person, including a public authority, or the person who owns or is carrying on for the time being or is responsible for the management of the undertaking, business or enterprise of whatever kind in which a worker is engaged; or
- (b) engages another person, including a public authority, to provide labour, whether directly or through another, and the person providing the labour is not genuinely operating a business on their own account;

“employers’ organisation” means an association consisting, wholly or mainly, of employers the principal objects of which include the regulation of relations between employers and workers or trade unions;

- “employer’s premises” includes any premises under the control of the employer where work is done or where workers are accommodated;
- “employment practice” includes any practice relating to a recruitment procedure, advertising and selection criteria, appointment and the process of appointment, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignment, the working environment and working facilities, training and development, performance evaluation system, promotion, transfer, demotion, termination of employment and disciplinary measures;
- “essential service” means a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;
- “executive committee” in relation to a trade union, federation of trade unions or employers’ organisation, means a subordinate body of such trade union, federation of trade unions or employers’ organisation that has the management of the affairs of the trade union, federation of trade unions or employers’ organisation as a whole between meetings of the body in which the ultimate authority of the trade union, federation of trade unions or employers’ organisation is vested and, where there are more than one such subordinate body, the expression includes all those subordinate bodies;
- “federation of employers’ organisations” means a federation, congress or association of employers’ organisations, and includes a branch of the federation, congress or association of the employers’ organisations;
- “federation of trade unions” means a federation, congress or association of trade unions, and includes a branch of the federation, congress or association of the trade unions;
- “financial year” means a period of 12 months ending on any given month in each year, as may be provided by an employer;
- “fixed-term contract” means a contract in terms of which a worker is employed for a specified period; or until the completion of a specified task; or the occurrence or non-occurrence, of a specified event;
- “fixed-term worker” means a worker who is employed under a fixed-term contract;
- “forced labour” means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily, and shall not include —

- (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military nature;
- (b) any work or service which forms part of the normal public obligations of the citizens of a fully self-governing country;
- (c) any work or service exacted from any person as a consequence of a conviction in a court of law;

Provided that the work or service shall be carried out under the supervision and control of a public authority and that such person is not hired to or placed at the disposal of a private individual, company or association;

- (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; and
- (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, which can be considered as normal public obligations incumbent upon the members of the community:

Provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

“gender-based violence and harassment” means violence and harassment directed at any person due to that person’s sex or gender, or affecting any person of a particular sex or gender disproportionately, and includes sexual harassment;

“guardian” means any person lawfully having charge of a child whether having parents or no parents or whose parents are unknown;

“harassment” means unwanted conduct which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment, or is calculated to induce submission by actual or threatened adverse consequences, and which is related to —

- (a) sex or gender; or
- (b) a person’s membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group;

“hazardous work” means the work set out in Schedule 1;

“industrial action” means a lock-out, strike or action short of a strike, in furtherance of a dispute;

“Industrial Court” means the Industrial Court continued under the Industrial Court Act;

“industrial undertaking” includes any industrial undertaking of the Government or other public authority, or of any part of the Government or public authority, and in particular, includes —

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (b) undertakings in which any article is manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which any material is transformed including undertakings engaged in ship-building or in the generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in building or civil engineering works, including repair, maintenance, alteration and demolition work; and
- (d) undertakings engaged in the transport of passengers or goods by road, rail, air or water, including the handling of goods at any warehouse or airport;

“injury” means any actionable wrong or any injury to a person in respect of his or her business, occupation, employment or other source of income;

“interference” means any act of interference by a public authority or an employer on the affairs or activities of a trade union or employers’ organisation which shall include, the public authority or employer —

- (a) drawing up the constitution or rules of the trade union or employers’ organisation;
- (b) electing the representatives of the trade union or employers’ organisation;
- (c) organising the administration and activities of the trade union or employers’ organisation;
- (d) formulating the programmes of the trade union or employers’ organisation;
- (e) promoting the establishment of a trade union under domination of the employer or employers’ organisation; or
- (f) supporting an employers’ organisation financially or by others means, with the intention of placing the employers’ organisation under the control of the employer or employers’ organisation.

Cap. 43:11

“intimidate” means to cause in the mind of a person, reasonable apprehension of injury to him or her or to any member of his or her family, or to any of his or her dependants, or of violence or damage to any person or property;

“intoxicating liquor” has the same meaning assigned to it in the Liquor Act;

“joint industrial council” means a body constituted for a trade or industry in accordance with section 250 for the purposes of negotiating the terms and conditions of employment for all workers in that trade or industry;

“labour health area” means an area declared by the Minister to be a labour health area for the purposes of this Act;

“labour inspector” means a labour officer appointed as a labour inspector in terms of section 31;

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

“labour officer” means a person appointed as a labour officer in terms of section 30;

“light work” means work set out in Schedule 2, which is not harmful to the health and development of a child; and does not prejudice the child’s attendance at school, participation in vocational orientation or training programmes approved by a competent authority or the child’s capacity to benefit from the instruction received;

“lockout” means the closing of a place of employment by an employer, or the suspension of work by the employer, or the exclusion by such employer of workers, in the furtherance of a dispute;

“maternity allowance” means the allowance payable to a female worker in terms of section 222 (6);

“mediation” includes facilitation, conducting a fact-finding exercise and the making of an advisory award;

“Mediation and Arbitration Board” means the Mediation and Arbitration Board established in section 59;

Cap. 61:02

“medical practitioner” means a person registered to practise as a medical practitioner in terms of the Botswana Health Professions Act;

“member of management” means a worker who has authority on behalf of his or her employer, to employ, transfer, suspend, lay off, recall, promote, terminate employment, reward, discipline or deal with any grievance relating to the employment; or to recommend any such action or the manner in which a grievance ought to be dealt with, if the exercise by the worker of that authority is not merely of a routine or clerical nature but requires the use of discretion of such worker;

- “mine” includes any undertaking, whether public or private, for the extraction of any substance from under the surface of the earth;
- “negotiation” in the context of collective bargaining means a process of dialogue between the parties for the purpose of concluding a collective agreement on matters that fall within the scope of collective bargaining including working conditions and terms of employment;
- “officer” in relation to a trade union, federation of trade unions or employers’ organisation, includes any member of its executive committee or the executive committee of a branch of the trade union, federation of trade unions or employers’ organisation, but does not include a trustee or an auditor;
- “overtime” means the number of hours worked in any one day or in any one week in excess of those prescribed or agreed in terms of this Act;
- “parental leave” means leave granted to a worker, or a worker benefit that provides a job protected leave from employment, to care for a child after the birth of the child or adoption of the child;
- “part-time worker” means a worker whose normal hours of work are less than those of comparable full-time worker who is engaged in the same or similar type of work;
- “place of employment” means any place provided by an employer where work is carried on by a worker in the course of his or her employment;
- “principal” means any person who, in the course of or for the purposes of his or her trade or business, contracts with a contractor for the supply of labour or for the execution by or under the contractor of the whole or any part of any work undertaken by the principal;
- “public authority” includes a local authority, the land board and any corporations established by law or corporation registered in accordance with the Companies Act, in which the Government owns a majority of all the equity shares;
- “reasonable accommodation” includes any positive action, modification or adjustment to a job or to the work environment that will enable any person who requires special protection or assistance to have access to, or participate or advance in, employment;
- “recruiter” means any person, intermediary or temporary employment agency that offers labour recruitment and placement services;
- “recruitment” includes all operations undertaken, excluding those undertaken by a public authority, with the object of obtaining or supplying from a place of recruitment the labour of persons to a third party, and includes arrangements whereby

the recruiter is an intermediary to place a worker in employment, and arrangements whereby the employment agency becomes a party to the employment relationship by employing the worker and placing such worker at the disposal of a third party;

“registered nurse-midwife” means a person who is duly registered both as a nurse and as a midwife under the Nurses and Midwives Act;

“registered office” in relation to a trade union, federation of trade unions or employers’ organisation, means the office of the trade union, federation of trade unions or employers’ organisation for the time being registered as its principal office under this Act;

“registered postal address” in relation to a trade union, federation of trade unions or employers’ organisation, means the postal address of the trade union, federation of trade unions or employers’ organisation for the time being registered as its postal address under this Act;

“Registrar” means the Registrar of trade of trade unions and employers’ organisations appointed as such in terms of section 38 (1), and includes a deputy registrar of trade unions and employers’ organisations designated as such under section 38 (2);

“serious misconduct” for the purposes of dismissal without notice or summary dismissal, means a misconduct by a worker, of a nature that it would be unreasonable to require the employer to continue his or her employment during the notice period;

“sexual harassment” means an unacceptable conduct, whether physical, verbal or nonverbal, of a sexual nature that violates the rights of a worker;

“shift work” means a method of organising work over a continuous period of time in which production or the provision of services exceeds the ordinary hours of work;

“strike” means the cessation of work by a body of workers in any trade or industry acting in combination or under a common understanding or a concerted refusal or a refusal under a common understanding by such body of workers to continue to work in the furtherance of a dispute;

“subcontractor” means any person who contracts with a contractor for the supply of labour or for the execution by or under the subcontractor of the whole or any part of any work undertaken by the contractor for his or her principal, or any person who contracts with a subcontractor to supply labour or to carry out the whole or any part of any work undertaken by the subcontractor for a contractor;

“trade” includes –

- (a) an industry;
- (b) any business, trade, manufacture, undertaking or calling of an employer;
- (c) any calling, service, employment, handicraft or industrial occupation or vocation of an worker;
- (d) a branch or section of any trade or industry or a group of trades or industries; and
- (e) the carrying on of trade activities by the Government or any public authority;

“trade union” includes a workers organisation, or an organisation the principal objects of which include the regulation of relations between workers and employers or employers’ organisation, registered in terms of section 80;

“tripartite” means a structure comprising Government, workers and employers;

“tripartite consultative representatives” means the social partners comprising of trade unions or federation of trade unions, employers’ organisations or federation of employers’ organisations, and Government;

“unfair dismissal” means the termination of employment under grounds that are considered to be unfair dismissal referred to in section 164;

“unfair labour practice” means any unfair act or omission that is considered to be an unfair labour practice in terms of this Act;

“unlawful industrial action” means any industrial action declared by the Industrial Court, in terms of this Act, to be unlawful;

“violence and harassment” in relation to work, means a range of unacceptable behaviours and practices, or threats, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;

“wage” in relation to any contract of employment, means remuneration or earnings, however designated or calculated, which is paid by an employer to a worker, is capable of being expressed in monetary terms, is fixed by mutual agreement or by legislation, and is payable by virtue of a written or unwritten contract of employment;

“week” means any period of seven consecutive days;

“worker” includes an apprentice, or a person who works for, renders a service to, or seeks to be engaged or is engaged by, another to provide labour and such person is not genuinely operating a business on his or her own account; and

“working to rule” means an industrial action where workers do not withdraw their labour but rather stay in their jobs and drastically slow down the operations.

(2) Any reference in this Act to a member of a worker’s or recruited person’s family shall, unless the context otherwise requires, be deemed to be a reference to his or her wife, husband, child, including a legally adopted child, father, mother, brother, uncle, father-in-law, mother-in-law or son-in-law, where that person lives habitually with or is dependent on the worker or recruited person.

(3) Nothing in this Act shall operate to relieve any employer of any duty or liability imposed on him or her by or under any other law for the time being in force or limit any powers conferred on any public officer by or under any such law.

Application of Act

3. Except as otherwise provided in this Act, this Act shall apply to all workers, including those in the informal sector economy, and the public service with the necessary modifications, but shall not apply to members of the —

- (a) Botswana Defence Force;
- (b) Botswana Police Service;
- (c) Directorate of Intelligence and Security;
- (d) Directorate on Corruption and Economic Crime; and
- (e) Drug Enforcement Agency.

Objectives of Act

4. The purpose of the Act is to promote development through economic efficiency, productivity and social justice in order to —

- (a) promote sound labour relations and provide the legal framework for employment standards and decent work;
- (b) promote and facilitate orderly collective bargaining and to provide a framework for collective bargaining at sectoral level and at the workplace or enterprise;
- (c) regulate industrial action as a means to prevent or resolve disputes;
- (d) provide a framework for resolution of disputes by mediation, arbitration and adjudication;
- (e) promote and facilitate operational requirements to enable economic growth;
- (f) give effect to the provisions of the Constitution, in so far as they apply to employment and labour relations, and conditions of work; and
- (g) give effect to the main conventions of the International Labour Organization as well as any other ratified convention.

PART II – *Fundamental Rights and Protections: Prohibition of Child Labour*

- 5. (1) This Part shall be in addition to and not derogation from the other provisions of this Act which shall apply unless varied by this Part.**
- (2) The objects of this Part shall be to —**
- (a) prohibit and eliminate the worst forms of child labour; and**
 - (b) establish a minimum age and the conditions for employment of children in compliance with the international law obligations to which Botswana is a party.**
- (3) For purposes of this section, “worst forms of child labour” means —**
- (a) any form of slavery or practice similar to slavery, such as the sale and trafficking of children, 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 for prostitution, for the production of pornography or pornographic performance;**
 - (c) the use, procuring or offering of a child for any illegal or illicit activity or criminal activity, in particular for the production and trafficking of drugs as provided in the relevant written laws; or**
 - (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or moral of a child.**
- 6. (1) A person shall not employ or cause to be employed a child under the age of 15.**
- (2) A person shall not employ a child to perform hazardous work set out in Schedule 1 or to perform work which is harmful to the health, development, safety or morals of the child.**
- (3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both.**
- 7. (1) Subject to this Part, a person may employ a child who is the age of 15 years and above to perform light work set out in Schedule 2, that is appropriate for the child of that age, and which does not place at risk, the well-being, education, physical or mental health, or spiritual, moral or social development, of such child:**
- Provided that a child who —**
- (a) has attained the age of 15 years, who is not attending school, and is employed on light work, where the employment is other than of a domestic character in connection with which suitable accommodation is provided, shall be readily able to return each night to the house of his or her parent or guardian or such other persons as may be approved by his or her parent or guardian, and shall not be required or permitted to work more than six hours a day or 30 hours a week;**

Application
and objects of
Part II

Prohibition of
child labour

Restriction on
employment of
perform light
work

	(b) has attained the age of 15 years and is still attending school may, whilst on vacation from school, be employed to perform light work in accordance with this Part for not more than five hours a day during normal working hours; and (c) is still attending school may not be required or permitted to work in excess of three hours per day. (2) A person shall not require or permit a child, during the course of the employment of the child, to lift, carry or move anything so heavy as to likely endanger his or her physical development. (3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both.
Prohibition of hazardous work and employment underground of children	8. (1) A person shall not require or permit a child, during the course of the employment of the child, to perform hazardous work as set out in Schedule 1. (2) A person shall not employ a child to perform underground work. (3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both.
Prohibition of night work by children	9. (1) A person shall not employ a child to perform any kind of work during the night: Provided that a child who has attained the age of 15 years may with the permission of the parent or guardian, be employed to perform work during the night — (a) in the case of an emergency which could not reasonably have been foreseen and prevented, which is not of a periodical character and which interferes with normal working hours; or (b) if the child is so employed under a contract of apprenticeship to learn. (2) For the purposes of this section, “the night” means a period of not less than 12 consecutive hours including the period between 10 p.m. and 6 a.m. the following morning. (3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both.
Hours of work of children in industrial undertakings	10. (1) A person shall not require or permit a child to perform work in an industrial undertaking for more than three consecutive hours without a period of rest which shall not be less than 30 minutes. (2) Subject to the restrictions imposed by section 7 on the number of hours a child may be required or permitted to work, a person shall not require or permit a child to perform work in an industrial undertaking for more than six hours a day. (3) Where a child who is employed in an industrial undertaking is attending school, the hours of his or her attendance at school shall be deemed, for the purposes of subsection (2), to be hours of work in the industrial undertaking:

Provided that this subsection shall not apply where the child is employed on work in an industrial undertaking carried out in any Government technical school or other technical school supervised by a public authority or under any apprenticeship or vocational training scheme approved by the Director of Labour.

(4) A person shall not require or permit a child to work overtime.

(5) A person who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

11. (1) A person shall not, without the permission of a parent or guardian of a child, permit or require the child to work on a rest day or paid public holiday.

Employment
of children and
young persons
on rest days
and paid public
holidays

(2) Where a child works on a rest day or paid public holiday or for part of the rest day or paid public holiday, the employer shall give him or her a day or part of a day off, as the case may be, in substitution for such rest day or paid public holiday or part of such rest day or paid public holiday before the rest day next following is due unless the time interval involved renders it impracticable.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

12. (1) The Minister may make regulations relating to the employment of children and without prejudice to the generality of the foregoing, the Regulations may provide for the registration of children where they are to be employed in an industrial undertaking.

Regulations
relating to
employment
of children

(2) If, having regard to the nature of the work involved in any occupation which forms part of an industrial undertaking, the Minister considers that such occupation should be excluded from all or any of the provisions of this Part relating to the industrial undertaking, the Minister may, by Order published in the *Gazette*, provide that employment in such occupation shall be deemed, for the purposes of this Part, not to be employment in such occupation to the extent specified in the Order.

(3) The Minister may, by Order published in the *Gazette*, inform all employers or every employer belonging to any class or description of employers specified in the Order that the kind of work a child is employed to perform is harmful to his or her health and development, and dangerous, immoral or otherwise unsuitable, and every employer who is so informed shall immediately cease to employ the child concerned.

(4) Where a contract of employment is terminated in consequence of a notification under subsection (2), the termination shall not affect the right of the child concerned to be paid such wages as he or she may have earned, up to the time of the termination, under the contract of employment.

(5) An employer shall not continue to employ a child after receiving an Order under subsection (3), whether oral or in writing, from the parent or guardian of the child that such child is employed against the wishes of the parent or guardian:

Provided that this subsection shall not apply where a child is employed under a written contract of employment entered into by the child with the approval of the Industrial Court.

(6) A person who recruits for employment or who employs, or requires or permits, a child to work in any circumstances prohibited in terms of this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

PART III – Fundamental Rights and Protections: Prohibition of Forced Labour

Prohibition of forced labour

13. (1) Subject to the provisions of the Constitution, a person shall not be required to perform forced labour.

(2) A person who, in contravention of subsection (1), demands or imposes forced labour or causes or permits forced labour to be demanded or imposed for his or her benefit or for the benefit of any other person commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both.

Penalty for official constraint

14. A public officer who puts any constraint upon the population under his or her charge or upon any individual member of that population to work for any private individual, company or association commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

Saving

15. Nothing in this Part shall authorise a person to demand or force another person to perform work or service for which such other person does not offer himself or herself voluntarily, where apart from this Part the demand or force of such work or service would be illegal.

PART IV – Fundamental Rights and Protections: Prohibition of Discrimination, Violence and Harassment in Workplace

Interpretation of terms in Part IV

16. For the purposes of this Part —

(a) “employer” includes a recruiter, an employment agency and any other intermediary or agent that offers labour recruitment and placement services; and

(b) “worker” includes an applicant for employment.

Measures to promote equality and prevent discrimination, violence and harassment in workplace

17. An employer shall, in consultation with a worker and the representative of the worker, take reasonable steps, including reasonable accommodation, to —

(a) eliminate discrimination in any employment policy or practice, and promote equal opportunity in employment; and

(b) prevent violence and harassment in the workplace, including but not limited to gender-based violence and harassment.

18. (1) A person may not discriminate, directly or indirectly, against any worker in any employment policy or practice on any arbitrary ground including race, sexual orientation, tribe or place of origin, national extraction, social origin and maternity, pregnancy, marital status, paternity, religion, disability, political affiliation or opinion, and health status.

Prohibition of
discrimination

(2) Notwithstanding subsection (1), it shall be lawful to —

- (a) distinguish, exclude or prefer any person in respect of a particular job based on the narrowly defined inherent requirements of the job; or
- (b) take lawful measures, including reasonable accommodation designed to meet the particular requirements of a person who, for reasons including sex, age, disability, pregnancy, maternity, family responsibilities or social or cultural status, requires special protection or assistance.

(3) Any harassment of a worker based on any of the prohibited grounds, including sexual harassment, shall be a form of discrimination and shall be prohibited.

(4) A person who offers employment or who denies the advancement or opportunity, or threatens dismissal, or who threatens the imposition of any other penalty against another person in the course of employment as a means of obtaining sexual favours or who sexually harasses a worker contravenes subsection (1).

(5) A worker shall be entitled to equal remuneration for work of equal value and any difference in terms and conditions of employment between the worker of the same employer performing the same or substantially the same work or work of equal value based on any of the grounds listed in subsection (1) shall be discrimination and shall be prohibited.

(6) A person who contravenes this section commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both.

19. (1) An employer shall be liable for the conduct of a worker in contravention of this Part unless the employer is able to prove that such employer did all that was reasonably practicable to ensure that the worker would not act in contravention of this Part.

Liability of
employers

(2) Any unfair discrimination against a worker in contravention of this Part shall constitute an unfair labour practice.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both.

PART V — *Fundamental Rights and Protections: Freedom of Association*

Objects and interpretation of Part V

20. (1) The principal objects of this Part shall be to give effect to freedom of association in compliance with the international obligations Botswana is party to.

(2) For the purposes of this Part, “worker” includes an applicant for employment and workers who are not employees.

Workers’ rights to freedom of association

21. (1) A worker shall have the right to —

- (a) establish a trade union;
- (b) join a trade union; and
- (c) participate in the lawful activities of a trade union.

(2) Notwithstanding subsection (1), the rights of a member of management may be subject to reasonable limitations provided under section 240.

(3) For the avoidance of doubt, and subject to the provisions of this Act, a worker, regardless of whether or not the worker is engaged by another person to provide labour, shall have the right to establish and join a trade union of such worker’s choosing, subject to the rules of the trade union concerned.

Protection from discrimination based on freedom of association

22. (1) A person shall not discriminate against a worker on the grounds that the worker —

- (a) exercises or has exercised any right in terms of any law;
- (b) belongs to or has belonged to a trade union that is registered and a trade union that is not registered; or
- (c) participates or has participated in the lawful activities of a trade union.

(2) Without limiting the generality of subsection (1), an employer shall not —

- (a) make it a condition of employment of any worker that the worker shall not be or become a member of any trade union in any industry or participate in the activities of the trade union; or
- (b) prohibit a worker from being or becoming a member of any trade union in any industry or subject the worker to any penalty by reason of such worker’s membership or participation in the activities of a trade union.

(3) A contravention of this section shall constitute an unfair labour practice.

(4) An employer who contravenes this section and any other person who is knowingly a party to the contravention, commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both.

Employers’ rights to freedom of association

23. (1) An employer shall have a right to —

- (a) establish and join a federation of employers’ organisation or an employers’ organisation; and
- (b) participate in the lawful activities of an employers’ organisation.

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

- (a) exercises or has exercised any right in terms of the law;
- (b) belongs to or has belonged to an employers' organisation; or
- (c) participates or has participated in the lawful activities of an employer's organisation.

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

(4) A person who contravenes subsections (2) and (3) commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both.

24. (1) A trade union or an employers' organisation shall have the right to —

Rights of trade unions and employers' organisations

- (a) determine and draw up its own constitution and rules;
- (b) elect its representatives in full freedom;
- (c) plan and organise its administration and lawful activities, and formulate its programmes;
- (d) establish and join a federation of trade unions or a federation of employers' organisations;
- (e) participate in the lawful activities of a federation of trade unions or a federation of employers' organisations; and
- (f) affiliate with and participate in the affairs of any international trade union or international employers' organisation or the International Labour Organization, and to contribute to, or receive, financial assistance from those organisations.

(2) A person who discriminates against an official or office bearer of a trade union or federation of trade unions for representing it or participating in its lawful activities, commits an unfair labour practice and is liable to a fine not exceeding P100 000 or to imprisonment for a term not exceeding seven years, or to both.

(3) A trade union or employers' organisation shall not discriminate against any person on any of the grounds listed in section 22(1) in respect of —

- (a) admission to, suspension or termination of membership;
- (b) election to or removal from office; and
- (c) the activities of the trade union or employers' organisation.

(4) Any act of interference by a public authority which restricts or impedes a trade union or employers' organisation to exercise its right under this section shall be prohibited.

25. A worker, employer, trade union and an employers' organisation, shall enjoy freedom of opinion and expression at any meeting of the worker or employer, in their publications and in the course of the activities of the trade union or employers' organisation, subject to any limitations that are reasonable and justifiable in a democratic society based on human dignity, equality and freedom.

Freedom of opinion and expression

PART VI — *Disputes Concerning Fundamental Rights and Protections*

Procedure for
disputes

26. (1) A person aggrieved by an unfair labour practice, or the interpretation or application of any provision relating to fundamental rights and protections under this Act, may refer a dispute to the Commission.

(2) The Commission shall attempt to resolve the dispute through mediation in accordance with the provisions of this Act.

(3) Where a dispute remains unresolved, a party to the dispute may refer it to the Industrial Court for adjudication.

Burden of
proof in
discrimination
disputes

27. In any proceedings where a worker makes a *prima facie* case of discrimination by an employer on any grounds listed under section 18(1), it shall be the duty of the employer to prove that the —

- (a) discrimination did not take place as alleged;
- (b) discriminatory act or omission is not based on any of the grounds of discrimination under section 19; or
- (c) conduct of such employer was justified in terms of section 18(2).

PART VII — *Labour Administration: Director of Labour and Labour Officers*

Director of
Labour
Cap. 26:01
Director of
Employment
Services
Appointment
of labour
officers

28. There shall be a Director of Labour appointed in terms of the Public Service Act.

29. There shall be the Director of Employment Services appointed in terms of the Public Service Act.

30. The Minister shall appoint any person whom he or she considers to be suitably qualified to be a labour officer for the administration and enforcement of this Act.

Appointment
of labour
inspectors

31. (1) The Minister shall appoint any person to be a labour inspector.

(2) The Minister shall, before he or she appoints a person to be a labour inspector, ensure that such person —

- (a) undergoes training relevant for purposes of labour inspection; and
- (b) is qualified to perform the duties of a labour inspector.

Powers of
Director
of Labour
to delegate
functions

32. (1) Except as otherwise provided in this Act, the Director of Labour may, in writing, delegate to any person by name or to the person for the time being holding or acting in the office designated by the Director of Labour, the exercise of any powers or the performance of any functions and duties of the Director of Labour under this Act, subject to any conditions, exceptions or qualifications as the Director of Labour may specify.

(2) A person shall exercise the powers and perform the functions and duties delegated to him or her in terms of subsection (1) in accordance with any conditions, exceptions or qualifications so specified.

(3) The Director of Labour may —

- (a) amend or revoke a delegation at any time; and
- (b) vary or set aside any decision made by a person exercising a delegated power or performing a delegated function or duty.

33. (1) The Director of Employment Services may, by Notice published in the *Gazette*, require every employer, or every employer belonging to any class or description of employers specified in the Notice, or every recruiter, to furnish him or her with such particulars of the employer's or recruiter's business relating to employment, in such manner and within such reasonable period as may be specified in the Notice.

Information to
be provided by
employers

(2) Without prejudice to subsection (1), the Director of Employment Services may, by notice in writing served on an employer or a recruiter, require the employer or the recruiter to furnish the Director of Employment Services, either periodically or otherwise, with written returns and statistics as to the number of workers employed by such employer, or recruited by such recruiter, in any particular employment, their basic pay or wages and the conditions generally affecting such employment, in such manner and within such period of time as may be specified in the Notice.

(3) Where a shut-down of an undertaking or business is anticipated, an employer or a recruiter shall, not less than 30 days immediately before the date of the anticipated shut-down, furnish the Director of Employment Services and the nearest labour officer, in writing, with the date of such anticipated shut-down:

Provided that the Minister may, by Order published in the *Gazette*, exempt any employer or every employer belonging to any class or description of employers specified in the Order, or any recruiter from the provisions of this subsection.

(4) The Director of Employment Services shall keep and maintain a register in which he or she shall enter or cause to be entered, information submitted to him or her in accordance with this section, in such a manner as to facilitate the administration and enforcement of every written law in respect of which the Director of Employment Services or any labour officer has any administrative or enforcement function.

(5) An employer or a recruiter who fails to comply with this section or with a requirement made in terms of this section, or submits information which he or she knows to be false or does not believe to be true commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

34. (1) Notwithstanding anything contained in any other law, the Director of Labour may, where he or she is satisfied that a contractor, subcontractor or an employer has ceased to carry on business or operate as such and the wages of a significant number of the workers or former workers of the contractor, subcontractor or employer are due under their contract of employment and such contractor, subcontractor or employer has, within seven days after receipt of a written direction by the Director of Labour to pay such workers, failed to pay the workers, seize any movable property belonging to the contractor, subcontractor or employer that he or she is satisfied has been used to carry on the business of the

Powers of
Director
of Labour
to secure
payment of
wages due to
workers

contractor, subcontractor or employer and cause the property to be sold by public auction.

(2) The Director of Labour shall have control of the proceeds of any sale by public auction in terms of this section and shall use the same towards payment of such wages which the Director of Labour is satisfied are due to a worker or former worker of the contractor, subcontractor or employer in question.

35. (1) The provisions of this section shall be in addition to and not in derogation from any other powers, functions or duties conferred or imposed on any person by this Act.

(2) The Director of Labour or any labour inspector may at any reasonable time —

- (a) enter, inspect and examine any land, building, camp, vehicle, place, structure or article whatsoever where or about which any worker is housed or employed or there is reason to believe any worker is housed or employed;
- (b) enter, inspect and examine any medical facility or dispensary, or any latrines or other sanitary arrangements used or intended to be used by workers in any place or building or any water supply available for the use of workers and enquire and ascertain whether in any medical facility, dispensary or place of employment suitable medicines and remedies are provided for workers;
- (c) inspect and examine kitchens and places in which food provided for workers is stored, prepared or eaten and inspect and examine all such food;
- (d) take and remove, for purposes of analysis, samples of any material or substances available or provided for the use of or handled by workers; however, that any sample taken under this paragraph shall be taken in duplicate in the presence of the employer or a person acting on the employer's behalf and shall be labelled and sealed in the presence of the employer or that person and one sample so labelled and sealed shall be left with the employer or a person acting on the employer's behalf;
- (e) require any employer to immediately produce any worker employed by the employer or any documents or records relating to the worker; and
- (f) request, either alone or in the presence of a witness, as the Director of Labour or labour inspector thinks fit, any employer or worker or any other person whose evidence he or she has reasonable cause to consider necessary regarding matters connected with carrying out any of the provisions of this Act:

Provided that, during any inspection, the Director of Labour or a labour inspector, as the case may be, shall —

- (i) notify the employer or the representative of the employer of his or her presence unless he or she believes, on reasonable ground, that such notification might be prejudicial to the performance of his or her duties,

- (ii) not offer any advice directed towards securing compliance with the provisions of this Act if in any case he or she considers it necessary to first obtain any relevant professional advice from the appropriate Government department, and
 - (iii) not enter or inspect any dwelling-house without the consent of the occupier of the dwelling-house.
- (3) The Director of Labour or any labour inspector may —
 - (a) by notice in writing served on an employer, require the employer to meet the Director of Labour and the labour inspector, at such reasonable time and at such reasonably situated public office as shall be specified in the notice, in order to discuss any matter for which provision is made by this Act, which matter shall also be specified in the notice:
Provided that —
 - (i) a requirement shall not be made under this paragraph unless at least two written requests for such a meeting communicated to the employer by the Director of Labour or labour inspector, as the case may be, have failed, for whatever reason, to result in such a meeting, and
 - (ii) an employer shall not be compelled to comply with a requirement made under this paragraph if the employer satisfies the Director of Labour or a labour inspector, as the case may be, in writing that such employer's attendance at such a meeting would cause significant economic harm to the employer's business, enterprise or concern and he or she indicates, at the same time, what steps have been or are proposed to be taken to ensure compliance with this Act in respect of the matter in question and those steps are acceptable to the Director of Labour or a labour inspector, as the case may be;
 - (b) at all reasonable times, require any recruiter or person engaged in recruitment or seeking to recruit any person to produce any recruited person or any document relating to the engagement or recruitment of such person;
 - (c) at all reasonable times require any recruiter or person engaged in recruitment or seeking to recruit any person to produce a licence or permit issued under this Act; and
 - (d) copy or make extracts from any documents or records in the possession of an employer relating to any worker in connection with the provisions of this Act.
- (4) The Director of Labour or any labour inspector may —
 - (a) require any room, store, place and premises in any camp or building used by or on behalf of any employer or recruiter to be kept clean and in a sanitary condition;

- (b) require the employer or recruiter, as the case may be, at the earliest reasonable opportunity and at the employer's or recruiter's expense, to return to the place of his or her recruitment or send to a medical facility any person who, in the opinion of the Director of Labour or a labour inspector, as the case may be, or of a medical officer, is ill and for whom the conditions prevailing at any place of employment or engagement are not conducive to the recovery of his or her health and strength;
- (c) require the employer or recruiter, as the case may be, at the earliest reasonable opportunity and at the employer's or recruiter's expense, to return to the place of his or her recruitment, following the recovery of his or her health and strength, any person sent to a medical facility by the employer or recruiter in compliance with a requirement made by the Director of Labour or a labour inspector under paragraph (b); and
- (d) if, in the opinion of the Director of Labour or the labour inspector, as the case may be, any land, building, camp, vehicle, place, structure or article whatsoever where or about which any worker is employed or which is provided for occupation or use by any worker or other person is insanitary or in such a condition as to be dangerous to health or unfit for occupation or use by the worker or other person, in writing direct the person for the time being responsible for the management of the same to discontinue such occupation or use from a date to be specified in the direction until such requirements of repair or reconstruction or otherwise specified in the direction have been fulfilled and until the same has been certified by the Director of Labour or a labour inspector to be fit for further occupation or use.

(5) The Director of Labour may prohibit the engagement of additional workers to be employed at any place of employment where the Director of Labour is satisfied that the conditions of the place of employment do not comply with this Act.

(6) The Director of Labour and any labour inspector shall have a duty, as often as the Director of Labour or the labour inspector considers it necessary or expedient to do so, to furnish technical information and advice to any employer or worker regarding the most effective means of complying with this Act.

(7) A labour inspector shall have the duty to bring to the notice of the Director of Labour any abuse which do not appear to be covered by this Act and any other defects or omissions.

(8) Where the Director of Labour or any labour inspector gives any direction under subsection (4)(d) or the Director of Labour makes any prohibition under subsection (5), a person to whom the direction or prohibition is addressed may, if the person is of the opinion that the terms of the direction or prohibition are harsh or unreasonable, or that the requirements of the direction cannot be fulfilled within a

reasonable time, after giving notice of such opinion to the Director of Labour or labour inspector concerned, as the case may be, appeal to the Minister who shall confirm, rescind or vary the terms of the direction or prohibition; and any direction or prohibition so appealed from shall remain in abeyance until the appeal is determined by the Minister:

Provided that, where the Director of Labour is of the opinion that for the direction or prohibition so to remain in abeyance would or might result in imminent danger to human health or safety, the Director of Labour may direct that the direction or prohibition shall not remain in abeyance pending the Minister's determination.

(9) An appeal under subsection (8) shall be in writing and shall be delivered to the Minister not later than 21 days immediately after the day on which the direction or prohibition appealed from was communicated to the employer or other responsible person and the Minister shall determine the appeal as soon as is reasonably practicable.

(10) The Minister may prescribe the procedure for hearing appeals under subsection (8).

36. (1) Subject to such exceptions as may be prescribed for the purposes of this subsection —

Obligations
of Director
of Labour
or labour
inspectors

- (a) neither the Director of Labour nor any labour inspector shall have under his or her immediate supervision in pursuance of this Act any undertaking in which he or she has any direct or indirect interest or reveal the source of any complaint brought to his or her notice a defect in or breach of, the law, or give any intimation to an employer or the employer's representative that an inspection was made in consequence of such a complaint; and
- (b) the Director of Labour or any labour inspector who, in the exercise of his or her powers or the performance of his or her functions or duties under this Act, acquires information relating to the financial affairs, secret processes, plant or equipment of any other person shall not disclose such information to any other person except —
 - (i) for the purpose of legal proceedings under this Act,
 - (ii) to a court of law or to a person invested by law with the power to compel disclosure of such information, or
 - (iii) to the Minister or any other person acting in the execution of this Act, but only in so far as such information is necessary for such execution.

(2) A person who contravenes this section commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both.

37. Any person who wilfully delays or obstructs the Director of Labour or any labour inspector in the exercise of any Director of Labour power or the performance of any function or duty conferred or imposed by this Part or who fails to comply with any direction, requirement, demand or prohibition of the Director of Labour or of a labour inspector given or

Delay or
obstruction
of duties of
or labour
inspectors

made under this Part or who conceals in order to prevent or otherwise prevents any person from appearing before or being questioned by the Director of Labour or a labour inspector or who attempts so to conceal or otherwise prevent any person commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

PART VIII — *Labour Administration: Trade Unions and Employers' Organisations*

Registrar and deputy registrars of trade unions and employers' organisations

38. (1) The Minister shall appoint a public officer, to be the Registrar of trade unions and employers' organisations, to perform the functions conferred on the Registrar by this Act.

(2) The Minister may designate such other public officers as deputy registrars, as he or she may think necessary to assist the Registrar in the administration of this Act.

(3) The Registrar shall in the exercise of his or her functions or duties under this Act, carry out such functions or duties independently, impartially and without fear, favour or prejudice.

(4) A suit shall not lie against the Registrar for anything done or omitted to be done by him or her in good faith, without negligence and in the intended exercise or performance of any function conferred or imposed on the Registrar by this Act.

Register of Trade unions, federations of trade unions, employers' organisation, etc.

39. (1) The Registrar shall keep and maintain a register of trade unions, federations of trade unions, employers' organisations and federations of employers' organisations, in which shall be recorded such particulars, and such other books and documents, of the trade unions, federations of trade unions, employers' organisations and federations of employers' organisations, as may be required by the Registrar.

(2) A copy of an entry in or excerpt from the register or any other book or document kept and maintained by the Registrar in accordance with this section, purporting to be certified under the hand of the Registrar to be a true copy, shall be prima facie evidence of the facts stated in the copy.

Inspection of records in custody of Registrar

40. A register, book and any other document in the custody of the Registrar by virtue of this Act shall be open for inspection by members of the public during such hours, on payment of such fees and subject to such conditions, as may be prescribed.

PART IX — *Labour Administration: Employment and Labour Relations Council*

Continuation of Employment and Labour Relations

41. (1) The tripartite consultative council known as the Labour Advisory Board established under section 143 of the repealed Act is hereby continued under the new name Employment and Council Labour Relations Council and shall continue as if established under this Act.

(2) The Council shall be a representative body for the purposes of social dialogue including information sharing, consultation and negotiation, and shall seek to reach consensus, and where appropriate, conclude agreements on matters within its mandate.

42. (1) The members of the Council shall be appointed by the Minister in consultation with the tripartite consultative representatives, and shall consist of —

Composition
of Council

- (a) a Chairperson of the Council who shall not be a member, official or office bearer of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, or a public officer in the public service;
- (b) a Vice Chairperson of the Council who shall be elected by members from amongst themselves, who shall be an independent person and who shall not be a representative of either the employers or workers, appointed as a member due to his or her expertise in labour, economic and social policy formulation; and
- (c) 11 members of the Council as follows —
 - (i) two shall be independent persons who shall not be a representative of either employers or workers, and appointed due to their expertise in labour, economic and social policy formulation,
 - (ii) three shall be representatives from the Government,
 - (iii) three shall be representatives of the employers, and
 - (iv) three shall represent the trade union movement.

(2) The Minister, in consultation with the tripartite consultative representatives, shall, before appointing a member of the Council, by notice in writing, invite nominations from —

- (a) trade unions and federations of trade unions, if the member is to represent workers;
- (b) employers' organisations and federations of employers' organisations, if the member is to represent employers; and
- (c) members of the Council not representing the interests of either the employers or workers in respect of the members provided in subsection (1)(c)(i).

43. (1) The functions of the Council shall be to —

Functions and
powers of
Council

- (a) advise the Minister on —
 - (i) any proposed legislation concerning labour matters, including amendments to this Act or any other relevant law before it is submitted to Cabinet,
 - (ii) the codes of good practice,
 - (iii) issues arising from the International Labour Organisation and matters for consultation in terms of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144),
 - (iv) any issue raised by any international or regional organisation of which Botswana is a part

- (v) national labour market policy,
 - (vi) national employment policy,
 - (vii) decent work country programme,
 - (viii) the prevention and reduction of unemployment,
 - (ix) the collection and compilation of information and statistics relating to the administration of labour laws,
 - (x) the promotion of a co-ordinated policy on labour, economic and social matters,
 - (xi) the effectiveness of legislation and policy affecting economic and social policy, and
 - (xii) any other matter which the Council considers useful to achieve the objects of the labour laws;
 - (b) report, provide advice or recommendations on matters which the Council is required or permitted to address in terms of this Act or any other labour law;
 - (c) work in cooperation with different ministries, statutory bodies, programmes and other forums or non-governmental agencies engaged in the formulation and the implementation of labour, economic, and social policy;
 - (d) develop policy and guidelines for improving collective bargaining coverage including mechanisms and a framework to promote sectoral collective bargaining at industry level and to facilitate the establishment of joint industrial councils in each sector of trade and industry, in which representatives of workers and employers across a particular sector or branch of the economy negotiate binding minimum terms and conditions applicable to all workers and employers in the sector;
 - (e) ensure the nomination of —
 - (i) assessors for appointment to the Commission of Industrial Court assessors in accordance with the Industrial Court Act,
 - (ii) persons for appointment as members of the Mediation and Arbitration Board in accordance with section 60, and
 - (iii) persons for appointment as members of Committees of the Council;
 - (f) determine minimum wages;
 - (g) determine essential services;
 - (h) regulate employment and related matters; and
 - (i) perform any other matter incidental to the functions of the Council.
- (2) The Council may, in the performance of its functions —
- (a) conduct an investigation as it may consider necessary; and
 - (b) research into labour, economic and social policy, and the effectiveness of legislation and policy affecting economic and social policy.

(3) The Council shall submit an annual report of its activities to the Minister.

44. (1) The Minister shall consult the Council before introducing any Bill relating to employment into the National Assembly or before making any subsidiary legislation relating to employment, subject to any reasonable limitation on consultation in a declared state of public emergency.

Duty of
Minister
to consult
Council

(2) For the avoidance of doubt, unless a limitation on consultation is justified, the Minister shall consult with the Council in a declared state of public emergency and shall seek to reach consensus on the formulation of policy and legislation in response to the state of public emergency.

(3) Without prejudice to the generality of subsection (1), the Minister shall consult the Council before introducing any Bill into the National Assembly or before making any subsidiary legislation, as the case may be, which —

- (a) varies any labour standards or amends and terms and conditions of employment;
- (b) amends this Act in any respect; or
- (c) relates to the productivity of workers.

45. (1) A member of the Council —

- (a) shall be appointed for a period not exceeding three years; and
- (b) may be eligible for re-appointment for one further term not exceeding three years.

Tenure of
office and
conditions of
appointment
of members of
Council

(2) The Minister shall, in consultation with the tripartite consultative representatives, determine the terms and conditions of service of members of the Council.

46. (1) A person shall not qualify for appointment as a member of the Council or continue to hold office, if he or she —

- (a) has, in terms of any law in force in any country —
 - (i) been adjudged or otherwise declared bankrupt or insolvent and has not been rehabilitated or discharged, or
 - (ii) made an assignment to, or arrangement or composition with, his or her creditors, which has not been rescinded or set aside;
- (b) has, within a period of 10 years immediately preceding the date of his or her proposed appointment, been convicted —
 - (i) in Botswana, of a criminal offence which has not been overturned on appeal or in respect of which he or she has not received a free pardon, or
 - (ii) outside Botswana, of an offence, which in Botswana, would have been a criminal offence, and sentenced by a court of competent jurisdiction to imprisonment for one month or more without the option of a fine, whether that sentence has been suspended or not, and which conviction has not been overturned on appeal and in respect of which he or she has not received a free pardon; or

Disqualification,
suspension and
removal from
membership of
Council

(c) is, at the time of appointment, a councillor, member of the National Assembly or Ntlo ya Dikgosi.

(2) The Minister may, in consultation with the tripartite consultative representatives, suspend from office, a member of the Council against whom criminal proceedings are instituted for an offence in respect of which a sentence of imprisonment without an option of a fine may be imposed, and while the member is so suspended, such member shall not carry out any functions under this Act or be entitled to any remuneration or allowances.

(3) The Minister shall, in consultation with the tripartite consultative representatives, remove a member of the Council from office, if the member —

- (a) becomes subject to a disqualification under subsection (1);
- (b) has failed to comply with the provisions of section 53 or 54;
- (c) is convicted of an offence under this Act, or under any other Act and after a period of 30 days from the date that a ruling against the member is made on all appeals made in respect of the conviction, he or she is sentenced to imprisonment for a term of six months or more without an option of fine;
- (d) is absent, without reasonable cause, from three consecutive meetings of which that member has had notice;
- (e) is found to be physically and mentally incapable of performing his or her duties efficiently, and a medical practitioner has issued a medical certificate to that effect;
- (f) commits a material breach of the code of ethical behaviour; or
- (g) contravenes the provisions of this Act or otherwise misconducts himself or herself to the detriment of the objectives of the Council.

47. A member of the Council shall vacate his or her office and such office shall become vacant —

- (a) if he or she is disqualified, suspended or removed, in terms of section 46;
- (b) if he or she is adjudged bankrupt or insolvent;
- (c) upon his or her death;
- (d) upon the expiry of such time as the Minister and the tripartite consultative representatives may specify in writing, notifying the member of his or her removal from office by the Minister;
- (e) upon the expiry of one month's notice in writing to the Minister and the tripartite consultative representatives of his or her intention to resign from office;
- (f) if he or she becomes physically or mentally incapable of performing his or her duties efficiently and a medical practitioner has issued a medical certificate to that effect;
- (g) if he or she is convicted of an offence under this Act or any other Act for which he or she is sentenced to imprisonment for a term of six months or more without an option of a fine; or

(h) if he or she is summarily dismissed from the Council by the Minister, in agreement with the tripartite consultative representatives, for contravening this Act.	
48. A member of the Council may resign from his or her appointment by giving one month notice, in writing, to the Minister and the tripartite consultative representatives.	Resignation from Council
49. (1) Where the office of a member of the Council becomes vacant before the expiry of the member's term of office due to death, resignation or removal from office, the Minister shall, in agreement with the tripartite consultative representatives, in accordance with section 45 and within four months from the date the vacancy occurs, appoint another person to be a member.	Filling of vacancy in Council
(2) The person appointed under subsection (1) shall —	
(a) take the place of the member who has vacated office; and	
(b) be appointed on a new or full term.	
(3) Notwithstanding subsection (2), a person appointed under subsection (1) may hold office for such period as the Minister may, in agreement with the tripartite consultative representatives and subject to section 45, specify.	
(4) The Chairperson, or the Vice Chairperson, of the Council, may be eligible for appointment as a member of the Council, where he or she has vacated his or her office before the expiry of his or her term, or on the expiry of his or her term.	
50. (1) The Council may, in the performance of its functions, invite any person whose presence it deems necessary to attend and participate in the deliberations of any meeting of the Council, but such person shall not vote.	Co-opted members of Council
(2) Sections 51, 53 and 54 shall, with the necessary modifications, apply to a co-opted member.	
51. A member of the Council shall be paid allowances for attending meetings, travel and subsistence as may be determined by the Minister.	Remuneration of members of Council

PART X – Meetings and Proceedings of Council

52. (1) Subject to the provisions of this Act, the Council may regulate its own proceedings.	Meetings of Council
(2) The Council shall hold its first meeting on such date and at such a place as the Minister may determine and thereafter the Council shall meet at least three times in a year.	
(3) The Council shall, at its first meeting, elect the Vice Chairperson of the Council in accordance with section 42 (1) (b).	
(4) Meetings of the Council may be held virtually, or in person at such places and times as the Council may determine and shall be convened by the Chairperson of the Council.	
(5) The Chairperson of the Council may, in writing, convene a meeting of the Council by giving the members of the Council a notice of not less than seven days of the meeting.	

(6) The Chairperson of the Council may, where a matter is urgent and does not permit the giving of notice in terms of subsection (5), call a special meeting of the Council within a notice less than seven days of receipt by the Chairperson of a —

(a) written and motivated special request of four members of the Council; or

(b) request of the Minister.

(7) There shall preside at any meeting of the Council —

(a) the Chairperson of the Council;

(b) in the absence of the Chairperson of the Council, the Vice Chairperson of the Council; or

(c) in the absence of the Chairperson of the Council and the Vice Chairperson of the Council, such member of the Council as the members present may elect from among themselves for the purpose of that meeting.

(8) A quorum at any meeting of the Council on any matter shall be the majority of the members of the Council present and voting at the meeting:

Provided that there shall be at least one member of the Council representing each of the —

(a) Government's interests;

(b) employers' interests; and

(c) workers' interests.

(9) In the event of an equality of votes, the Chairperson of the Council shall have a casting vote in addition to the Chairperson's deliberative vote.

(10) A decision of the majority of the members of the Council present and voting at the meeting of the Council shall be the decision of the Council.

(11) The secretariat of the Council shall cause proper minutes of the meetings of the Council to be taken and recorded, and such minutes shall be kept and confirmed by a subsequent meeting of the Council.

(12) The Director of Labour or such other senior public officer directly subordinate to the Director of Labour as the Minister may designate to act on behalf of the Director of Labour, shall be the technical advisor at the meetings of the Council.

(13) The Chairperson of the Council shall not call a meeting of the Council unless the Director of Labour or the public officer referred to in subsection (12) shall be present at the meeting, or the Council has permission of the Director of Labour in writing to meet in the absence of the Director of Labour of such public officer.

Disclosure of
interest

53. (1) A member of the Council, committee or any person attending a meeting of the Council or committee shall, immediately upon commencement of the meeting of the Council, at which any matter in which the member or the member's immediate family member is directly or indirectly interested in a private capacity is the subject of consideration,

disclose such interest and shall not take part in any consideration or discussion of or vote on any question concerning the matter unless the Council otherwise directs.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it was made.

(3) Where a member or person fails to disclose his or her interest in accordance with subsection (1) and a decision by the Council or committee is made benefiting such member or person or an immediate family member of the member or person, such decision shall be void to the extent that it benefits such member, person or the family member.

(4) A person who fails to comply with the provisions of subsection (1) commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding eight years, or to both.

54. (1) A member of the Council or committee, and any other person assisting the Council or committee, shall observe and preserve the confidentiality of all matters coming before the Council or committee, and such confidentiality shall subsist even after the termination of the member's term of office or that person's mandate.

Confidentiality

(2) A member of the Council or committee, or a person to whom confidential information is revealed by virtue of his or her association with the Council or committee shall not disclose that information to any other person unless he or she is required to do so in terms of any written law or for purposes of any judicial proceedings.

(3) Upon ceasing to hold office, neither a member of the Council or committee, the secretariat nor a person co-opted by the Council, shall use to their personal advantage, information acquired by them, by virtue of their association with the Council or committee for a period of two years after leaving office.

(4) A member or person who contravenes the provisions of this section commits an offence and is liable to a fine not exceeding P500 000 or to imprisonment for a term not exceeding eight years, or to both.

55. (1) The Council may, for the purposes of performing its functions —

Committees of
Council

(a) establish committees to perform specific functions of the Council; and

(b) assign any of its functions to a committee, on conditions it may deem necessary to impose.

(2) A committee of the Council —

(a) shall be a tripartite;

(b) consist of at least three members; and

(c) may include any number of other committee members, but such members shall not vote in meetings of the committee if that committee has been assigned functions in terms of subsection (1)(b).

(3) Any function performed by a committee in terms of this section shall be deemed to be performed by the Council.

(4) Sections 51, 52, 53 and 54 shall, with the necessary modifications, apply to a member of a committee of the Council.

Secretariat of
Council

56. (1) The Minister shall designate public officers in the Ministry to be the secretariat of the Council.

(2) The members of the secretariat under subsection (1) shall be ex officio members of the Council but shall not vote.

(3) The functions of the secretariat shall be to —

- (a) coordinate meetings of the Council;
- (b) record and keep minutes of the meetings and proceedings of the Council; and
- (c) carry out any other duties related to the Council, as may be determined by the Council.

*PART XI – Establishment of Mediation and Arbitration
Commission and Mediation and Arbitration Board*

Establishment
of Mediation
and
Arbitration
Commission

57. (1) There is established a body to be known as the Mediation and Arbitration Commission.

(2) The Commission shall be a body corporate capable of suing and being sued in its own name and, subject to the provisions of this Act, of performing such acts as bodies corporate may, by law, perform, including to —

- (a) acquire and sell such movable and immovable property as may be necessary for the efficient operation of the Commission; and
 - (b) enter into such contracts as may be required under the seal, and for the efficient operation, of the Commission.
- (3) The Commission shall —
- (a) be an independent public body;
 - (b) be independent of any political party, trade union, federation of trade unions or employers' organisation;
 - (c) subject to the provisions of this Act, exercise its functions independently; and
 - (d) be subject to the provisions of this Act.

Functions of
Commission

58. (1) The functions of the Commission shall be to —

- (a) mediate any dispute referred to it in terms of the provisions of this Act or any labour law; and
- (b) determine any dispute referred to it by arbitration if —
 - (i) a labour law requires the dispute to be determined by arbitration,
 - (ii) the parties to the dispute agree to such dispute being determined by arbitration, or
 - (iii) the Industrial Court refers the dispute to the Commission to be determined by arbitration in terms of the provisions of this or any other labour law.

(2) Notwithstanding the generality of subsection (1), the Commission may —

- (a) upon request, provide a worker and an employer, and a trade union, federation of trade unions or employers' organisation with information, advice and training relating to the prevention and settlement of a dispute, as may be prescribed,

- (b) in writing, offer the parties to a dispute that has not been transferred to it to mediate the dispute;
 - (c) conduct or scrutinise any election or an approval process of a trade union or employers' organisation if —
 - (i) required to do so by the Industrial Court, or
 - (ii) at the request of the trade union or employers' organisation concerned; and
 - (d) publish guidelines in relation to any matter dealt with in this Act.
- (3) The Commission may make rules to provide for —
- (a) the practice and procedure in connection with the resolution of a dispute through mediation or arbitration;
 - (b) the process by which mediation is initiated, and the form, content and use of the process;
 - (c) the process by which arbitration or arbitration proceeding is initiated, and the form, content and use of the process;
 - (d) the joinder of any person having an interest in a dispute in any mediation and arbitration proceedings;
 - (e) the intervention of any person as an applicant or respondent in any mediation or arbitration proceedings;
 - (f) the amendment of any citation and the substitution of any party for another in mediation or arbitration proceedings;
 - (g) the hours during which an office of the Commission will be open to receive any process;
 - (h) any period that is not to be counted for the purpose of calculating time or periods for delivering any process or notice relating to mediation or arbitration proceedings;
 - (i) the forms to be used by parties and the Commission;
 - (j) the basis on which an arbitrator may make any order as to costs in any arbitration;
 - (k) the right of any party to be represented by any person or category of persons in any mediation or arbitration proceedings, including the regulation or limitation of the right to be represented in those proceedings;
 - (l) the consequences for any party to mediation or arbitration proceedings for not attending those proceedings;
 - (m) the circumstances in which the Commission may charge a fee in relation to any mediation or arbitration proceedings or for any services the Commission may provide; and
 - (n) any other matter incidental to the performance of the functions of the Commission.
- (4) The Commission shall perform any other functions and may exercise any other powers conferred on it in terms of this Act and any other law.

59. (1) There is established a body to be known as the Mediation and Arbitration Board which shall be the governing body of the Commission and shall be responsible for the direction of the affairs of the Commission

Mediation and
Arbitration
Board

Composition
of Mediation
and
Arbitration
Board

(2) Notwithstanding the generality of subsection (1), the Mediation and Arbitration Board shall give general policy direction to the Commission.

60. The members of the Mediation and Arbitration Board shall be nominated by the Council and appointed by the Minister in agreement with the Council, and shall consist of —

- (a) a Chairperson of the Mediation and Arbitration Board who shall not be a member, official or office bearer of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, or a public officer in the public service;
- (b) a Vice Chairperson of the Mediation and Arbitration Board who shall be elected by members from amongst themselves, who shall be an independent person and who shall not be a representative of either the employers or workers, appointed as a member due to his or her expertise in labour, economic and social policy formulation;
- (c) 13 members of the Mediation and Arbitration Board as follows —
 - (i) two shall be independent persons who shall not be a representative of either employers or workers, and appointed due to their expertise in labour, economic and social policy formulation,
 - (ii) three shall be representatives from the Government,
 - (iii) four shall be representatives of the employers in Botswana, and
 - (iv) four shall represent the trade union movement in Botswana; and
- (d) the Commissioner General, who shall be an ex officio member of the Board but shall not vote.

Delegation of
functions of
Mediation and
Arbitration
Board

61. (1) The Mediation and Arbitration Board may, in writing, delegate any of its functions, other than the functions under subsection (2), to the Commissioner General, a committee of the Mediation and Arbitration Board, and a mediator or an arbitrator.

(2) The Mediation and Arbitration Board shall not delegate its functions relating to the —

- (a) appointment of the Commissioner General;
- (b) appointment of a mediator and an arbitrator;
- (c) approval of the annual or supplementary budget for submission to the Minister.

(3) The Mediation and Arbitration Board may attach conditions to a delegation and may amend or revoke a delegation at any time.

(4) The Mediation and Arbitration Board may vary or set aside any decision made by a person acting in terms of a delegation made in terms of subsection (1).

Rules of
procedure of
Mediation and
Arbitration
Board

62. The rules of procedure of, and any other matters related to, the Mediation and Arbitration Board, shall be as prescribed.

63. A member of the Mediation and Arbitration Board — (a) shall be appointed for a period not exceeding three years; and (b) may be eligible for re-appointment for one further term not exceeding three years.	Tenure of office of appointment of members of Mediation and Arbitration Board
64. Sections 46 to 54 shall, with the necessary modifications, apply to a member of the Mediation and Arbitration Board.	General provisions relating to Mediation and Arbitration Board
65. (1) The Mediation and Arbitration Board may, for the purposes of performing its functions — (a) establish committees to perform specific functions of the Mediation and Arbitration Board; and (b) assign any of its functions to a committee, on conditions it may deem necessary to impose. (2) A committee of the Mediation and Arbitration Board — (a) shall be a tripartite; (b) shall consist of at least three members; and (c) may include any number of other committee members, but such members shall not vote in meetings of the committee if that committee has been assigned functions in terms of subsection (1)(b). (3) Any function performed by a committee in terms of this section shall be deemed to be performed by the Mediation and Arbitration Board.	Committees of Mediation and Arbitration Board
66. (1) The Minister may, in consultation with the Mediation and Arbitration Board, appoint Commissioner General of the Commission. (2) In appointing the Commissioner General, the Minister shall select a person who — (a) is of good standing and recognised for their high level of professional, competence and integrity, and has not been convicted of any offence involving dishonesty; and (b) has experience in labour relations and dispute resolutions or any other area relevant to the objects and functions of the Commission. (3) The Commissioner General shall be subject to the general directions and control of the Mediation and Arbitration Board, and shall — (a) perform the functions that may be — (i) conferred on the Commissioner General under this Act, and (ii) delegated to the Commissioner General by the Mediation and Arbitration Board; (b) manage and direct the activities of the Commission; and (c) supervise the staff of the Commission. (4) Notwithstanding the provisions of this Act, the Commissioner General may— (a) mediate and arbitrate disputes referred to the Commission in terms of this Act; and	Commissioner General of Commission

(b) if it is in the public interest, refer any dispute referred to the Commission to the Industrial Court for determination.

(5) The Commissioner General may, in consultation with the Mediation and Arbitration Board, delegate any of his or her functions or the functions of the Commission to any mediator, arbitrator or member of staff.

(6) The Commissioner General shall, unless in any particular case the Mediation and Arbitration Board otherwise directs, in writing, attend all meetings of the Mediation and Arbitration Board, but shall not vote.

(7) The Mediation and Arbitration Board shall determine the remuneration, allowances and any other terms and conditions of appointment of the Commissioner General.

67. (1) The Mediation and Arbitration Board shall —

(a) appoint to the Commission, a full-time and part-time mediator and arbitrator with expertise in labour law, labour relations or any other related area, with due regard to the need to constitute an independent and professional Commission; and

(b) determine the terms and conditions of the appointment of a mediator and an arbitrator.

(2) A mediator or an arbitrator shall preside over any dispute referred to the Commission and perform any other functions assigned to the mediator and arbitrator in accordance with this Act.

(3) The Mediation and Arbitration Board shall be responsible for the supervision and discipline of a mediator and an arbitrator:

Provided that the supervision or discipline shall not amount to interference with the independence of the mediator and arbitrator in any dispute.

(4) For purposes of subsection (3), “interference” means any act of influence by the Board on any decision made by a mediator or an arbitrator in relation to a dispute.

(5) The Mediation and Arbitration Board shall prepare a code of conduct for mediators and arbitrators and ensure that the mediators and arbitrators comply with the code of conduct in the performance of their functions.

(6) The Mediation and Arbitration Board may remove a mediator or an arbitrator from office on the following grounds

(a) serious misconduct relating to the functions of a mediator or arbitrator, including a material violation of the code of conduct referred to in subsection (4); or

(b) physical or mental incapacity relating to the performance of the functions of the mediator or arbitrator efficiently, and a medical practitioner has issued a medical certificate to that effect whether arising from ill-health or any other cause.

(7) Nothing contained in this Act shall prevent —

(a) a person to be appointed as both a mediator and an arbitrator under this section; and

- (b) a person referred to in paragraph (a) from being assigned to perform the functions of a mediator and an arbitrator in respect of a dispute;

Provided that an assignment of such person to perform the functions of the mediator and arbitrator shall only take place where there are published rules and guidelines regulating the performance of such functions.

68. (1) A mediator and an arbitrator may —

Powers of
mediators and
arbitrators

- (a) summon any person for questioning or to attend a mediation or an arbitration hearing if the mediator or arbitrator considers that the attendance of a that person shall assist in the resolution of a dispute;
- (b) summon any person who is believed to have possession or control of any book, document or object relevant to the resolution of a dispute, to appear before the mediator or arbitrator to be questioned and to produce the book, document or object;
- (c) administer an oath or accept an affirmation from any person called to give evidence in relation to a mediation or an arbitration hearing; and
- (d) question any person about any other matter relevant to a mediation or an arbitration hearing.

(2) The witness fees to a person who appears before a mediator or an arbitrator in response to a summons issued in terms of this section shall be borne by a party who calls such witness.

(3) Where a witness is summoned by a mediator or an arbitrator on the mediator's or arbitrator's own motion, the cost for the witness shall be borne by the Commission.

(4) Notwithstanding the provisions of subsection (2), a mediator or an arbitrator may, where necessary, order the cost for the witness be paid by the Commission.

(5) A person who does or omits to do any of the acts provided under this subsection, shall be in contempt of the Commission —

- (a) if, after having been summoned to appear before a mediator or an arbitrator, the person, without good cause, fails to appear at the place, date and time stated in the documents summoning such person;
- (b) if, after having appeared in response to being summoned, the person fails to remain in attendance until excused by a mediator or an arbitrator;
- (c) by refusing to take an oath or to make an affirmation as a witness when required to do so by a mediator or an arbitrator;
- (d) by refusing to answer any question fully or to the best of the person's knowledge and belief subject to any law entitling such person to refuse to do so;
- (e) if the person, without good cause, fails to produce any book, document or object specified in the documents summoning such person;
- (f) if the person wilfully hinders a mediator or an arbitrator in performing any function conferred on the mediator or arbitrator by or in terms of any labour law;

Appointment
of Secretary
of Mediation
and Arbitration
Board

Functions of
Secretary of
Mediation and
Arbitration
Board

Accountability
to Commission

Conditions
of service of
Secretary of
Mediation and
Arbitration
Board

Appointment
of staff of
Commission

- (g) if the person insults, disparages or belittles a mediator or an arbitrator, or prejudices or improperly influences proceedings or improperly anticipates the decision of the mediator or arbitrator;
- (h) by wilfully interrupting the mediation or arbitration proceedings, or behaving in a disobedient or any other manner during the mediation or arbitration proceedings; or
- (i) by doing anything else in relation to the Commission which, if done in relation to a court of law, would have been contempt of court.

(6) A person who is in contempt of the Commission in terms of subsection (5) commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

(7) A person who obstructs or improperly influences a mediator or an arbitrator in the performance of his or her functions under this Act, or attempts to do so, commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

69. The Mediation and Arbitration Board shall, with the recommendation of the Commissioner General, appoint a Secretary of the Mediation and Arbitration Board who shall be suitably qualified and experienced in the legal discipline to a level appropriate for the seniority of the position.

70. The Secretary of the Mediation and Arbitration Board shall attend meetings of the Mediation and Arbitration Board but shall have no right to vote, and shall —

- (a) advise the Mediation and Arbitration Board on all legal and procedural issues in respect of its deliberations and decisions;
- (b) be responsible for the accurate and complete recording of the Mediation and Arbitration Board's proceedings and decisions; and
- (c) be responsible for all legal business of the Mediation and Arbitration Board and institutional linkages and representation of the Mediation and Arbitration Board.

71. The Secretary of the Mediation and Arbitration Board shall be accountable to the Commission for his or her functions and responsibilities.

72. The conditions of service, including the remuneration package of the Secretary of the Mediation and Arbitration Board shall be set by the Mediation and Arbitration Board, with the recommendation of the Commissioner General.

73. (1) The Mediation and Arbitration Board shall, on the recommendation of the Commissioner General and on the terms and conditions determined by the Mediation and Arbitration Board appoint senior staff of the Commission as it may consider necessary for the proper discharge of the functions of the Commission, and shall determine the terms and conditions of employment of the senior staff.

(2) The senior staff shall be under the direction of the Commissioner General, assist the Commissioner General in the proper management and administration of the functions and affairs of the Commission in accordance with the policies laid down by the Mediation and Arbitration Board.

(3) The Commissioner General shall appoint such other staff as may be necessary for the proper discharge of the functions of the Commission.

74. (1) The funds of the Commission shall include —

Funds of
Commission

- (a) moneys appropriated by the National Assembly for the purposes of the Commission;
- (b) any money accruing to the Commission arising from performance of its functions under this Act, including fees, charges and levies for services provided to all beneficiaries; and
- (c) any payments received from any other sources in favour of the Commission.

(2) The Commission shall maintain with a bank, a designated account into which shall be paid all sums accruing to the Authority in respect of subsection (1) and from which all due payments shall be effected.

75. The financial year of the Commission shall be a period of 12 months starting on 1st April and ending on 31st March each year.

Financial year

76. (1) The Commission shall keep proper accounts and records in respect of every financial year relating to its assets, liabilities, income and expenditure, and shall prepare in each financial year, a statement of such accounts.

Financial
report

(2) The accounts of the Commission in respect of each financial year shall, within three months of the end of each financial year, be audited by an auditor appointed by the Mediation and Arbitration Board.

(3) The auditor shall report in respect of the accounts for each financial year, in addition to any other matter on which the auditor considers it pertinent to comment on, whether or not —

- (a) the auditor has received all the information and explanation which, to the best of the auditor's knowledge and belief, were necessary for the performance of the auditor's duties;
- (b) the accounts and related records of the Authority have been properly kept;
- (c) the Commission has complied with all the financial provisions of this Act with which it is the duty of the Commission to comply; and
- (d) the statement of accounts prepared by the Commission was prepared on a basis consistent with that of the preceding year and represents a true and fair view of the transactions and financial affairs of the Commission.

(4) The report of the auditor and a copy of the audited accounts shall, within 14 days of the completion thereof, be forwarded to the Commission by the auditor.

Annual report	77. (1) The Commission shall, within a period of six months after the end of the financial year or within such longer period as the Minister may approve, submit to the Minister, a comprehensive report on the operations of the Commission during such year, together with the auditor's report and the audited accounts as provided for in section 76. (2) The Commission shall cause the report referred to under subsection (1) to be published in print form or electronic media, before it is laid before the National Assembly. (3) The Minister shall, within 30 days of his or her receiving the Commission's report referred to under subsection (1), lay such report before the National Assembly.
Pension and other funds	78. (1) The Commission may, out of its revenues, establish and maintain such pension, superannuation, provident or other funds as it may consider desirable or necessary for the payment of benefits or other allowances on the death, sickness, injury, superannuation, resignation, retirement or discharge of its workers and may make rules providing for the payment of money out of its revenues to such funds and providing for contributions to such funds by its workers. (2) The Commission may contract with insurance companies or such other bodies as may be appropriate for the maintenance and administration of the funds authorised under subsection (1).
Exemption from personal liability	79. An action shall not be taken against any staff of the Commission, any member or Secretary of the Mediation and Arbitration Board or its committees, the Board or Council for any act or omission except in so far as the act or omission complained of was done in bad faith.

PART XII – Trade Unions, Federation of Trade Unions and Employers' Organisations

Registration under	80. Except as otherwise provided in this Act, a trade union, Act federation of trade unions, employers' organisation or federation of employers' organisations shall be registered in accordance with this Act.
Application for registration	81. (1) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall, within six months after a resolution is taken to register the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, apply to the Registrar for registration as a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, as the case may be, under this Act. (2) An application for registration under subsection (1) shall be made in the prescribed form which shall be accompanied by — (a) a prescribed fee; (b) a copy of the constitution of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, authenticated under the hand of the principal secretary of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations;

- (c) in the case of an application by —
 - (i) a trade union or employers' organisation, one copy of the resolution by which it was formed authenticated under the hand of the principal secretary of the trade union or employers' organisation, or
 - (ii) a federation of trade unions or federation of employers' organisations, one copy of each of the resolutions by which the members of the federation were authorised to enter into the federation authenticated under the hand of the principal secretary of the trade union in question;
- (d) a list of the full names of all the members of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations; and
- (e) a written statement setting out, in respect of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, the —
 - (i) name, postal address and the location of its principal office of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations,
 - (ii) date of the formation of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, and
 - (iii) titles, full names, ages, postal and residential addresses and occupations of the officers of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations who are signatories to the application.

(3) An application for registration may include any other information that may assist the Registrar to determine whether or not a trade union, federation of trade unions, employers' organisation or federation of employers' organisations meets the requirements for registration.

82. (1) For purposes of this section "independent" means a trade union that is not under the direct or indirect control of any employer or employers' organisation; and that is free of any interference or influence of any kind from any employer or employers' organisation.

Requirements
for registration

(2) A trade union shall be registered in terms of this Act, and recognised as such if —

- (a) its principal purpose is to regulate relations between a worker and an employer, including any employers' organisation representing the employer;
- (b) it is an association that is not for gain;
- (c) it is independent of any employer or employer's association;
- (d) it has adopted a constitution and rules that comply with section 83;
- (e) it has adopted a name that does not resemble the name of another trade union so as to mislead or create confusion; and
- (f) it has an address in Botswana.

(3) An employers' organisation shall be registered in terms of this Act, and recognised as such if —

- (a) its principal purpose is to regulate relations between a worker and an employer, including any employers' organisation representing the employer;
- (b) it is an association that is not for gain;
- (c) it has adopted a constitution and rules that comply with section 83;
- (d) it has adopted a name that does not resemble the name of another employer association so as to mislead or create confusion; and
- (e) it has an address in Botswana.

(4) A federation of trade unions shall be registered in terms of this Act, and recognised as such if —

- (a) a trade union has affiliated to the federation;
- (b) it is a federation that is not for gain;
- (c) it has adopted a constitution and rules that comply with section 83;
- (d) it has adopted a name that does not resemble the name of another federation so as to mislead or create confusion;
- (e) it comprises trade unions; and
- (f) it has an address in Botswana.

(5) A federation of employers' organisations shall be registered in terms of this Act, and recognised as such if —

- (a) an employers' organisation has affiliated to the federation;
- (b) it is a federation that is not for gain;
- (c) it has adopted a constitution and rules that comply with section 83;
- (d) it has adopted a name that does not resemble the name of another federation so as to mislead or create confusion;
- (e) it comprises employers' organisations; and
- (f) it has an address in Botswana.

Constitutions
and rules
of trade
unions and
employers'
organisation,
etc.

83. (1) The constitution and rules of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall —

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

- (i) provide for a procedure for the appointment or nomination or election of officials;
 - (j) establish the circumstances and manner in which office bearers, officials and representatives may be removed from office;
 - (k) establish the circumstances and manner in which an approval process shall be conducted;
 - (l) provide for an approval process of the members in respect of whom, in the case of —
 - (i) a trade union, the trade union may call upon to strike, and
 - (ii) an employers' organisation, the employers' organisation may call upon to lock out;
 - (m) provide for the banking of contributions made by members;
 - (n) establish the purposes for which the contributions referred to in paragraph (m) may be used;
 - (o) provide for a procedure for the amendment of the constitution and rules;
 - (p) provide for a procedure for affiliation, or amalgamation, in the case of —
 - (i) a trade union, with another trade union,
 - (ii) an employer's organisation, with other registered employers' organisation,
 - (iii) a federation of trade unions or federation of employers' organisations, with other federations, or
 - (iv) any other prescribed matter;
 - (q) prescribe a procedure for affiliation to an international trade union or an international employers' organisation, or
 - (r) prescribe a procedure to dissolve the organisation or federation.
- (2) A constitution or rules of a trade union or employer's organisation shall not conflict with the provisions of this Act or any other written law.

84. (1) The Registrar shall by Notice in the Gazette, in a newspaper of national circulation, electronic media or Government portal cause an application for registration under section 81 to be published.

Notice of application for registration to be published

(2) A Notice referred to in subsection (1) shall set out the particulars relating to the registration requirements under section 82 and shall call upon any person who objects to the registration of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations to notify the Registrar of the objection, together with the grounds of the objection, within such reasonable time as shall be specified in the Notice.

85. (1) Subject to section 82, the Registrar shall, after considering any objection to the registration of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations notified in accordance with section 84 and after making such inquiries in the matter as may be necessary, register the trade union, federation of trade unions, employers' organisation or federation of employers' organisations and issue a certificate of registration if the requirements for registration are met.

Issuance of certificate of registration

(2) A certificate of registration shall, for all purposes, unless the registration of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations to which the certificate relates is proved to have been cancelled in terms of section 87 be conclusive evidence that that trade union, federation of trade unions, employers' organisation or federation of employers' organisations is duly registered in accordance with this Act.

(3) Where the Registrar issues a certificate of registration, he or she shall immediately inform the Director of Labour that he or she has issued the certificate of registration.

86. (1) The Registrar shall refuse to register a trade union, federation of trade unions, employers' organisation or federation of employers' organisation if its name is identical with that by which some other trade union, federation of trade unions, employers' organisation or federation of employers' organisations has been registered or so nearly resembles that other name as to be likely to deceive or mislead any person or is otherwise misleading or undesirable, until such time as the name is altered to one that meets the requirements for registration.

(2) Notwithstanding subsection (1), the Registrar shall refuse to register a trade union, federation of trade unions, employers' organisation or federation of employers' organisations if the applicant —

- (a) has not complied with the provisions of this Act in respect of the requirements for registration; or
- (b) is not a trade union, federation of trade unions, employers' organisation or federation of employers' organisations in terms of this Act.

(3) If the Registrar is not satisfied that an applicant meets the requirements for registration, the Registrar shall —

- (a) submit a written notice of the decision and the reasons for that decision to the applicant; and
- (b) in the notice referred to in paragraph (a), inform the applicant to meet the requirements for registration within 30 days from the date of the notice.

(4) If, within the period referred to in subsection (3)(a), an applicant meets the requirements for registration, the Registrar shall register the applicant by entering such applicant's name in the appropriate register.

(5) If, within the period referred to in subsection (3)(a), an applicant has attempted to meet the requirements for registration but the Registrar concludes that the applicant has failed to do so, the Registrar shall —

- (a) refuse to register such applicant; and
- (b) notify such applicant in writing of the decision to not register and the grounds for such decision.

(6) Where the Registrar refuses to register a trade union, federation of trade unions or employers' organisation, the trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall not enjoy the rights, immunities and privileges reserved for a trade union, federation of trade unions, employers'

organisation or federation of employers' organisations under this Act.

(7) For the avoidance of doubt, nothing prevents an unregistered or de-registered trade union, federation of trade unions, employers' organisation or federation of employers' organisations from continuing to organise and to recruit members subject to the provisions of this Act.

87. (1) The Registrar may apply to the Industrial Court for an order to cancel the registration of a trade union, federation of trade unions, employers' organisation or federation of employers' organisation if the trade union, federation of trade unions, employers' organisation or federation of employers' organisations fails to comply with the requirements for registration or the provisions of this Part.

Cancellation
of registration

(2) The Registrar shall not proceed under subsection (1) unless the Registrar has given notice to the trade union, federation of trade unions, employers' organisation or federation of employers' organisations concerned that the Registrar intends to apply for cancellation of the registration of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, and such application shall specify the grounds on which he or she proposes to have such registration cancelled.

(3) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations served with a notice relating to an application under subsection (1) may, within two months immediately following the day on which service of the notice under subsection (2) was effected, in writing to the Registrar, show cause why its registration should not be cancelled and, if such cause is shown, the Registrar may hold such inquiry as he or she considers necessary in the particular circumstances.

(4) Where a trade union, federation of trade unions, employers' organisation or federation of employers' organisation fails to show cause in terms of subsection (3), the Registrar may, after the expiry of the period of the two months but not earlier, apply to the Industrial Court to cancel its registration.

(5) The Industrial Court may make any appropriate order including —

- (a) cancelling the registration of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations; and
- (b) giving a trade union, federation of trade unions, employers' organisation or federation of employers' organisations an opportunity to remedy any failure to comply.

(6) Where the registration of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations is cancelled under this section, the trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall cease to enjoy all the rights, immunities and privileges of a trade union, federation of unions, employers' organisation or federation of employers' organisations under this Act.

Appeals

88. (1) Where a person is aggrieved by —

- (a) the refusal of the Registrar to register a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, such person may appeal against the refusal to the Industrial Court; or
- (b) an order of the Industrial Court, in terms of section 87, cancelling the registration of a trade union, federation of trade unions, employers' organisation or federation of employers' organisation, such person may appeal against the order to the Court of Appeal.

(2) The Industrial Court may, on an appeal under this section, make such order as it thinks proper, including any directions as to the costs of the appeal.

(3) The Judge President of the Industrial Court may make rules of the Industrial Court governing appeals under this section, providing for the method of giving evidence and prescribing the —

- (a) time within which such appeals shall be brought;
- (b) fees to be paid;
- (c) procedure to be followed; and
- (d) manner of notifying the Registrar of the appeal.

(4) The Registrar shall be entitled to be heard on any appeal under this section.

Rights of
trade unions,
etc. pending
registration

89. (1) Subject to the provisions of this Act, a trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall unless registered, not enjoy the rights, immunities and privileges of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, and any liabilities incurred by the trade union, federation of trade unions, employers' organisation or federation of employers' organisations may be enforced against it and its assets.

(2) An officer and a member of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations that is not registered shall not enjoy the rights, immunities and privileges accorded to an officer and a member of a registered trade union, federation of trade unions, employers' organisation or federation of employers' organisations.

Benefits of
registration for
trade unions,
etc.

90. After registration, a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, its officer or member shall enjoy the following rights, immunities and privileges —

- (a) there shall be no suit or other legal proceedings in any civil court against the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, or its officer or member in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the grounds only that such act induces some other person to breach a contract of employment or that it is in

interference with the trade, business or employment of some other person or with the rights of some other person to dispose of his or her capital or labour as he or she determines;

- (b) there shall be no suit against the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, or its officer or member on behalf of himself or herself and another member of such trade union, federation of trade unions, employers' organisation or federation of employers' organisation in respect of any delictual act alleged to have been committed by or on behalf of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations; and
- (c) the objects of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall not, by reason that they are in restraint of trade, be unlawful so as to render —
 - (i) any member of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations liable to criminal prosecution, or
 - (ii) any agreement or trust void or voidable.

91. A trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall be liable on any contract entered into by the trade union, federation of trade unions, employers' organisation or federation of employers' organisations or by a duly authorised agent on its behalf.

Liability in contract

92. (1) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations may sue or be sued in its own name.

Proceedings by or against trade union, etc.

(2) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations not registered under this Act may sue or be sued under the name by which it has been operating or is generally known.

(3) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations whose registration has been cancelled in terms of section 87 may sue or be sued under the name by which it was registered.

(4) An execution for any moneys recovered from a trade union, federation of trade unions, employers' organisation or federation of employers' organisations in civil proceedings may be issued against any property belonging to or held in trust for the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, other than its provident, welfare or pension fund.

(5) An attachment shall not be made of any provident, welfare or pension fund kept apart by a trade union, federation of trade unions, employers' organisation or federation of employers' organisations unless a court so orders.

Membership of trade unions or employers' organisations by children

Restrictions on membership of trade unions or employers' organisation

Notice of officers of trade union, etc. to be exhibited

Trustees of trade unions or federation of trade unions

Cap. 31:05

93. A person under the age of 15 years shall not be a member of a trade union or employers' organisation.

94. (1) The membership of a trade union or employers' organisation shall be subject to the qualifications set out in the constitution of a trade union or employers' organisation.

(2) The constitution of a trade union or employers' organisation may not include any provision that discriminates directly or indirectly against any persons based on the grounds listed in section 22 (1).

95. (1) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall at all times prominently exhibit at its registered office and at the principal office of every branch of the office, a notice clearly setting out the full names of all the officers for the time being of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, together with their respective titles.

(2) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations that fails to comply with this section, and every officer of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations who is knowingly a party to the failure commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

96. (1) A constitution of a trade union or federation of trade unions shall comply with the requirements for the constitution provided in section 83, and may provide for the appointment, or election and removal of trustees and for the filling of a vacancy in the office of trustees such that, as far as may be, there shall at all times be at least three trustees of the trade union or federation of trade unions.

(2) An officer of a trade union or federation of trade unions shall be a trustee of the trade union or federation of trade unions.

(3) A person shall not be a trustee of a —

(a) trade union unless he or she is a member of the trade union; and

(b) federation of trade unions unless he or she is a member of a trade union belonging to the federation of trade unions;

Provided that a bank approved by the Registrar may be a trustee of a trade union or federation of trade unions.

(4) A person shall not be a trustee of a trade union or federation of trade unions if he or she has at any time been convicted of an offence involving dishonesty.

(5) A trade union or federation of trade unions shall comply with the Trust Property Control Act in any matter relating to a trustee of the trade union or federation of trade unions.

97. (1) Any property belonging to a trade union or federation of trade unions shall, where a trustee has been appointed, vest in and under the control of the trustee for the time being of the trade union or federation of trade unions for the use or benefit of such trade union or federation of trade unions, and its members.

Property of trade unions or federation of trade unions to vest in trustees

(2) In any action or suit, or prosecution, before any court, concerning any property belonging to a trade union or federation of trade unions, the trade union or federation of trade unions shall, where a trustee has been appointed, be stated to be the property of any person who is the trustee for the time being of such trade union or federation of trade unions in his or her proper names as such trustee without any further description.

(3) Where a trade union appoints a trustee, the trustee of the trade union shall deal with any property vested in such trustee by virtue of this section in such manner as the executive committee of the trade union shall direct:

Provided that the disposal of the property shall not be made unless the trustee is satisfied that the executive committee has acted lawfully and in accordance with the constitution of such trade union.

(4) Where a federation of trade unions appoints a trustee, the trustee of the federation of trade unions shall deal with any property vested in such trustee by virtue of this section in such manner as the body designated by the constitution of the federation of trade unions for this purpose shall direct:

Provided that the disposal of the property shall not be made unless the trustee is satisfied that the designated body has acted lawfully and in accordance with the constitution of the federation of trade unions.

98. A change in an officer or trustee of a registered trade union or federation of trade unions, or an officer of an employers' organisation or federation of employers' organisations shall not have effect unless the change is registered by the Registrar.

Effect of change of officers or trustees

99. (1) A change of name, or change to the constitution and rules, of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall not have effect unless the Registrar approves the change under this section.

Change of name or constitution of trade union, etc.

(2) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations may apply for the approval of a change of name, or change to its constitution and rules by submitting to the Registrar a —

- (a) prescribed form duly completed and signed by the secretary; and
- (b) copy of the resolution containing the wording of the change and a certificate signed by the secretary stating that the resolution was passed in accordance with the constitution and rules.

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

Amendment
of constitution
of trade union,
etc.

(4) The Registrar shall consider an application made in terms of subsection (2) and any further information provided by the applicant, and if satisfied that the change —

- (a) to the constitution and rules complies with the requirements provided in section 83, approve the change by issuing the prescribed certificate for the change; or
- (b) of name does not resemble the name of another trade union, federation of trade unions, employers' organisation or federation of employers' organisations so as to mislead or create confusion, approve the change by issuing a new certificate of registration reflecting the new name.

(5) Where the Registrar refuses to approve an application, to change the name, or for a change to a constitution and rules, of a trade union, federation of trade union, employers' organisation or federation of employers' organisations, he or she shall give a written notice of his or her decision and the reasons for the refusal.

100. (1) A trade union, federation of trade union, employers' organisation or federation of employers' organisations may amend its constitution, including its name or objects:

Provided that an amendment of the name or objects of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall not be valid unless notice in writing containing particulars of the proposed amendment has first been given to the Registrar and he or she has signified in writing that he or she is satisfied that the proposed amendment meets the requirements prescribed in this Act.

(2) A copy of every amendment made to the constitution of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, signed by at least two-thirds of the members of its executive committee, shall be submitted by the trade union, federation of trade unions, employers' organisation or federation of employers' organisations to the Registrar within 30 days immediately after the amendment and the Registrar shall register such amendment, upon payment of a prescribed fee, if he or she is satisfied that the amendment complies with this Act.

(3) Every amendment to the constitution of a registered trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall take effect from the date of registration of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations by the Registrar unless some later date is specified by the constitution or by the amendment itself.

(4) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations that fails to comply with this section, and an officer of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations who is knowingly a party to the failure, commits an offence and is liable to

a fine not exceeding P2 000 and, in the case of a continuing offence, to a further fine not exceeding P10 for every day the offence continues, but such fine shall not exceed P1 000, and the court before which the prosecution is brought may order a copy of the amendment in question to be submitted by such trade union, federation of trade unions, employers' organisation or federation of employers' organisations to the Registrar within such time as shall be specified in the order.

101. A change in the name of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall not affect any right or obligation of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, or render defective any legal proceeding by or against such trade union, federation of trade unions employers' organisation or federation of employers' organisations, or any legal proceeding that might have been continued or commenced by or against it under its new name.

Effect of
change of
name of trade
of trade union,
etc.

102. (1) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall, within 30 days immediately after the change in the officers of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, submit a notice in writing to the Registrar upon payment of a prescribed fee, and the Registrar shall, subject to subsections (3) and (4), register the change accordingly.

Certain
matters to be
notified to
Registrar

(2) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations that fails to comply with this section commits an offence and is liable to a fine not exceeding P2 500 and, in the case of a continuing offence, to a further fine of P10 for every day the offence continues, but such fine shall not exceed P1 000.

(3) An officer of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, who is knowingly a party to the failure referred to in subsection (2) commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

(4) Before registering a change of officers referred to in subsection (3) and any new information or making any correction or alteration to a register, the Registrar may require a trade union, federation of trade unions, employers' organisation or federation of employers' organisations to produce such evidence as is necessary to satisfy the Registrar of the validity of the change, the accuracy of such change or of any new information or the propriety of the proposed correction or alteration.

(5) If, after inquiry, the Registrar is not satisfied of the validity of the change referred to in subsection (1), he or she may refuse to register the change and refer the matter back to a trade union, federation of trade unions, employers' organisation or federation employers' organisations.

Registered
office and
postal address

103. (1) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall have a registered office which shall be its principal office and a postal address at which any communication and notice may be delivered or addressed.

(2) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall immediately submit a notice in writing of any change in the location of the principal office or postal address of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations to the Registrar who shall register the change in place of the existing particulars.

(3) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations that fails to comply with subsection (2) commits an offence and is liable to a fine not exceeding P2 500 and, in the case of a continuing offence, to a further fine of P10 for every day the offence continues, but such fine shall not exceed P1 000.

Notification of
dissolution of
trade unions,
etc. to
Registrar

104. Where a trade union, federation of trade unions, employers' organisation or federation of employers' organisations is dissolved, a notice containing the particulars of the dissolution as may be prescribed —

- (a) in the case of a trade union or employers' organisation, by seven members of the trade union or employers' organisation and the principal officer of such trade union or employers' organisation, or
- (b) in the case of a federation of trade unions or federation of employers' organisations, by the principal officer of each of the trade unions or employers' organisation belonging to the federation of trade unions or the federation of employers' organisation, and the principal officer of the federation of trade unions or federation of employers' organisations, shall, within 14 days immediately after such dissolution, be submitted to the Registrar by the signatories and the Registrar shall register the dissolution if he or she is satisfied that such dissolution has been effected in accordance with the constitution of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations; and the dissolution shall have effect from the date of registration of such dissolution.

Application of
funds of trade
unions, etc.

105. The funds of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall not be expended otherwise than provided by the constitution of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations.

Interdict
to restrain
unauthorised
or unlawful
expenditure of
funds, etc. of
trade unions,
etc.

106. Five or more persons having sufficient interest in the relief sought may apply to the Industrial Court for an interdict to restrain any unauthorised or unlawful expenditure of the funds or use of any property of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations.

107. (1) A trade union, federation of trade union, employers' organisation or federation of employers' organisations shall cause to be kept and maintained, such proper books of account as are necessary to give a true record of its financial position and more particularly with respect to —

Books of
account

- (a) all sums of money received or expended by the trade union, federation of trade unions, employers' organisation or federation of employers' organisations and the matters in respect of which such receipt or expenditure takes place; and
- (b) the assets and liabilities of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations.

(2) The books of account required to be kept and maintained under subsection (1) shall be kept and maintained by the trade union, federation of trade unions, employers' organisation or federation of employers' organisations at its principal office or at such other place in Botswana as its executive committee thinks fit, and shall be open at all reasonable times to inspection by members of the executive committee.

(3) An officer of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations who fails to take every reasonable step available to him or her to secure compliance by the trade union, federation of trade unions, employers' organisation or federation of employers' organisations with this section or has, by his or her own wilful act, been the cause of any failure by such trade union, federation of trade unions, employers' organisation or federation of employers' organisations to comply with this section commits an offence and is liable to a penalty not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both:

Provided that person shall not be sentenced to imprisonment under this section unless the court is satisfied that the offence was committed wilfully.

108. (1) The principal treasurer of a trade union or employers' organisation shall, not later than 18 months immediately after the registration of the trade union or employers' organisation and subsequently in every financial year, prepare and prominently exhibit at the principal office of such trade union or employers' organisation and send to every branch of the trade union or employers' organisation, for the exhibition at the branch's principal office, and submit to the Registrar, a balance sheet in such form as the Minister may prescribe giving a true record of the state of the financial affairs of such trade union or employers' organisation at the end of every preceding financial year.

Circulation,
furnishing and
auditing of
accounts

(2) Subsection (1) shall, with the necessary modifications, apply to the principal treasurer of a federation of trade unions or federation of employers' organisations.

(3) A treasurer of a trade union or employers' organisation and every other officer of the trade union or employers' organisation who is responsible for its accounts or for the collection, disbursement, custody or

control of any of its funds or moneys shall, upon resigning or otherwise vacating his or her office or by a resolution passed by a general meeting of such trade union or employers' organisation, furnish the members of the trade union or employers' organisation and the Registrar with a just and true account of all moneys received or disbursed by him or her during the period that has elapsed since the date of his or her last assumption of office as a treasurer or such other period as the general meeting may specify.

(4) A treasurer or any other officer furnishing an account in terms of subsection (3), shall include in the account, the balance of any moneys remaining in his or her hands and of all bonds, securities and other property of the trade union or employers' organisation entrusted to his or her possession or custody or otherwise under his or her control.

(5) Subsections (3) and (4) shall, with the necessary modifications, apply to every treasurer and every other officer of a federation of trade unions or federation of employers' organisations as if any reference to a general meeting was a reference to a meeting of the body in which the ultimate authority of the federation is vested.

(6) Every balance sheet prepared in accordance with subsection (1) and every account referred to in subsection (3) shall be audited at the expense of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations by an auditor approved by an independent and impartial auditing body and, for these purposes, the auditor shall have and be given free access to all books and other documents relating to the accounts of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations.

(7) After the auditing of an account referred to in subsection (3), the treasurer or other officer concerned of a trade union, federation of trade unions or employers' organisation shall immediately hand over to the trustees of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations such balance as is due from him or her of all bonds, securities, effects, books, documents and other property of such trade union, federation of trade unions, employers' organisation or federation of employers' organisations in his or her possession or custody or otherwise under his or her control:

Provided that, in the case of an employers' organisation that has no trustees in whom all its property is vested, the bonds, securities, effects, books, documents and other property of the employers' organisation shall be handed over to the executive committee of such employers' organisation.

(8) A person who obstructs or in any other manner whatsoever hinders an auditor in carrying out his or her functions in terms of subsection (6) and any person who fails to comply with this section commits an offence and is liable to a penalty not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

109. (1) A trade union, federation of trade unions, employers' organisations or federation of employers' organisations shall submit a copy of the balance sheet prepared and audited in accordance with section 108 together with a copy of the auditor's report to the Registrar on or before a set date in every financial year.

(2) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations shall, in addition to submission of the annual returns in terms of subsection (1), submit to the Registrar —

- (a) a copy of the constitution of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations at the end of the preceding financial year;
- (b) a copy of all amendments to the constitution of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations and a written statement setting out all changes in its officers made during the preceding financial year; and
- (c) at the end of the preceding year, a written statement setting out, in the case of —
 - (i) a trade union, the number of its members,
 - (ii) federation of trade unions or federation of employers' organisations, the name and registered postal address of each of the trade unions belonging to the federation of trade unions or federation of employers' organisations, or
 - (iii) employers' organisation, the name and postal address of each of its members.

(3) A trade union, federation of trade unions, employers' organisation or federation of employers' organisations that fails to comply with subsection (1) or (2) and every officer of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations who is knowingly a party to the failure commits an offence and is liable to a penalty not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both.

(4) A person who makes or causes to be made any entry in a document, with which the Registrar is required to be furnished in accordance with this section, that he or she knows to be false or does not believe to be true or omits or causes to be omitted from any such document any fact which he or she knows or suspects to be a material fact commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both.

110. (1) The books of accounts of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations, together with a list of its members shall, as may be prescribed, be open for inspection by any officer or member of the trade union or employers' organisation or of a trade union belonging to the federation of trade unions or an employers' organisation belonging to a federation of employers' organisations, at such times as shall be provided by the constitution of such trade union, federation of trade unions, employers' organisation or federation of employers' organisations.

Interdict
against
officers of
trade unions,
etc.

(2) If any inspection to which a person is entitled in terms of this section is refused or unreasonably delayed, every officer of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations in question who is knowingly a party to the refusal or delay commits an offence and is liable to a fine not exceeding P2 500 and, in the case of a continuing offence, to a further fine of P10 for every day the offence continues, but such fine shall not exceed P1 000.

111. (1) A member of, a trade union, an employers' organisation or a trade union belonging to a federation of trade unions or an employers' organisation belonging to a federation of employers' organisations, may apply to the Industrial Court for an interdict to prohibit an officer of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations from holding office in or controlling the funds of such trade union, federation of trade unions, employers' organisation or federation of employers' organisations.

(2) Where, on an application under this section, the Industrial Court is satisfied that there is a prima facie case against the officer in question for fraudulent misuse of the funds of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations or that such officer is disqualified from holding office in such trade union, federation of trade unions, employers' organisation or federation of employers' organisations, whether by virtue of this Act or otherwise, the Industrial Court may grant the interdict for which the application is made.

Record of
meetings

112. (1) A trade union and its branch shall cause minutes of all proceedings of general meetings and of meetings of the executive committees of the trade union and its branch to be entered in the books kept and maintained for that purpose and shall retain each book in safe custody for not less than five years immediately after the date of the last entry in such book.

(2) Subsection (1) shall, with the necessary modifications, apply to a federation of trade unions in respect of the proceedings of meetings of the body in which the ultimate authority of the federation is vested and of the federation's executive committee.

(3) Every minutes such as is provided in subsections (1) and (2) shall, if purported to be signed by the person presiding at the meeting at which it was recorded or by the person presiding at the next succeeding meeting of the same body, be prima facie evidence of the facts in such recorded minutes.

(4) Where minutes have been recorded in accordance with this section, the meeting in question shall be deemed, unless the contrary is shown, to have been duly held and convened and all proceedings of the meeting to have been duly taken; and all appointments, elections or dismissals arising from such meeting of officers shall be deemed, unless the contrary is shown, to be valid.

(5) A trade union or its branch or federation of trade unions that fails to comply with this section and every officer of the trade union or federation of trade unions who is knowingly a party to the failure commits an offence and is liable to a penalty not exceeding P10 000 or to imprisonment not exceeding two years, or to both.

113. (1) Subject to the provisions of this Act, any two or more trade unions may, in accordance with their respective constitutions, amalgamate as one trade union with or without the dissolution of their funds, or form a federation of trade unions.

Amalgamations
and federations
of trade unions

(2) The trade unions that have formed an amalgamation in terms of subsection (1) shall, in writing, inform the Registrar of such amalgamation within 14 days of its formation.

114. (1) Sections 80 to 87 shall, with the necessary modifications, apply to the registration of an amalgamation or proposed amalgamation of trade unions.

Registration of
amalgamation
of trade unions

(2) The trade unions forming an amalgamation shall apply to the Registrar for the registration of the proposed amalgamation in accordance with section 81.

(3) If the Registrar is satisfied that the requirements for registration under section 82 are complied with and that the proposed amalgamation of the trade unions is entitled to registration under this Act, he or she shall register the proposed amalgamation and the amalgamated trade unions shall be deemed to be registered as a trade union in accordance with this Act and have effect from the date of such registration.

(4) Where any person is aggrieved by the refusal of the Registrar to register a proposed amalgamation of trade unions, that person may appeal against the refusal to the Industrial Court and the provisions of section 88 shall, with the necessary modifications, apply to the appeal.

115. An amalgamation in terms of sections 113 and 114 shall not prejudice any right of either or any of the trade unions, or any right of a creditor of either or any of such trade unions.

Amalgamation
not to prejudice
rights of trade
unions

116. (1) Where, on a complaint made by, a member of a trade union, a member of a trade union belonging to a federation of trade unions, a member of an employers' organisation or a member belonging to a federation of employers' organisations or the Registrar, it is shown to the satisfaction of the Industrial Court that a person has —

Penalty for
misuse of
money or
other property

- (a) in his or her possession or control, any property of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations otherwise than in accordance with its constitution; or
- (b) unlawfully expended or withheld any money of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations, the Industrial Court may, if it considers that the justice of the case so requires, order that person to deliver all such property or pay the money so unlawfully expended or withheld to the trustees of such trade union, federation of trade unions,

employers' organisation or federation of employers' organisations, if such trustees exists, and if not, to the executive committee of the employers' organisation.

(2) A complaint under subsection (1), not being a complaint made by the Registrar, shall not be considered unless the Industrial Court is satisfied that the complainant is or was, on the date of the complaint, a member of a trade union or employers' organisation or an officer or member of a trade union or employers' organisation that belongs or belonged, on that date, to a federation of trade unions or federation of employers' organisations, in respect of whose money or other property the complaint is made.

(3) A person to whom an order under subsection (1) is addressed who fails to comply with the order within such time as shall be specified in such order commits an offence and is liable to a penalty not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

Penalty for
false entries in
documents

117. A person who makes or causes to be made any entry in a document required by or for the purposes of this Act that he or she knows to be false or does not believe to be true in a material particular or omits or causes to be omitted from any such document any fact which he or she knows or suspects to be a material fact commits an offence and is liable to a penalty not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

Limitation of
prosecutions

118. A prosecution shall not be instituted for an offence under section 275 or for an offence of attempting or conspiring with another person to commit such offence unless the prosecution is instituted by or at the instance of or with the consent in writing of the Director of Public Prosecutions:

Provided that a person may be arrested for and charged with the offence and remanded in custody or on bail notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for such offence has not been obtained; but no further or other proceedings shall be taken unless that consent has been obtained.

Receipt of
funds

119. (1) A trade union, federation of the trade unions or employers' organisation may, subject to the provisions of any other law, accept funds originating from outside Botswana.

(2) For purposes of this section, "funds" includes all donations, loans or other assistance having pecuniary value, other than air, road or sea passages, or scholarships.

Service of
legal process

120. Every summons, notice or document required to be served on a trade union, federation of trade unions or employers' organisation in any civil or criminal proceedings shall be deemed, for the purposes or those proceedings, to be duly served if it is delivered at its principal office or posted to its registered postal address or served personally on its president, principal secretary or treasurer or any other of its officers, in so far as that service is otherwise in compliance with the requirements of any other law relating to the service of documents.

121. The Registrar shall, by Notice published in the *Gazette*, notify every —

Certain facts
to be notified
in *Gazette*

- (a) registration of a trade union, federation of trade unions, employers' organisation or federation employers' organisations under this Act or refusal of such registration;
- (b) cancellation of the registration of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations under this Act;
- (c) registration of a change of name by a trade union, federation of trade unions, employers' organisation or federation of employers' organisations;
- (d) registration of a proposed amalgamation of trade unions under this Act or refusal of such registration; and
- (e) dissolution of a trade union, federation of trade unions, employers' organisation or federation of employers' organisations.

122. The Minister may, on the advice of the Council, make regulations for the better carrying into effect of the purposes and provisions of this Part and, without prejudice to the generality of the foregoing, such regulations may provide for —

Power of
Minister
to make
regulations

- (a) the fees payable in connection with any registration under this Part;
- (b) the hours during which and the conditions subject to which documents in the custody of the Registrar shall be open to inspection by members of the public and the fees to be paid in respect of the inspection;
- (c) the basic agreements and arrangements in respect of the system commonly known as "check-off" and the subscriptions to a trade union, federation of trade unions and employers' organisation; and
- (d) any other matter connected with or incidental to the matters referred to in this section.

123. The Companies Act and the Co-operatives Societies Act shall not apply to a trade union, federation of trade unions, employers' organisation or federation of employers' organisations and the registration of the trade union, federation of trade unions, employers' organisation or federation of employers' organisations under either of the Acts shall be void.

Inapplicability
of certain laws
Cap. 42:04

124. Nothing contained in this Part shall be construed to —

Part XII not
to apply to
certain matters

- (a) apply to any agreement —
 - (i) between partners in relation to their own business,
 - (ii) between an employer and worker in relation to the employment of the worker by the employer, or
 - (iii) in consideration of the sum of the goodwill of a business or of instruction in a profession, trade or handicraft; or
- (b) preclude any trade union, federation of trade unions, employers' organisation or federation of employers' organisations from providing any benefit for its members, or any federation of trade unions or of employers' organisations from providing any benefit for members of a trade union or employers' organisation belonging to the federation of trade unions or of employers' organisations.

PART XIII — *Recruitment, Contracts of Employment and Termination of Employment: Special Contracts for Recruitment including Work outside Botswana*

Application of
Part XIII

125. (1) This Part shall apply to every contract of employment entered into by a person to be recruited for employment in consequence of the person's recruitment which —

- (a) relates to work outside Botswana; or
- (b) falls into a category of contracts of employment prescribed by the Minister for the purposes of this Part.

(2) For purposes of this Part, "contract of employment" means a contract of employment to which this Part applies.

Contracts to
be in writing

126. (1) A contract of employment shall be in writing and a person shall indicate consent to the contract of employment by either signing such contract of employment or affixing to the contract of employment the impression of his or her thumb or finger.

(2) If a contract of employment is not made in writing, the contract of employment shall not be enforceable except during the period of one month immediately after entering into such contract of employment:

Provided that, where the parties to the contract of employment make a note or memorandum in writing setting out the terms of such contract of employment and a party to the contract has indicated his or her consent to the contract of employment, prior to the expiry of the period for which such contract of employment was made, the contract of employment shall be enforceable against that party notwithstanding the expiry of the period of one month immediately after entering into the contract of employment.

(3) If a contract of employment is not made in writing, a worker may apply to the Director of Labour for the cancellation of the contract of employment.

(4) Where, after an application under subsection (3), the Director of Labour is satisfied that the omission to make a contract of employment in writing was due to the wilful act or the negligence of the employer, the Director of Labour may order the cancellation of the contract of employment and after such cancellation, such contract of employment shall cease to be enforceable against the person to be recruited for employment notwithstanding that the period of one month immediately after entering into the contract of employment has not expired.

(5) Where the omission to make a contract of employment in writing was due to the wilful act or the negligence of an employer, the employer commits an offence and is liable to —

- (a) damages for any loss occasioned to such person by virtue of the contract of employment having been made; and
- (b) a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

127. A contract of employment shall, in clear and unambiguous terms, define the rights and obligations of the parties to the contract of employment and, without prejudice to the generality of the foregoing, such contract of employment shall include —

Contents of contracts of employment

- (a) the names of the person to be recruited for employment, the place of engagement or employment, the place of recruitment, and any other necessary details for identification, of such person;
- (b) the names and addresses of the next-of-kin of the person to be recruited for employment;
- (c) the name of the employer or group of employers, and where appropriate, the name of the undertaking and the place of employment;
- (d) the nature of the employment;
- (e) the duration of the employment and the method of calculating that duration;
- (f) the appropriate period of notice to be given by the party wishing to terminate the contract of employment;
- (g) the wages and method of calculation of the wages, the manner and periodicity of payment of wages, the advances of wages, if any, and the manner of repayment of any such advances;
- (h) the measures to be taken to provide for the welfare of the person to be recruited for employment and any family members of such person who may accompany the person under the terms of the contract of employment;
- (i) the conditions of repatriation; and
- (j) any special conditions of the contract of employment.

128. A child shall not be capable of entering into a contract of employment under this Part.

Capacity to enter into contracts of employment

129. (1) A person commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years, or to both, if that person —

Offence to induce persons to engage in employment outside Botswana

- (a) induces or attempts to induce another person to engage in employment outside Botswana with a view to being employed, or if that other person is already employed, continue his or her employment outside Botswana, without a contract of employment made and dealt with in accordance with this Part; or
- (b) knowingly aids in the engagement or transfer of any person so induced by forwarding or conveying the person, by advancing money or by any other means whatsoever.

(2) Subsection (1) shall apply in addition to and not in derogation from the provisions of the Anti-Human Trafficking Act.

Cap. 08:09

130. (1) The Director of Employment Services may keep and maintain a register of citizens recruited to work outside Botswana for the purposes of monitoring and analysing the trends; and to assist with the contacting of citizens outside Botswana in the circumstances relating to natural disaster, civil unrest or family emergency.

Registration of citizens recruited to work outside Botswana

- (2) The register referred to in subsection (1) may include —
 - (a) the names, qualifications and contact details of the citizens recruited to work outside Botswana; and
 - (b) details of the employer.

PART XIV – Recruitment, Contracts of Employment and Termination of Employment: General Provisions Relating to Recruitment

Application
and objects of
Part XIV

131. (1) This Part shall apply to the recruitment of persons for employment either within or outside Botswana:

Provided that this Part shall not apply to recruitment for employment within Botswana unless such recruitment is undertaken by a person or association engaged in employment services that offer recruitment and placement services.

(2) The objects of this Part shall be to ensure that a recruitment accords with the principles that —

- (a) recruitment occurs in a manner that respects relevant laws and international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation;
- (b) recruitment responds to labour market needs, and does not displace or diminish an existing workforce or to lower international labour standards, wages or working conditions, or to otherwise undermine decent work;
- (c) legislation and any policy on employment and recruitment apply to all persons to be recruited for employment, labour recruiters and employers;
- (d) regulation of any recruitment activity, including licensing and enforcement, is effective and transparent and that abusive and fraudulent recruitment methods are prevented, including those that could result in forced labour or trafficking in persons;
- (e) any recruitment fee or related cost is not charged to, or otherwise borne by, any person to be recruited for employment or jobseeker;
- (f) the terms and conditions of employment are specified in an appropriate, verifiable and easily understandable manner in accordance with national laws, regulations, employment contracts and applicable collective agreements;
- (g) the freedom of movement within a country or freedom to leave a country is respected and the identity documents of the person to be recruited for employment and contract of employment are not confiscated, destroyed or retained;
- (h) a person to be recruited for employment, irrespective of the person's legal status, has access to grievance and other dispute resolution mechanisms in cases of alleged breach of the rights of such person in the recruitment process, and effective and appropriate remedies in this regard; and

- (i) in the case of recruitment that results in contractual arrangements involving multiple parties, the employment agency and any third party determine, in accordance with this Act, which of the parties shall be responsible for the various aspects of the employment relationship.

132. (1) A person shall not be engaged in a recruitment unless he or she is a holder of a valid licence to recruit, issued under this Part.

Prohibition of recruitment except under licence

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P15 000 or to imprisonment for a term not exceeding two and half years, or to both.

133. (1) A person may, in the manner and form, and upon payment of a fee, to be prescribed, apply to the Director of Employment Services for a licence to recruit a worker for employment under this Part.

Application and issuance of licence to recruit

(2) The Director of Employment Services may, upon receipt of an application referred to in subsection (1) consider —

- (a) the possible effects of the withdrawal of a person to be recruited for employment on the health, welfare and development of the local population concerned;
- (b) whether adequate provision has been made for safeguarding the health and welfare of a person to be recruited for employment; and
- (c) whether the applicant is a fit and proper person to hold a licence to recruit and is in a position to fulfil his or her obligations under the licence.

(3) The Director of Employment Services may, upon considering the requirements referred to in subsection (1), issue a licence to recruit in the prescribed form, where the applicant has complied with such requirements.

(4) A licence to recruit shall be valid for 12 months unless previously revoked, cancelled or suspended, during such period.

(5) A licence to recruit shall be subject to the condition as may be specified in the licence.

(6) Without prejudice to the generality of subsection (5), the Director of Employment Services may, for the purpose of safeguarding the population of any area likely to be adversely affected by the withdrawal of a person to be recruited for employment, after the recruitment of that person under this Part, or for any other justifiable reason, specify in the licence, conditions as to the —

- (a) restriction of the number of persons which may be recruited for employment in any area;
- (b) closing of any area to the recruitment; or
- (c) employment of persons recruited in a particular area within a specified area.

(7) A holder of a licence to recruit who fails to comply with any condition specified in the licence commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

Appeal against refusal to issue licence to recruit	(8) The Minister may prescribe for the transfer, renewal, revocation, cancellation or suspension of a licence to recruit. 134. (1) An applicant for a licence to recruit who is aggrieved by a decision of the Director of Employment Services to refuse to issue the licence, or by a condition imposed on such licence, may appeal against that decision by way of an application to the Industrial Court. (2) An appeal under subsection (1) shall be in writing and shall be lodged within 30 days immediately after the day on which the decision complained of was communicated to the applicant. (3) The Industrial Court may, in the case of an appeal against a decision to — - refuse to issue a licence to recruit, either dismiss the appeal or allow the appeal, in which last case the Industrial Court may refer the application back to the Director of Employment Services to reconsider, or may require the Director of Employment Services to issue the licence to the applicant; or - specify any condition in a licence to recruit, either dismiss the appeal or allow the appeal, either wholly or in part, and may refer the matter back to the Director Employment Services with directions, or may rescind the condition or vary its terms accordingly, in which last case the condition as so varied shall be deemed, for the purposes of this section, to have been specified in the licence by the Director of Employment Services.
Prohibition of assisting in recruitment without permit	135. (1) A person shall not assist a recruiter in the recruitment of a person for employment and a recruiter shall not employ any person to assist him or her in such recruitment unless that person is a holder of a permit to recruit issued to him or her under this Part. (2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.
Application and issuance of permit to recruit	136. (1) A person may, in the manner and form, and upon payment of a fee, to be prescribed, apply to the Director of Employment Services for a permit to recruit any person for employment under this Part. (2) The Director of Employment Services may, after receipt of an application referred to in subsection (1), issue a permit to recruit in the prescribed form, subject to the provisions of this Act and to the conditions as the Director of Employment Services may specify in the permit. (3) The Director of Employment Services shall issue a permit to recruit in terms of subsection (2) where the Director of Employment Services has satisfied himself or herself that the applicant — - is a fit and proper person to be issued with the permit; and - is in a position to fulfil his or her obligations under the permit. (4) A permit to recruit shall be valid for 12 months unless previously revoked, cancelled or suspended, during such period.

(5) A holder of a permit to recruit who fails to comply with any condition specified in the permit commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

(6) Subject to any general or special directions the Director of Employment Services may be given by the Minister in consultation with the Council, and without prejudice to the generality of subsection (3), the Director of Employment Services may specify as a condition of a permit to recruit that the holder of the permit shall not receive from the recruiter for his or her services, remuneration calculated at a rate per person recruited for employment; or where the Director of Employment Services permits such remuneration, he or she shall specify in the permit a condition that such remuneration shall not exceed such amount per such person as shall be specified.

(7) A recruiter shall, on being required to do so by a labour officer, tender the recruiter's licence to recruit to the labour officer for entry in the records of such labour officer, of the name of every person in the employment of such recruiter who is a holder of a permit to recruit issued under this Part.

(8) The Minister may prescribe for the transfer, renewal, revocation, cancellation or suspension of a permit to recruit.

137. (1) An applicant for a permit to recruit referred to in section 136, who is aggrieved by a decision of the Director of Employment Services to refuse to issue the permit, or by a condition imposed on such permit, may appeal against that decision to the Minister.

Appeal against
refusal to
issue permit to
recruit

(2) An appeal under subsection (1) shall be in writing and shall be lodged within 30 days immediately after the day on which the decision complained of was communicated to the applicant.

(3) The Minister may, in the case of an appeal against a decision to —

- (a) refuse to issue a permit to recruit, either dismiss the appeal or allow the appeal, in which last case the Minister may refer the application back to the Director of Employment Services to reconsider, or may require the Director of Employment Services to issue the permit to the applicant; or
- (b) specify any condition in a permit to recruit, either dismiss the appeal or allow the appeal, either wholly or in part, and may refer the matter back to the Director of Employment Services with directions, or may rescind the condition or vary its terms accordingly, in which last case the condition as so varied shall be deemed, for the purposes of this section, to have been specified in the permit by the Director of Employment Services.

(4) A person who is aggrieved by the decision of the Minister in this section may appeal against such decision to the High Court, within 30 days from the date the decision was made.

Power of
Director of
Employment
Services
to take
security from
applicants

138. The Director of Employment Services may, before issuing a licence to recruit or a permit to recruit, require an applicant to execute a bond in the prescribed form for such amount as the Director of Employment Services may consider reasonable for the due observance and fulfilment of any condition which may be specified in the licence or permit and for the due observance of this Act.

Power of
Director of
Employment
Services
to cancel
or suspend
licence or
permit to
recruit

139. (1) The Director of Employment Services may —

- (a) cancel a licence or permit to recruit, where the holder of the licence or permit has committed an offence under this Act, or such holder is found to have committed misconduct rendering him or her unfit to engage in recruitment; or
- (b) suspend a licence or permit to recruit, pending the result of any enquiry by the Director of Employment Services into the fitness of the holder of the licence or permit to continue to hold such licence or permit.

(2) A person aggrieved by a decision of the Director of Employment Services to cancel or suspend a licence or permit to recruit may appeal against that decision to the Minister.

(3) An appeal under this section shall be in writing and shall be delivered to the Minister not later than 30 days immediately after the day on which the decision complained of was communicated to the applicant.

(4) The Minister may consider an appeal made to him or her under this section and may either dismiss the appeal or allow the appeal, and set aside the cancellation or suspension, as the case may be.

Renewal of
licence or
permit to
recruit

140. A holder of a licence or permit to recruit may apply to the Director of Employment Services for renewal of the licence or permit, and sections 132 to 137 shall, with the necessary modifications, apply in respect of such application to renew.

Liability
of recruiter
for offences
committed
by recruiter's
staff

141. (1) Where a worker of a recruiter commits an offence under this Act, the recruiter shall be deemed, for purposes of this Act, to also have committed the offence unless such recruiter proves that such offence was committed without the knowledge or consent of the recruiter.

(2) Where a recruiter is deemed by virtue of subsection (1) to have committed an offence under this Act, the recruiter may be prosecuted for the offence either alone or jointly with a worker who is alleged to have committed such offence.

Recruitment
of non-citizens

142. (1) An employer shall, before recruiting a non-citizen, ensure that there is no citizen with suitable skills to fill a vacancy.

Cap. 57:04

(2) The Director of Employment Services shall require an employer and a recruiter to request the Human Resources Development Council, established under the Human Resources Development Council Act, for information relating to the labour market before advertising and recruiting a non-citizen.

Cap. 25:02

(3) An employer shall comply with the provisions of the Immigration Act when recruiting a non-citizen.

(4) A person who fails to comply with this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two months, or to both.

143. (1) Subject to the provisions of this Act, a person shall not recruit a child.

Prohibition of recruitment of children

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both.

144. (1) A member of the family of a person recruited for employment shall not be treated as if the member of the family has been recruited solely by the reason of the recruitment of that other person.

Families of recruited workers

(2) Where the spouse or child of a recruited person has been authorised by an employer to accompany or follow the recruited person to, and to remain with such recruited person at the place of employment, the spouse or child shall not be separated from the recruited person except with that person's express consent.

(3) The authorisation by the employer of the spouse or child of a recruited person to accompany or follow the recruited person to the place of employment shall be deemed, for the purposes of this section, to be an authorisation to remain with such recruited person at the place of employment for the full duration of his or her term of employment:

Provided that this subsection shall not apply where the recruited person has entered into an agreement to the contrary before his or her departure from the place of recruitment.

(4) A person who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

145. (1) A public officer shall not —

Prohibition of recruitment by public officers

(a) recruit, either directly or indirectly, for a private undertaking except where the recruited person is to be employed on works of public utility for the execution of which a private undertaking is acting as a contractor for a public authority;

(b) exercise pressure on any person to engage or not to engage for employment; or

(c) receive from any source whatsoever any remuneration or other special inducement for assistance in recruitment.

(2) A person shall not give or offer to give any money or other consideration whatsoever to a public officer for the purpose of obtaining a supply of labour.

(3) A person who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

146. (1) A recruiter shall, at his or her expense provide a recruited person with a reasonable means of transport to the place of engagement or place of employment.

Transport of recruited persons and their families to place of engagement

Transport
of recruited
persons and
their families
in special
circumstances

(2) Subsection (1) shall apply to the members of the family of a recruited person who has been authorised in terms of section 144 to accompany or follow the recruited person to the place of engagement or place of employment.

(3) A recruiter who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

147. (1) Where a recruited person —

- (a) becomes incapacitated through sickness or accident during the journey to the place of recruitment;
- (b) is not engaged after recruitment for any reason beyond the control of the recruited person;
- (c) on arrival at the place of employment is not employed for any reason beyond the control of the recruited person or is found on medical examination to be physically unfit to perform the work contemplated by the contract of employment; or
- (d) after arrival at the place of employment is found after due enquiry by a labour officer to have been recruited by misrepresentation or mistake, the employer shall, at his or her expense, provide such recruited person and his or her family members with a reasonable means of transport to the place of recruitment.

(2) Where a recruited person dies during the journey to the place of recruitment or during the period of his or her employment, the employer shall, at his or her expense, provide the family of the recruited person with a reasonable means of transport to the place of recruitment and pay the reasonable expenses of a burial.

(3) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

Supply of
necessities
during journey
to place of
engagement or
employment

148. (1) A recruiter who is required under this Act to provide transport for a recruited person or the recruited person's family during a journey to the place of engagement or place of employment shall provide such recruited person or his or her family with adequate necessities for their welfare during the journey at the recruiter's expense and, without prejudice to the generality of the foregoing, shall —

- (a) where it is necessary to break the journey for the night, supply them, except in the case of an unforeseeable stoppage, with suitable housing and sanitary accommodation;
- (b) obtain for them, when required, such medical attention as is reasonably procurable; and
- (c) where the Director of Employment Services so requires, cause them to be accompanied by an authorised worker of the recruiter or the employer, as the case may be.

(2) A recruiter who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

149. The Minister may make Regulations to —

Regulations
in connection
with
recruitment
for economic
development
schemes

- (a) provide for measures to be taken in any area within which a scheme of economic development which is likely to involve recruitment is to be applied to —
 - (i) avoid the risk of pressure being brought to bear on the residents of the area by or on behalf of any employer in order to obtain the labour required,
 - (ii) ensure that, as far as possible, the political and social organisation of such residents and their powers of adjustment to the changed economic conditions will not be endangered by the demand for labour, and
 - (iii) deal with any other possible untoward effects of such development on such residents;
- (b) provide for the records to be kept and maintained, and the returns to be rendered by employers and recruiters in connection with a recruitment;
- (c) provide for the housing accommodation and the transport, feeding, medical and other arrangements to be made available where a recruited person and his or her family are carried to and from the place of employment;
- (d) require a recruited person to be medically examined;
- (e) provide measures to be taken for the acclimatisation of a recruited person and the protection from and immunisation against disease of the recruited person and his or her family travelling with the recruited person;
- (f) regulate recruitment for service outside Botswana and the travel arrangements from Botswana of a person so recruited;
- (g) provide for the repatriation of a recruited person who become unfit or whose services are not required and of his or her family;
- (h) prohibit the employment of a recruited person in any prescribed industry, business or undertaking;
- (i) restrict the amounts which may be paid to a recruited person in respect of advances of wages and regulate the conditions under which such advances may be made; and
- (j) provide for the regulation of vehicle loading and for the proper cleanliness and disinfestation of a vehicle.

PART XV — Recruitment, Contracts of Employment and Termination of Employment: Contracts of Employment

150. (1) Subject to Part XIII, a contract of employment may be oral or in writing, expressed or implied.

Oral and
written
contracts of
employment

(2) Unless otherwise stated, this Part shall apply to every contract of employment.

Presumption
of
employment

151. A person who works for or renders a service to any other person shall, unless it can be shown that the other person is a client or customer of a business genuinely carried on by the worker, be presumed to be a worker of that other person, regardless of the form of the contract or the designation of the person, if any one or more of the following factors is present —

- (a) the manner in which such person works is subject to the control or direction of that other person;
- (b) the person's hours of work are subject to the control or direction of that other person;
- (c) in the case of a person who works for an organisation, the person's work forms an integral part of the organisation;
- (d) the person has worked for that other person for an average of at least 40 hours per month over a period of three months or more than three months;
- (e) the person is economically dependent on the other person for whom that person works or renders a service;
- (f) the person is provided with tools of trade or work equipment by that other person; or
- (g) the person only works for or renders a service to that other person.

Contracts of
employment

152. A contract of employment may include a —

- (a) contract of employment for an unspecified period or a permanent contract, or a temporary employment on a fixed-term contract of employment;
- (b) full-time or a part-time contract of employment; or
- (c) casual contract;

Provided that a person may be employed under a contract of apprenticeship.

Presumption
related
to casual
employment

153. Subject to the provisions of this Act, a person on a casual contract by the same employer and who works on average for more than 22 and a half hours in a month for a period of 12 months shall be deemed to be employed on an indefinite basis.

Duty of
employer to
keep register
of casual
workers

154. (1) An employer who employs a casual worker shall keep and maintain a register of the casual worker in such manner as may be prescribed.

(2) An employer shall —

- (a) keep and maintain a register in pursuance of this section in safe custody until the expiry of two years immediately after the date of the last entry in the register; and
- (b) immediately make it available for inspection by a labour officer or a labour inspector on being required to do so by the labour officer or the labour inspector.

(3) Where an employer winds up any undertaking, business or enterprise of whatever kind in which a casual worker has been engaged, the employer shall immediately deposit a register kept and maintained by such employer

in pursuance of this section in relation to that undertaking, business or enterprise with the Director of Labour.

(4) An employer who fails to comply with this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

155. (1) An employer may require a newly appointed worker, whether a contract of employment is for a fixed term or for an unspecified period, to serve a probation not exceeding a period of six months before the appointment of the worker is confirmed, in order to give such employer an opportunity to evaluate the performance of such worker before confirming the appointment of the worker.

Contracts of employment incorporating period of probation

(2) A period of probation shall be determined —

- (a) in advance and be of a reasonable duration, and shall not exceed a period of six months; and
- (b) with reference to the nature of the work and the time it takes to determine the suitability of a newly appointed worker for continued employment.

(3) An employer shall, before entering into a contract of employment with a newly appointed worker, inform the worker in writing, which may be included in a letter of offer, that a probationary period shall apply and specify the length of the probationary period.

(4) An employer shall, during a probationary period, assess the performance of a person on probation and shall —

- (a) advise the person of any aspect in which the employer considers such person to be failing to meet the required performance standards; and
- (b) give the person reasonable evaluation, instruction, training, guidance or counselling in order to assist such person to meet the required performance standards.

(5) Where an employer has complied with subsection (4), and has invited a person on probation to make representations, the employer may terminate the contract of employment within the probationary period if such employer is satisfied that the person on probation is not qualified to perform the work, and the employer shall give notice to such person, or alternatively pay the person in lieu of the notice.

(6) Where an employer has not confirmed the appointment of a worker, and has not informed the worker of his or her reason to not confirm the appointment of such worker, the appointment of the worker shall be deemed to have been confirmed.

156. (1) A part-time worker shall have the right not to be treated by an employer, less favourably than the employer treats a comparable full-time worker as regards the terms of the contract of employment between such employer and the part-time worker, or subject such part-time worker to any other detriment by any act, or deliberate failure to act, by the employer.

Part-time and fixed-term contracts of employment to not be less favourable

(2) The right conferred by subsection (1) shall apply only if the treatment is not justified on objective grounds.

(3) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker, a *pro rata* principle shall be applied unless the principle is inapplicable.

(4) For purposes of subsection (3), "*pro rata* principle" means that where a comparable full-time worker receives or is entitled to receive pay or any other benefit, a part-time worker shall receive or be entitled to receive not less than the proportion of that pay or other benefit that the number of his or her weekly hours bears to the number of weekly hours of the comparable full-time worker.

(5) A fixed-term worker shall have the right not to be treated, by an employer, less favourably than the employer treats a comparable permanent worker as regards the terms of the contract of employment between such employer and the fixed-term worker, or subject such fixed-term worker to any other detriment by any act, or deliberate failure to act, by the employer.

(6) Subject to subsections (7) and (8), the right conferred by subsection (5) includes in particular the right of a fixed-term worker in question not to be treated less favourably than the employer treats a comparable permanent worker in relation to —

- (a) any period of service qualification relating to any particular condition of service;
- (b) the opportunity to receive training; or
- (c) the opportunity to secure any permanent position in the establishment.

(7) In determining whether a fixed-term worker has been treated less favourably than a comparable permanent worker, a *pro rata* principle shall be applied unless the principle is inapplicable.

(8) For purposes of subsection (7), a "*pro rata* principle" means that where a comparable permanent worker receives or is entitled to pay or any other benefit, a fixed-term worker shall receive or be entitled to such proportion of that pay or other benefit as is reasonable in the circumstances having regard to the length of his or her contract of employment and to the terms on which the pay or other benefit is offered.

(9) Notwithstanding subsections (1) to (8) —

- (a) where a part-time worker or a fixed-term worker is treated by an employer less favourably than the employer treats a comparable full-time worker or permanent worker as regards any term of his or her contract of employment, the treatment in question shall be regarded as justified on objective grounds if the terms of the fixed-term worker's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent worker's contract of employment; and
- (b) any differential treatment between a fixed-term worker and part-time worker compared to a permanent worker may be justified on objective grounds such as —

- (i) seniority,
- (ii) experience or length of service,
- (iii) quality or quantity of work performed, or
- (iv) any other criteria of a similar nature.

157. (1) An employer may not employ a worker on a fixed-term contract of employment or a successive fixed-term contracts of employment for longer than 12 months of employment unless the —

Presumption
of indefinite
employment

- (a) nature of the work for which the worker is employed is of a limited or definite duration; or
 - (b) employer can demonstrate any other justifiable reason for fixing the term of the contract of employment.
- (2) Without limiting the generality of subsection (1), the conclusion of a fixed-term contract of employment shall be justified if a worker —
- (a) is replacing another person who is temporarily absent from work;
 - (b) is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
 - (c) is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
 - (d) is employed to work exclusively on a specific project that has a limited or defined duration;
 - (e) is employed to perform seasonal work;
 - (f) is employed in a position which is funded by an external source for a limited period; or
 - (g) has reached the normal or agreed retirement age applicable in the employer's business.
- (3) Any employment in terms of a fixed-term contract of employment concluded or renewed in contravention of this section is deemed to be of indefinite duration.
- (4) An offer to employ a worker on a fixed-term contract or employment or to renew or extend a fixed-term contract of employment, shall —

- (a) be in writing; and
 - (b) state the reasons provided in subsection (1).
- (5) An employer shall, if it is relevant in any proceedings, prove that there was a justifiable reason for fixing the term of a contract of employment as provided in this section and that the term was agreed upon between an employer and a worker.

158. (1) An employer shall, unless a worker repudiates a contract of employment, or without default on the part of the employer, performance is impossible, provide the worker with work in accordance with the contract of employment during the period for which the contract of employment is binding on a number of days equal to the number of working days provided for, either expressly or by implication, in the contract of employment.

Duty of
employer to
provide work

Breach of contracts of employment	(2) An employer who fails to provide work in accordance with subsection (1) shall pay a worker, in respect of every day on which the employer so fails, wages at the same rate as if the worker had performed a full day's work, whether such worker is or is not released from the workplace.
Liability following certain breaches of contract of employment and related offences	159. (1) An employer shall be deemed to be in breach of a contract of employment if the employer fails to pay basic pay or wages in accordance with the provisions of this Act or any other applicable law. (2) A worker shall be deemed to be in breach of a contract of employment if the worker is absent from work without the consent of an employer unless such worker has reasonable cause for such absence, and as soon as it is reasonably practicable to do so, informs the employer of that cause. 160. (1) Subject to any agreement in the contrary, a party in breach of a employment whereby or as a direct result of which contracts of employment under the contract of employment ceases shall be liable to pay to the other party, a sum equal to the amount he or she would have been liable to pay to the other party in order to terminate the contract of employment in accordance with section 168 as may be applicable. (2) A person who directly or indirectly, either by himself or herself or by an agent commits an offence is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both, if that person — (a) induces or attempts to induce a worker to leave his or her employment under circumstances which amount or would amount to a breach of his or her contract of employment, or of this Act; (b) knowingly engages or employs a worker who has unlawfully left his or her employment; or (c) without the permission of an employer, enters upon the premises of the employer with the intent to induce or attempt to induce a worker to leave his or her employment with that employer, whether before or after the completion of the worker's contract of employment with that employer.
Social protection contribution for cases of termination of employment	PART XVI — <i>Recruitment, Contracts of Employment and Termination of Employment: Termination of Employment</i> 161. For purposes of this Part, the Minister may, in consultation with the tripartite, prescribe for the manner in which an employer and a worker may contribute monies towards an agreed method between the employer and the worker, for the payment of such worker's benefits in cases of termination of employment where such employer is unable to make such payment.
Termination of employment	162. (1) For purposes of this Part, "termination of employment" includes a —

- (a) lawful termination of employment under the common law;
- (b) termination by a worker as a result of the employer's continued intolerable employment for the worker;
- (c) failure to renew a fixed-term contract of employment on the same or similar terms if there was a reasonable expectation of renewal;
- (d) failure to allow a worker to resume work after taking a maternity leave granted under this Act or any agreed maternity leave; and
- (e) failure to re-employ a worker if the employer has terminated the employment of a number of workers for the same or similar reasons and has offered to re-employ one or more of them.

(2) Subject to the provisions of this Act, a fixed-term contract of employment shall terminate when the work specified in the contract of employment is completed, or in the case of a contract of employment for a specified period of time, when the period of time for which the contract of employment was made expires.

(3) A contract of employment for an unspecified period of time, other than a contract of employment for a specified piece of work, without reference to time, shall be deemed to run until lawfully terminated in accordance with section 163.

163. (1) An employer shall not unfairly terminate the employment of any person.

Requirements
for lawful
termination

(2) A termination of employment by an employer shall be unfair if the employer fails to prove that the —

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

(3) An employer may not terminate the employment of a person for reasons related to the conduct of that person before providing such person with an opportunity to respond to the allegations unless the employer cannot reasonably be expected to provide the opportunity.

(4) An employer shall comply with the requirements for a fair procedure which shall be that —

- (a) a worker who faces a disciplinary hearing shall be given a reasonable notice of the time and place the employer intends to hold the disciplinary hearing;
- (b) the employer shall inform a worker of the nature of the disciplinary action against the worker;
- (c) a worker shall be given the option to being assisted or represented at the disciplinary hearing by a co-worker chosen by the worker or by a trade union representative;
- (d) the employer shall place sufficient evidence before the disciplinary hearing to prove on a balance of probability that the alleged misconduct has been committed and that it has been committed by a worker so charged;

- (e) a worker shall be entitled to question any witness who gives evidence;
 - (f) a worker shall be entitled to give evidence and to call his or her witnesses;
 - (g) in the event of being found guilty of the alleged misconduct, a worker shall be given a further opportunity to put forward any facts in mitigation before a decision is made;
 - (h) if found guilty and after a penalty has been imposed, a worker shall be informed of his or her right to appeal against such decision; and
 - (i) a disciplinary hearing shall be conducted in good faith.
- (5) An employer may not terminate the employment of a worker for reasons related to capacity, including poor work performance and physical or mental incapacity to perform work, unless the employer has, in the case of —
- (a) poor work performance —
 - (i) notified the worker of a required standard of performance, and
 - (ii) given the worker a fair opportunity to meet the required standard of performance including an opportunity to be heard and to be assisted by a co-worker chosen by such worker or trade union representative; and
 - (b) physical or mental incapacity to perform work —
 - (i) investigated the extent of the incapacity arising from the physical or mental incapacity to perform work, a medical doctor has issued a medical certificate to that effect, and an alternative to termination of employment, including adapting work circumstances of the employment to accommodate the worker's inability to work, and
 - (ii) given the worker an opportunity to respond and to be assisted by a co-worker chosen by such person or trade union representative.
- (6) In deciding whether a termination of employment by an employer is lawful, a mediator, arbitrator or Industrial Court shall take into account any code of good practice provided under this Act or any other law.
- 164.** Notwithstanding anything contained in a contract of employment, an employer shall not terminate the contract of employment on the ground of —
- (a) a worker's membership of a trade union or participation in any activity connected to a trade union outside working hours, or with the consent of the employer, within working hours;
 - (b) a worker seeking office as, or acting or having acted in the capacity of a worker's representative;
 - (c) a worker who, in good faith, makes a complaint or participates in proceedings against the employer involving an alleged violation of any law;

- (d) the pregnancy of a worker, worker's absence on maternity leave or after her return to work, except on grounds unrelated to the pregnancy or birth of a child or nursing;
- (e) a worker's race, tribe, place of origin, social origin, national extraction, political affiliation or opinion, marital status, religion, gender, sexual orientation, colour, creed, health status or disability; or any other ground or reason which does not affect the worker's ability to perform his or her duties under such contract of employment; or
- (f) a worker who refused to work in an unhealthy and unsafe working environment.

165. (1) In any termination of employment for operational requirements, including a retrenchment for economic or technological reasons, an employer shall be required to —

Termination of
employment
for operational
requirements

- (a) give notice in writing of any intention to retrench as soon as such employer contemplates retrenchment;
- (b) disclose all the relevant information on the intended retrenchment to a worker for the purpose of proper consultation with the worker as may be prescribed;
- (c) consult a worker before a contemplated retrenchment or redundancy on —
 - (i) the reasons for the intended retrenchment or redundancy,
 - (ii) any measures to avoid or minimise the intended retrenchment or redundancy, including re-skilling of a worker by the employer, and any other measures as may be prescribed,
 - (iii) the method of selection of the workers to be retrenched or redundant,
 - (iv) the timing of the retrenchment or redundancy, and
 - (v) the retrenchment package in respect of the retrenchment or redundancy as may be prescribed; and
- (d) give notice, make a disclosure and consult, in terms of paragraphs (a) to (c), with any —
 - (i) trade union recognised in terms of a collective agreement,
 - (ii) trade union with members in the workplace not represented by a recognised trade union; and
 - (iii) worker not represented by a recognised trade union.

(2) An employer shall ensure that a method of selection of the workers to be retrenched chosen by the employer shall be a fair method, and where reasonably practicable, be in accordance with the principle commonly known as first-in-last-out.

Provided that in so doing such employer shall take into account the —

- (a) need for the efficient operation of the undertaking in question, and
- (b) ability, experience, skill and occupational qualification of each worker concerned.

(3) Where in the consultation held in terms of subsection (1), an agreement is not reached between the parties, the matter shall be referred to mediation in accordance with the provisions of this Act.

(4) Without prejudice to the other provisions of this Part in relation to the giving of notice, where an employer forms an intention to terminate a contract of employment for the purpose of reducing the size of his or her work force, the employer shall give a written notice in the manner to be prescribed of that intention to the Director of Labour and to every worker to be or likely to be directly affected by the termination of employment.

(5) The Director of Labour shall, upon receipt of a notice referred to in subsection (1), in consultation with an employer and a worker concerned, set measures to be taken by the employer to —

- (a) avert the termination of a contract of employment of the worker; and
- (b) mitigate the adverse effects of the termination of a contract of employment of worker.

(6) Where an employer is unable to avert, or mitigate the adverse effects, of the termination of a contract of employment of a worker, and the consultation referred to in subsection (5) results in the retrenchment of the worker in terms of this section, the employer and the worker shall negotiate a separation package above the minimum package prescribed.

(7) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

166. (1) If a contract of employment is terminated by either party on notice, the period of notice shall be not less than —

- (a) seven days, if the worker is paid on a daily or weekly basis; or
- (b) one month, if the worker is paid on a monthly basis.

(2) An agreement may provide for a period of notice that is longer than that required in subsection (1):

Provided that the period of notice shall be of equal duration for both an employer and a worker.

(3) A notice of termination of employment shall be in writing, stating the —

- (a) reasons for the termination of employment; and
- (b) date on which the notice is given, which shall be a working day, and except where wages are payable in respect of any period not exceeding a week, that day shall be included in the period of notice:

Provided that, notwithstanding anything to the contrary contained in a contract of employment, notice of intention to terminate the contract of employment may be given orally by either party if he or she is illiterate.

(4) A notice of termination shall not be given —

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

(5) Where a worker refuses to work during the period of notice under this section, an employer may deduct, from any money due to the worker on termination of employment, the amount that would have been due to such worker if the worker had worked during the period of notice.

(6) Nothing in this section shall affect the right of —

(a) a worker to dispute the lawfulness or fairness of a termination of employment under this Act or any other labour law; or

(b) an employer or a worker to terminate employment without notice for any cause recognised by this Act or any other labour law.

(7) Nothing in this section shall prohibit either party to a contract of employment from waiving his or her entitlement to notice of termination of employment in any particular case.

167. Notwithstanding section 166, either party to a contract of employment which may be terminated by notice of the termination to the other party, may —

Payment
instead of
notice of
termination

(a) terminate the contract of employment without giving such notice, by paying to the other party a sum equal to the amount of basic pay which would otherwise have accrued to the worker during the minimum lawful period of the notice; or

(b) where such notice has already been given, whether the period of the notice is the appropriate minimum lawful period or a longer period, terminate the contract of employment, without waiting for the expiry of the period of the notice, by paying to the other party a sum equal to the amount of basic pay which would otherwise have accrued to the worker during the balance of the period of notice.

168. (1) Notwithstanding sections 166 and 167, an employer may terminate a contract of employment without notice of the termination, where the worker has committed serious misconduct in the course of his or her employment:

Termination of
employment
without notice
of
termination

Provided that the employer shall be deemed to have waived his or her right under this subsection unless such employer exercises such right within a reasonable period after becoming aware of the misconduct in question.

(2) A worker may terminate a contract of employment without giving notice on the ground that —

(a) the worker is performing work markedly different in nature from the work which such worker was originally engaged to perform;

(b) the worker's continued employment necessitates a change of residence which is not provided for in the contract of employment;

(c) the worker is transferred to a lower grade work;

(d) the worker is mistreated by the employer or employer's representative; or

(e) by virtue of the worker's employment, a threat or danger to such worker or the worker's family from violence or disease has arisen which was not contemplated by the contract of employment.

Entitlement
to severance
benefit on
termination of
employment

(3) A worker shall be deemed to have waived the right to terminate a contract of employment under subsection (2) unless the worker exercises such right within a reasonable period after becoming aware of the existence of the ground conferring that right.

(4) For purposes of this section, "serious misconduct" shall, without prejudice to its general meaning, include —

- (a) wilful disobedience of a lawful or reasonable order given by the employer;
- (b) wilful, express or implied, misrepresentation by the worker in respect of his or her skills or qualifications;
- (c) habitual or wilful neglect of duties;
- (d) acts of theft, misappropriation or wilful dishonesty against an employer, another worker, or a customer or client of the employer;
- (e) acts of violence and sexual harassment;
- (f) damage caused wilfully or by gross negligence to movable or immovable property of the employer;
- (g) wilful disclosure of confidential information or trade secrets where such disclosure is or is likely to be detrimental to the interests of the employer;
- (h) inability to carry out normal duties, due to the consumption of alcohol or drugs;
- (i) wilful refusal to obey or comply with any safety rules or practices for the prevention or control of accidents or diseases;
- (j) offering or receiving bribes; or
- (k) persistent absence from work without permission, as may be prescribed.

169. (1) On a termination of a contract of employment, whether by reason of death or retirement of a worker, or for any other ground provided under section 168, an employer shall pay to the worker who has been in continuous employment with him or her for 60 months or more, a severance benefit at the rate to be prescribed:

Provided that —

- (a) severance benefit shall be payable at the conclusion of each period of 60 months continuous service by such worker or at the termination of his or her employment, at the option of the worker;
- (b) where, upon the date of payment of any severance benefit, such worker, or the worker's dependant or beneficiary, is at that date or some future date entitled to the payment of a gratuity or pension in respect of the period of employment under the contract of employment, a severance benefit which would otherwise be payable in terms of this section to such worker or his or her dependant or beneficiary shall not be payable; and
- (c) where the continuous employment began at any time before the commencement of this Act, that employment shall be deemed, for the purposes of this section, to have begun at the commencement of this Act.

(2) Notwithstanding subsection (1), an employer shall, in the case of a termination of a contract of employment before a worker has served a continuous period of 60 months, pay to the worker a severance benefit at a rate proportionate to that worker's length of service.

(3) Where a gratuity is less than a severance benefit, an employer shall pay the severance benefit instead of the gratuity.

(4) For purposes of calculating the severance benefit payable in accordance with this section —

(a) in subsection (1) —

(i) “month”, in relation to the first 60 months of continuous employment, means a complete month and, in relation to continuous employment after the 60 months, means a complete month or any fraction of the month, and

(ii) “basic pay” means the basic pay payable to the worker at the time of the termination of the contract of employment; and

(b) where, at the time of the termination of the contract of employment, any leave is due to the worker or he or she has any other right of absence under this Act, the period of that leave or other right of absence shall be deemed to be part of his or her period of continuous employment.

(5) Where a severance benefit is payable in accordance with this section, either the employer or worker may, where there is a dispute as to the amount payable, apply, within such period and in such form and manner as may be prescribed, to the nearest labour officer to determine the amount of the severance benefit and, where such application is made, the nearest labour officer shall immediately proceed to determine the amount of the severance benefit.

(6) Where the employer or worker is dissatisfied with any determination made by the nearest labour officer in accordance with this subsection (5), he or she may appeal against that determination, within such period and in such form and manner as may be prescribed, to the Director of Labour who may either dismiss the appeal and confirm the labour officer's determination or allow the appeal, either wholly or in part, and vary the amount of the benefit accordingly.

(7) A final determination of the amount of any severance benefit made by the nearest labour officer or the Director of Labour under subsection (5) or (6), as the case may be, shall be conclusive of the amount of the benefit payable in accordance with this section.

(8) An employer who fails to comply with this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

170. Subject to the provisions of this Act on termination of a contract of employment, an employer shall pay a worker any —

(a) remuneration for work done before the termination of the contract of employment;

Payment on
termination
of contract of
employment

Certificate of employment	(b) annual leave pay due to the worker under section 218 for leave that such worker has not taken; (c) annual leave pay accrued during any incomplete leave cycle determined in accordance with section 217; (d) notice that may be due; (e) severance that may be due; and (f) transport allowance that may be due. 171. (1) Upon the termination of a contract of employment, a worker may require an employer to provide a prescribed certificate of employment specifying the dates of the worker's engagement and of the termination of the contract of employment, the name and address of the employer, a description of the industry in which such employer is engaged and the type or types of work on which such worker has been engaged. (2) A certificate referred to in subsection (1) shall contain nothing unfavourable to a worker and may specify the reason for termination of a contract of employment if requested by the worker. (3) An employer who fails to comply with a requirement made of him or her under subsection (1) commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.
Unlawful termination of contracts of employment	172. (1) In any dispute where the Industrial Court determines that a worker has been subjected to an unlawful termination of a contract of employment, or an unfair dismissal, or has been wrongfully disciplined or subjected to unfair labour practice, the Industrial Court may make any award or order which it considers just and equitable including, in the case of — (a) unlawful termination of the contract of employment, order reinstatement of the worker, with or without compensation, or order compensation in lieu of reinstatement; or (b) wrongful disciplinary action or an unfair labour practice, order the payment of such compensation as it considers just. (2) The Industrial Court shall consider compulsory reinstatement as a remedy for wrongful dismissal only where the — (a) termination of a contract of employment was found to be unfair or motivated on the grounds of gender, trade union membership, trade union activity, the lodging of a complaint or grievance, or race, sexual orientation, tribe or place of origin, national extraction, social origin, sex, gender and maternity, pregnancy, marital status, religion, disability, political affiliation or opinion, and health status; and (b) employment relationship between the employer and the worker has not irrevocably broken down. (3) Where the Industrial Court orders a reinstatement, any compensation ordered shall not exceed the actual pecuniary loss suffered by the worker as a result of wrongful dismissal.

(4) In assessing the amount of compensation to be paid under subsection (1), the Industrial Court may take into account —

- (a) the actual and future loss likely to be suffered by the worker as a result of the wrongful termination of a contract of employment;
- (b) the age of the worker;
- (c) the prospects of the worker in finding other equivalent employment;
- (d) the circumstances of the termination of a contract of employment;
- (e) the acceptance or rejection by either the employer or the worker of any recommendations made by the Industrial Court for the reinstatement of such worker;
- (f) any contravention of the terms of any collective agreement or of any labour law by the employer or worker; or
- (g) the ability of the employer to pay.

(5) Where an employer dismisses a worker on the grounds provided under section 164, the Industrial Court may make an order of compensation which shall be a minimum period of six months' monetary wages.

(6) An employer who fails to comply with an order of reinstatement made by the Industrial Court commits an offence and is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding three years, or to both.

(7) The Industrial Court may order that the penalty imposed under subsection (6) or any part of the penalty, be paid to the worker concerned as compensation for any loss suffered as a result of the employer's failure to reinstate such worker.

(8) Where a contract of employment is wrongfully terminated by a worker, the Industrial Court may make such order of compensation in favour of the employer.

(9) An order for compensation made under subsection (8) shall not exceed six months' monetary wages.

(10) A person who, without lawful excuse, fails to comply with any decision of the Industrial Court under this section, other than an order referred to under subsection (6), commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both.

PART XVII — General Provisions Relating to Employment

173. (1) If a trade, undertaking, business or enterprise, whether or not it is established by or under any written law, is transferred from one person to another and worker in the trade, undertaking, business or enterprise continues to be employed in such trade, undertaking, business or enterprise, the period of continuous employment immediately preceding the transfer shall be deemed, for the purposes of this Act, to be part of the worker's continuous employment with the transferee immediately following the transfer.

Change of
employer

(2) If, by or under any written law, a contract of employment between a body corporate and a worker is modified by the substitution or some other body corporate as the employer, the period of continuous employment immediately preceding the substitution shall be deemed, for the purposes of this Act, to be part of the worker's continuous employment with such other body corporate immediately following the substitution.

(3) If, on the death of an employer, a worker continues to be employed by the legal personal representative or trustee of the deceased, in his or her capacity as such, the period of continuous employment immediately preceding such death shall be deemed, for the purposes of this Act, to be part of the worker's continuous employment with the legal personal representative or trustee immediately following the death of the employer.

(4) If there is any change in the partnership, legal personal representatives or trustees who employ any person, that person shall be deemed, for the purposes of this Act, to remain in employment with the same employer and such change shall be deemed, for the purposes of this Act, not to interrupt such employment.

(5) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both.

Joint and several liability in arrangements involving multiple parties

174. In the case of any arrangement whereby the service of a worker, who is engaged by an employment agency or other person, is provided to a third party, both the employment agency or other person who engaged the worker and the third party shall be jointly and severally liable, if the employment agency does not comply with this Act or any other applicable standard of employment, unless the third party is the sole employer.

Death or disappearance of worker during contract of employment

175. (1) Where a contract of employment is terminated by the death of a worker or in such other circumstances as to prevent an employer from paying the worker, as required by this Act, such worker's basic pay or any other payment due to the worker or any of such worker's property in the possession of the employer, shall be delivered by such employer to any person specified in Schedule 3, and shall include such basic pay, any other payment or property, and that person shall dispose of the basic pay, any other payment or property as otherwise required by law.

(2) The Minister may make Regulations to provide for the form of indemnity to be rendered to an employer by a person specified in Schedule 3 to whom money or property has been delivered by the employer in accordance with subsection (1).

(3) The Minister may, by Order published in the *Gazette*, amend Schedule 3.

Employment card containing written particulars of employment

176. (1) The Director of Labour may, by a written notice served on an employer concerned, require the employer, or the employer belonging to any class or description of employers specified by the Minister in an Order published in the *Gazette*, to issue an employment card to a worker, or to a worker belonging to any class or description of workers specified in the notice or Order, as the case may be.

(2) The Minister may prescribe the conditions attaching to the issuance of an employment card under this section, the form of the employment card and the particulars to be contained in such employment card.

(3) An employer who fails to comply with a requirement made of him or her under this section commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

177. (1) A worker who has been brought to the place of employment by an employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of such employer to his or her place of recruitment —

Repatriation

- (a) at the expiry of the period for which the contract of employment was made;
- (b) on the termination of a contract of employment by reason of the inability of the employer to fulfil the contract of employment;
- (c) on the termination of a contract of employment by reason of the inability of the worker to fulfil the contract of employment due to sickness, accident or injury and a medical practitioner has issued a medical certificate to that effect;
- (d) on the termination of the contract of employment by the employer for a justified cause, whatever the cause may be;
- (e) on the termination of a contract of employment by agreement between the parties, unless the contract of employment provides otherwise; or
- (f) on the termination of the contract of employment by an order of a court, unless the court directs otherwise.

(2) Notwithstanding subsection (1) —

- (a) a non-citizen who is resident in Botswana and is recruited and employed in Botswana shall not be entitled to be repatriated outside of Botswana; and
- (b) the parties to a contract of employment may agree to payment in lieu of repatriation, which shall be based on the reasonable costs to the employer.

(3) Where the family of a worker has been brought to the place of employment by an employer or by any person acting on behalf of the employer, the family of the worker shall be repatriated at the expense of such employer in the event of such worker being repatriated, or of his or her death.

(4) The expenses of repatriation of a worker and his or her family shall include —

- (a) travelling and subsistence expenses or rations during the journey to repatriate the worker and his or her family; and
- (b) subsistence expenses or rations during the period, if any, between the date of the termination of the contract of employment and the date of repatriation.

(5) An employer shall not be liable for subsistence expenses or rations in respect of any period during which the repatriation of a worker has been delayed —

- (a) by the worker's own choice or act;
- (b) for unavoidable reasons, which, in the event of a dispute, shall be determined by the Commission; or
- (c) if, throughout the period, the employer has continued to employ the worker in accordance with the terms of his or her recently concluded contract of employment.

(6) If the employer fails to fulfil his or her obligations in respect of repatriation of a worker or the family of the worker, such obligations shall be discharged by or under the directions of the Director of Labour and any sums expended in consequence of the discharge of the obligations may be recovered from the employer by a civil suit.

(7) An employer who, without reasonable excuse, fails to fulfil any obligation imposed by this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both; and in any proceedings in respect of an offence under this subsection the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

Exemption
from
obligation to
repatriate

178. The Director of Labour may exempt an employer from liability for repatriation expenses where the Director of Labour is satisfied that a worker has by —

- (a) a declaration in writing or otherwise, signified that the worker does not wish to exercise the right to repatriation and has consented to be settled at or near the place of employment; or
- (b) choice, failed to exercise the right to repatriation within a reasonable period immediately after the date of the termination of the contract of employment.

Duty of
employer to
provide means
of transport on
repatriation

179. (1) An employer shall provide the means of transport for a worker who is being repatriated.

(2) The Director of Labour shall take all the necessary measures, and may give such directions to an employer or to any person acting on behalf of the employer, to ensure that —

- (a) the vehicles or vessels used for the transport of the worker is suitable for such transport, is in good sanitary condition and is not overcrowded;
- (b) when it is necessary to break the journey for the night, suitable provision in the circumstances is made for the worker; and
- (c) in the case of long journeys, all reasonable arrangements are made for the welfare of the worker.

(3) A person who, without reasonable excuse, fails to comply with this section or with any direction of the Director of Labour given under this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both, and in any proceedings in respect of an offence under this subsection the court

shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

180. (1) Where a worker is to perform work under a contract of employment in an area within Botswana where a medical facility is not readily available, an employer shall provide a reasonable medical facility for the worker and for every family member who the employer has agreed may accompany such worker.

Duty of employer to provide medical facilities in certain circumstances

(2) The Minister may make Regulations to provide for the scale of a medical facility required to be provided by subsection (1).

(3) Where a worker employed in the circumstances referred to in subsection (1), or a family member who an employer has agreed may accompany the worker, falls ill and it appears necessary that admittance to a medical facility is required, the employer shall provide suitable transport to the nearest medical facility able to provide suitable treatment.

(4) An employer who fails to comply with this section commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

PART XVIII – *Standards of Employment*

181. (1) The purpose of this Part shall be to regulate the standards of employment and promote decent work in accordance with international labour standards.

Purpose and application of Part XVIII

(2) Subject to the provisions of this Act standard of employment in this Part shall constitute a term of any contract of employment except to the extent that —

- (a) any law regulating employment provides a term that is more favourable to the worker;
- (b) a term of the contract of employment or a provision of a collective agreement is more favourable to the worker; or
- (c) a standard of employment has been altered by a variation permitted in terms of section 184.

(3) Where the provisions of any written law relating to vocational training regulates a standard of employment, the provisions of that other law shall apply.

182. Where a contract of employment, whether made before or after the commencement of this Act, provides for conditions of employment less favourable to a worker than the conditions of employment provided under this Act, or any other law, the contract of employment shall be void to the extent that it so provides, and the conditions of employment provided for in this Act shall substitute the void terms of such contract of employment.

Certain terms of contracts of employment to be void

183. An employer who enters into a contract of employment containing a term, or applies a minimum standard that is, contrary to this Act, commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

Offences where terms of contracts of employment contravene Act

184. (1) The Minister may, if it is consistent with this Act and in consultation with the Council, by Order in the *Gazette* replace or vary a standard of employment provided for in this Act in respect of any category of workers or category of employers.

(2) An Order made in terms of subsection (1) may —

- (a) not be made in respect of minimum standards of employment; and
- (b) only be made in respect of section 6 dealing with the prohibition of child labour, or to allow the employment of a child in the performance of advertising, sports, artistic or cultural activities.

(3) An Order in terms of this section may only be made in respect of hours of work if the —

- (a) worker's ordinary hours of work, rest periods and annual leave are on the whole no less favourable to the worker than the minimum standards of employment provided in this Act; and
- (b) Order is necessitated by the operational circumstances of a sector in respect of which the variation is sought and the majority of workers in the sector are not members of a trade union.

(4) An Order made in terms of this section shall be made on the advice of the Council, and after consultation with the workers and employers, or their representatives, in the sector, trade or industry concerned.

(5) An employer in respect of whom an Order has been made in terms of this section, or whose workers are covered by the Order shall —

- (a) display a copy of such Order conspicuously at the workplace where it can be read by the workers to whom the Order applies;
- (b) notify each worker in writing of such Order and of where a copy of the Order has been displayed; and
- (c) give a copy of such Order to every —
 - (i) trade union representing the workers,
 - (ii) trade union representative representing the workers, and
 - (iii) worker who requests a copy of the Order.

(6) An employer who contravenes a provision of the Order commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding two years, or to both.

(7) The Minister may on application by any affected party and after allowing other affected parties a reasonable opportunity to make representations, amend or revoke an Order issued in terms of this section.

(8) For purposes of this subsection (7), an "affected party" is —

- (a) an employer or employer's organisation that is covered by an Order under this section; or
- (b) a trade union representing workers covered by an Order under this section, or a worker covered by the Order who is not a member of a trade union.

(9) The Minister shall publish a draft of the Order made under this section in the *Gazette* and allow interested parties at least 21 days to comment in writing on the draft Order.

(10) If the Minister modifies the draft Order based on the comments received from interested parties in terms of subsection (9), it shall not be necessary to publish any modifications before making the final Order.

(11) The Minister shall, after making modifications, if any, referred to in subsection (10), publish the final Order in the *Gazette*.

185. (1) It shall be an unfair labour practice for an employer to unilaterally alter any term or condition of a contract of employment.

Prohibition of unilateral change to terms and conditions of employment

(2) For the avoidance of doubt —

- (a) negotiation on the variation of material terms and conditions of a contract of employment is required before any change to the terms and conditions of the contract of employment of a worker is implemented; and
- (b) a unilateral change to the terms and conditions of a contract of employment may be implemented by an employer only —
 - (i) if the changes are based on a sound commercial reason, and
 - (ii) after negotiation with the workers who will be affected by the change, or with their representatives.

(3) Where a variation of material terms and conditions of a contract of employment relates to an acting appointment, an employer shall, as may be prescribed, make such acting appointment in writing to a worker:

Provided that the employer shall not prejudice a worker who has performed the duties of the acting appointment where the employer has failed to make a written acting appointment to the worker.

(4) The Minister may prescribe any other variation of the material terms and conditions of a contract of employment.

PART XIX – *Enforcement of Minimum Wages*

186. (1) Where a contract of employment provides for the payment of a wage less than the minimum wage to a worker to whom a minimum wages order applies, the contract of employment shall have effect as may be stipulated by the prescribed minimum wage.

Effect and enforcement of minimum wages order

(2) Where an employer fails to pay a worker to whom a minimum wages order applies at or above the rate of the minimum wage at such times and in accordance with such conditions as may be specified in the minimum wages order, the employer commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

(3) Where proceedings are instituted against an employer in respect of an offence under subsection (2) and the employer is convicted of the offence, the Industrial Court may —

- (a) permit evidence to be led of like offences committed by such employer during the period of two years immediately before the date of the offence of which he or she stands convicted; and
- (b) order such employer to pay to a worker such sum as may be found by the Industrial Court to represent the difference between

the amount that ought to have been paid to the worker by way of wages in accordance with the relevant minimum wages order during the period of two years referred to in paragraph (a) and the amount in fact paid by way of wages during that period:

Provided that this subsection shall not apply unless the —

- (i) employer concerned has been given notice in writing, not less than 14 days immediately before any application is made to the Industrial Court to exercise the powers conferred by this subsection, of the intention to make the application, or
- (ii) Industrial Court has informed the employer concerned, not less than 14 days immediately before the notice referred to in paragraph (i) commences to exercise the powers conferred by this subsection, of its intention to exercise such powers.

(4) Nothing in this section shall —

- (a) derogate from any right of a worker to recover wages due to the worker; or
- (b) prevent any contract of employment providing for the payment of a wage greater than the minimum wage, or any employer paying more than the minimum wage to a worker to whom a minimum wages order applies.

Duty of employer to keep certain records for enforcement of minimum wages order

187. (1) An employer of a worker to whom a minimum wages order applies shall keep and maintain such records as may be prescribed for the enforcement of this Part, and shall retain the records for at least six years immediately after the date of the last entry in such records.

(2) An employer who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

Duty of employer to exhibit certain notices in connection with minimum wages order

188. (1) The Minister may, by —

- (a) Notice in the *Gazette*, publish any matter relating to the fixing of a minimum wage, or to adjusting or abolishing of a minimum wage; or
- (b) Order published in the *Gazette*, fix, adjust or abolish a minimum wage.

(2) An employer shall conspicuously display in such manner as may be prescribed —

- (a) a copy of any Notice published by the Minister in the *Gazette* in relation to any matter of fixing a minimum wage which may affect his or her workers or any of them, or in relation to any question of adjusting or abolishing a minimum wage which affects his or her workers or any of them; and
- (b) a copy of any Order published by the Minister in the *Gazette* fixing, adjusting or abolishing a minimum wage which affects his or her workers, or any of them,

within 30 days immediately after the day on which such Notice or Order was published in the *Gazette* and shall take every other reasonable step to ensure that such workers who may be or are affected by the Notice or

Order, particularly those who are illiterate or are unable to read English, are informed of and understand the contents of such Notice or Order.

(3) An employer who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

PART XX — *Payment of Wages and Related Protections*

189. The Minister may, after consultation with the Council and with a trade union or workers' organisation concerned and an employer's organisation, if any, or with affected workers, and employers directly if not represented, by Order published in the *Gazette*, exclude from the application of all or any of the provisions of this Part the wages paid to a category of workers whose circumstances and conditions of employment are such that the application to such workers of all or any of the said provisions would, in the opinion of the Minister, be inappropriate.

Exemption
from
application of
Part XX

190. (1) A contract of employment may fix a period, (in this section referred to as a "wage period"), in respect of which wages earned shall be payable:

Fixing of
wage periods

Provided that —

- (a) except in relation to a casual worker, a wage period shall not be less than one week; and
- (b) a wage period shall not exceed one month.

(2) Where a contract of employment does not provide for a wage period, the wage period shall be deemed to be one month.

191. Any wages earned by a worker under his or her contract of employment shall be paid on the agreed date, which shall be a date no later than the last day of the wage period:

Time of
payment

Provided that, in the case of the completion of a period of employment, the total wages and other payments which may be due to a worker shall be paid to him or her before the expiry of the third day immediately after the day on which the period of employment was completed.

192. Nothing in this Part shall prevent an employer from agreeing with a worker that the wages of the worker shall be paid at an agreed rate in accordance with the task, that is, the specific amount of work required to be performed, and not by the day or by the task.

Task work

193. (1) Subject to the provisions of this Act, the total wages and any other payment which may be due to a worker whose employment has been terminated by an employer under section 168 (1) shall be paid by the employer on the day of the termination.

Payment of
wages, etc., on
termination by
employer

(2) An employer who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

Payment of wages, etc., on termination of employment by worker

194. (1) Subject to the provisions of this Act, the total wages and any other payment which may be due to a worker who terminates his or her contract of employment under section 168 (2) shall be paid by the employer within 30 days after the termination of the contract of employment.

(2) Subject to the provisions of this Act, the total wages and any other payment which may be due to a worker who terminates his or her employment without giving prior notice, in circumstances in which a notice is required, or before the expiry of any period of notice, shall be paid by the employer before the expiry of the third day immediately after the day on which the worker terminated the employment.

Provided that —

- (a) where such third day is a rest day or public holiday or other holiday, such wages and other payments shall be paid before the expiry of the first day immediately after the rest day or public holiday or other holiday which is not a rest day or public holiday or other holiday; and
- (b) subject to any order made by the Industrial Court or the Director of Labour to the contrary, the employer may deduct from the total wages and any other payments which may be due to such worker such sum as the worker is liable to pay.

(3) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

Payment of wages, etc., to be made during working hours

195. (1) All payments of wages and any other payments which may be due to a worker shall be made on a working day and during working hours at or near the place of employment:

Provided that such payments may be made elsewhere than at or near the place of employment with the prior consent of the worker.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

Prohibition of unauthorised deductions from wages, etc.

196. (1) Except as otherwise permitted by this Act or any other written law, an employer shall not make any deduction or agree with a worker, whether the agreement is contained in the contract of employment, for any deduction from the wages to be paid by the employer or from any other payments which may be due to the worker.

(2) An employer who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 18 months, or to both.

Authorised deductions from wages, etc.

197. (1) Notwithstanding section 196, an employer may —

- (a) deduct from the wages and any other payments which may be due to a worker or any amount due by the worker —
 - (i) in respect of any tax or rate imposed by any written law or the Income Tax Act,

- (ii) as a contribution to any provident or pension fund or scheme established and maintained in accordance with Regulations made under this Act or in accordance with any other written law to which such worker has agreed to contribute, or
- (iii) in respect of any agency fee due in terms of a collective agreement;
- (b) with the consent of a worker, deduct from the wages and any other payments which may be due to the worker any amount —
 - (i) due to the employer by way of rental or service charges for accommodation provided by such employer and occupied by such worker:

Provided that such deduction shall not be made where, by any custom, accommodation are provided free of charge in addition to wages,

- (ii) the deduction of which is provided for under any collective agreement made between a trade union of which such worker is a member and the employer or an employers' organisation of which the employer is a member, or
- (iii) by virtue of an agreement entered into with such worker on a specific deduction;
- (c) subject to such limitations and conditions imposed by this Act or as may be prescribed, deduct from the wages and any other payments which may be due to such worker any amount which the worker has requested the employer to remit to any other person or body on his or her behalf; and
- (d) make deductions from the wages and any other payments which may be due to such worker including deductions —
 - (i) in respect of unauthorised absence from work,
 - (ii) in respect of the actual cost of food, or so much of the actual cost of food as is not subsidised by an employer, supplied by the employer at the request of the worker,
 - (iii) in order to recover any overpayment of wages, subject to the provisions of this section,
 - (iv) in respect of contributions payable by the worker by virtue of the Retirement Funds Act,
 - (v) in order to recover any basic pay which may have been paid to the worker in respect of an annual leave granted by the employer before the completion of the period by virtue of which that leave would have been earned, and
 - (vi) for any other purpose which may be approved by the Minister, in consultation with the Council, by an Order published in the *Gazette*:

Provided that the total deductions from the worker's remuneration under this subsection shall not exceed 70 per cent of the worker's remuneration in money.

Limitation on
attachments
and
assignments,
etc.

Wages to be
paid in legal
tender

- (2) Notwithstanding anything contained in this Act, where —
- (a) an employer or any fund contributed to by an employer, loans to a worker;
 - (b) the total amount of the loan has been paid by an employer or the fund, referred to in paragraph (a), as the case may be, to a worker in cash; and
 - (c) a memorandum of the transaction has been made and signed by or on behalf of an employer or fund, and a worker providing for the repayment of the loan by one or more instalments,
- the employer may deduct from any wages, ex gratia payments, severance pay, gratuities and payments for accrued leave due to the worker such instalments at such times as are set out in the memorandum:

Provided that —

- (a) where Regulations determine the maximum amount of loans or instalments and the terms and conditions upon which such loans may be made or recovered, a loan or instalment may not be recovered in excess of the relevant prescribed amount nor may such loan or instalment be recovered upon terms more onerous to such worker than those provided for in such Regulations; and
- (b) nothing in this subsection shall permit the recovery of any loan irrecoverable under any other written law.

198. Notwithstanding anything contained in any other written law, a court shall not make an order for the attachment or assignment of the wages or any other payments which may be due to a worker such as to jeopardise the wellbeing of the worker, or that of the dependent members of his or her family.

199. (1) Except as otherwise provided in this Act, the total amount of the wages earned by, and any other payments which may be due to, a worker under his or her contract of employment shall be paid —

- (a) in legal tender; or
- (b) with the consent of the worker, or at such worker's request, and subject to such limitations and conditions as may be prescribed into a bank account maintained by the worker, and every payment of, or on account of, any such wages or other payments made in any other form shall be invalid.

(2) A worker shall be entitled to recover in court wages and any other payments which may be due, exclusive of sums lawfully deducted from his or her wages in accordance with this Act, which have not been paid to the worker in accordance with subsection (1).

(3) An employer who enters into a contract of employment providing for the payment of wages or any other payments which may be due to the worker, or pays wages or makes any other such payments contrary to this section commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

200. (1) An employer shall not impose any term of employment, as to the place in which, the manner in which or the person with whom, any wages or any other payments which may be due to a worker are to be expended after the wages have been paid to the worker, and such a term shall be invalid.

Arrangement as to place or manner of spending wages prohibited

(2) An employer who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

201. (1) Nothing in this Act shall render a contract of employment or any other agreement with a worker invalid solely by virtue of the fact that the contract of employment or agreement provides for the payment of the wages or other payments of the worker which may be due to him or her in the form of payments in kind, other than in the form of intoxicating liquor, where —

Partial payment of wages in kind

(a) such payments in kind are appropriate for the personal use and benefit of such worker and his or her family; and

(b) the value attributed to such payments in kind is fair and reasonable:

Provided that an employer who enters into a contract of employment or other agreement with a worker under which the employer makes a payment in respect of wages or any other payment, which may be due to the worker, of which more than 25 per cent of the payment is in kind commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

(2) An employer who makes any payment of the wages of or other payments due to a worker wholly or in part in the form of intoxicating liquor commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

202. (1) Any wages or other payments which may be due shall not be paid to a worker in premises used for the sale of intoxicating liquor or for the retail sale of goods, except in the case of a worker employed in such premises.

Wages not to be paid on certain premises

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

203. (1) Nothing in Part shall prohibit an employer who is lawfully entitled to do so from establishing a trade or business for the sale of provisions generally to his or her worker, and the worker or any other person shall not be compelled by any contract of employment, agreement or order, written or oral, to purchase provisions at the trade or business.

Authority of employer to operate a trade or business

(2) A person who compels or seeks to compel —

(a) a worker by any contract of employment, agreement or order; or

(b) any other person by agreement or order,

to purchase provisions at the trade or business referred to in subsection (1), or buy services operated in connection with that undertaking to the worker, or such other person commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

Cap. 43:02 Advance of wages	(3) For purposes of this section, “trade or business” has the same meaning assigned to it in the Trade Act. 204. (1) A person who gives or promises to give any other person any advance of wages or valuable consideration upon condition, whether expressed or implied, that such other person or any dependant of such other person shall enter upon any employment commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.
Prohibition of interest on advances	(2) The amount of wages which may be advanced to a worker at the time of his or her engagement and the method of repayment of the wages shall be by an agreement between the employer and the worker. 205. (1) An employer shall not make deductions by way of discount, interest or any similar charge on account of any advance of wages made to a worker in anticipation of the regular period of payment of such wages.
Payment of wages for partial performance of contracts of employment	(2) An employer who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both. 206. (1) Subject to the provisions of this Act and to the terms, whether expressed or implied, of a contract of employment, a worker shall be entitled to such wages in respect of the partial performance of his or her contract of employment — (a) where the wages are calculated under the contract of employment by reference to any period of time, to the length of the period worked subject to a minimum number of hours; or (b) in any other case, to the amount of work performed. (2) A period during which a worker is on leave with pay and any weekly rest period in respect of which, by agreement or custom, the worker is not required to work under his or her contract of employment shall be deemed, for the purposes of subsection (1) (a), to be part of the period worked. (3) An employer who fails to pay the wages to which a worker is entitled by virtue of this section commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.
Priority of wages	207. Notwithstanding the provisions of any other law, whenever any attachment has been issued against the property of an employer in execution of any judgment against him or her, the proceeds realised in pursuance of such execution shall not be paid by any court to the judgment creditor until a judgment obtained against the employer in respect of the wages of a worker has been satisfied to the extent of a sum not exceeding three months’ wages to the worker:
Worker’s claims arising out of employment in event of insolvency	Provided that nothing in this section shall prevent a worker from recovering any balance due on such judgment. 208. (1) Notwithstanding anything contained in any law or agreement, in the event of the insolvency of an employer, a worker shall be treated as a preferred creditor and the claim by the worker arising out of his or her employment shall have priority and shall be payable out of the assets of

such employer before the non-privileged creditor is paid his or her share.

(2) The protection provided in subsection (1) shall extend to the following claims —

- (a) the claim by a worker for wages up to three months before the insolvency of an employer or to the termination of employment;
- (b) the claim by a worker for payment as a result of work performed during holidays within a period of 24 months prior to the insolvency of an employer or termination of employment;
- (c) the claim by a worker for any amount due to him or her in respect of other types of paid absence for a period not less than three months prior to the insolvency of an employer or to the termination of employment; and
- (d) such severance benefits or other terminal benefits as the worker is entitled to.

209. An employer who —

- (a) fails to pay wages or other remuneration due to a worker, unless such employer has reasonable and probable cause for thinking that the wages or other remuneration are not due; or
- (b) before or after the termination of a contract of employment, upon demand being made and without lawful cause, refuses to deliver or permit to be taken away, property belonging to a worker lawfully remaining or being upon the land of such employer or in the possession of the employer without reasonable and probable cause for believing the property to be lawfully kept,

Failure to pay wages, etc., or keeping of worker's property

commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

210. (1) An employer shall keep and maintain such records, books and accounts in respect of workers employed by him or her as may be prescribed, and shall, at all reasonable times, afford every facility to the Director of Labour or any labour officer or labour inspector for the examination of such records, books and accounts.

Duty of employer to keep records, etc.

(2) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

211. (1) A person who obtains any advance of wages or benefits in kind by entering into a contract of employment with the intent to defraud his or her employer commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding 12 months, or to both.

Entering or leaving employment with fraudulent intent

(2) If any person, having obtained any advance of wages or benefits in kind by entering into a contract of employment, fails to take up employment under the contract with the employer or to return such advance, he or she shall be deemed to have committed an offence created by subsection (1) unless the contrary is proved.

(3) A worker who owes money to his or her employer in respect of wages or benefits in kind received in advance and who leaves his or her

employment with intent not to return to the employment under circumstances from which it appears that he or she intended to defraud his or her employer commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

PART XXI — *Hours of Work, Rest Periods and Public Holidays*

Weekly rest
period

212. (1) An employer shall, in every period of seven consecutive days, grant the worker a rest period comprising at least 24 consecutive hours, which period shall ordinarily be or include a Sunday:

Provided that, an employer shall grant a worker engaged on a shift work in terms of section 215 a rest period comprising any period of 24 to 30 consecutive hours.

(2) Where a rest period of a worker includes days other than a Sunday, the employer shall prepare or cause to be prepared a roster in respect of every month specifying the rest period of the worker within that month and shall display the roster in a conspicuous place readily accessible to such worker not less than seven days immediately before the commencement of the month in question.

(3) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

Payment for
work
during rest
periods

213. A worker who works during a rest period, either by agreement with the employer or on being required to do so in terms of this Act shall be paid double the wages he or she would have been paid had the period been an ordinary working period, or at his or her option be granted a day or days off, as the case may be, in lieu of payment of such wages.

Hours of work
and daily rest
periods

214. (1) Except as otherwise provided, a worker shall not be required under his or her contract of employment to work more than —

- (a) five consecutive hours without a period of rest which shall not be less than 30 minutes; or
- (b) an ordinary working period of eight hours in any one day or more than 48 hours in any one week:

Provided that —

- (i) a worker engaged in work which by reason of its nature requires to be carried on continuously may be required to work for eight consecutive hours if those hours include a period or periods of rest of not less than 45 minutes in the aggregate during which period or one of which periods the worker shall be provided with the opportunity to have a meal, and
- (ii) where the working week is one of five days, the hours of work in each day may be increased to nine; but these hours shall be interrupted by a period or periods of rest of not less than one hour in the aggregate during which period or one of which periods the worker shall be provided with the opportunity to have a meal.

(2) A worker may be required by his or her employer to exceed the limit of hours provided in subsection (1) or to work during a rest period in the case of —

- (a) an accident, actual or imminent;
- (b) work, the performance of which is essential to the life of the community;
- (c) work essential for national defence or security;
- (d) urgent work to be done to machinery or plant; or
- (e) an interruption of work which it was not reasonably possible to foresee:

Provided that a worker required to work during a rest period shall be granted a similar rest period in substitution for rest period, before the next following rest period is due.

(3) If a worker works, on being required to do so in subsection (1) (b) (i), for eight consecutive hours, the period or periods of rest of not less than 45 minutes in the aggregate as may be prescribed shall count as working time and be paid accordingly.

(4) If a worker is required to work in any one day more than the number of hours in the ordinary daily working period, the number of hours so worked in excess shall be deemed, for the purposes of this Act, to be overtime, and the worker shall be paid for such overtime one and a half times the wages he or she would have been paid had the time worked not been overtime.

(5) Notwithstanding subsection (4), where a contract of employment provides for the payment of wages for a worker who is in the category of members of management without reference to the number of hours worked by the worker and further provides that such worker may be required to work overtime in exceptional circumstances and the worker is on occasion so required to work, such worker shall not be entitled to be paid for the overtime unless the contract of employment otherwise provides.

(6) A worker shall not be required or permitted to work overtime for more than 14 hours in any one week:

Provided that the Minister may, by Order published in the *Gazette*, declare that this subsection shall not apply to a worker in such industry or undertaking as shall be specified in the Order.

(7) For the purpose of calculating the daily rate of payment or benefits due for overtime to a worker employed on a monthly rate of pay, the following divisors shall be applied —

- (a) 22 in respect of a 5 day working week;
- (b) 24 in respect of a 5 and a half day working week; or
- (c) 26 in respect of a 6 day working week:

Provided that the Minister may prescribe different methods of calculation in respect of any particular specified circumstances.

(8) The Minister may make Regulations for calculating the payments due to a worker for overtime in any particular circumstances.

(9) Except where a worker is required to work under subsection (2) or in exceptional circumstances not covered by that subsection, the worker shall not work for more than 12 hours in any one day.

(10) Notwithstanding anything contained in this section, where a commuted overtime is paid, a worker shall not be made to work excess hours which are not commensurate with the commuted overtime allowance.

Shift work

215. (1) Notwithstanding anything contained in this Act, a person employed in regular shift work may be required by his or her employer to work more than five consecutive hours without a period of rest, more than eight hours in any one day or more than 48 hours in any one week.

Provided that the average number of hours worked by such person over any period of four weeks shall not exceed 48 hours per week.

(2) Section 214 (4) shall not apply to a person engaged in regular shift work; but any such person who works for his or her employer for more than an average of 48 hours per week over a wage period, which, if less than a month shall be deemed to be one month for the purposes of this section, shall be paid in accordance with that section in respect of those hours worked in excess of the average of 48 hours per week.

(3) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

Paid public holidays

216. (1) A public holiday set out in Schedule 4 shall be a paid holiday for the purposes of this section:

Provided that, within the mining industry, a paid public holiday for the purposes of this section shall be the public holiday customarily recognised by the mining industry as paid public holiday where the recognised public holiday is no less favourable than provided for in this Act.

(2) Where a paid public holiday falls on a rest day the day next following the rest day which is not itself a rest day shall be deemed, for the purposes of this section, to be a paid public holiday.

(3) A worker who works on a paid public holiday or on a day observed as a public holiday by virtue of subsection (2) shall be —

(a) paid at least double the wages the worker would have been paid had the day been an ordinary working day; or

(b) granted a paid day off in lieu of the public day within 10 days immediately after such public holiday.

(4) Subject to subsection (3), the employer shall pay to a worker, the worker's basic pay in respect of every paid public holiday.

(5) The Minister may, by Order published in the *Gazette*, amend Schedule 4.

(6) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding 12 months, or to both.

217. (1) For purposes of this section, “night work” means work performed after 18:00 hours and before 06:00 hours the next day. Night work

(2) An employer may require or permit a worker to perform night work, if the employer and the worker so agree, and if —

- (a) such employer compensates such worker by the payment of an allowance as may be prescribed; and
- (b) transportation is available between the place of residence of such worker and the workplace at the commencement and conclusion of night work by the worker.

(3) An employer who requires a worker to perform work on a regular basis after 23:00 hours and before 06:00 hours the next day shall —

- (a) inform the worker in writing, or orally if such worker is not able to understand a written communication, in a language that the worker understands, of —
 - (i) any health and safety hazards associated with the work that such worker is required to perform, and
 - (ii) the right of the worker to undergo a medical examination in terms of paragraph (b) for the account of the employer, concerning the health and safety hazards; and
- (b) transfer the worker to a suitable day work within a reasonable time if —
 - (i) the worker suffers from a health condition associated with the performance of night work, and
 - (ii) it is practicable for the employer to do so.

(4) For the purposes of subsection (3), a worker works on a regular basis if the worker works for a period longer than one hour after 23:00 hours and before 06:00 hours at least five times per month or 50 times per year.

(5) The Minister may, after consultation with the Council, make Regulations relating to the conduct of a medical examination for workers who perform night work.

(6) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P10 000 or to imprisonment for a term not exceeding 18 months, or to both.

PART XXII — *Statutory Leave Provisions*

218. For the purposes of this Part, “leave cycle” means the period of 12 consecutive months’ employment with the same employer immediately following the — Interpretation of leave cycle

- (a) commencement of employment by a worker; or
- (b) completion of the last leave cycle.

219. (1) Nothing in this section shall affect any law, award, custom or agreement between the parties to a contract of employment providing for leave with pay no less favourable to the worker than that for which this section makes provision. Annual leave with pay

(2) An employer shall grant a worker leave with basic pay at the rate of not less than 1,25 days per month.

(3) A worker shall take not less than eight working days of the 15 working days' leave earned in respect of any period of 12 months, no later than six months immediately after the end of the period in respect of which the leave was earned.

(4) Any balance of leave not taken in accordance with subsection (3) and not exceeding seven working days in a leave cycle, may be accumulated annually:

Provided that the accumulated leave shall not exceed the equivalent of three years annual leave entitlement.

(5) A worker shall take an annual leave in accordance with an agreement between an employer and the worker, or if there is no agreement, at a time determined by the employer:

Provided that such employer shall not deny such worker to take his or her annual leave.

(6) A worker shall be entitled to 35 per cent in monies of the accrued leave within a leave cycle, where there is no agreement between the worker and the employer to take leave in terms of subsection (3) for at least two successive attempts by such worker.

(7) The leave for which this section applies shall be in addition to any public holiday or weekly rest period in respect of which, by agreement or custom, a worker is not required to work under his or her contract of employment and any period during which the worker is absent from work due to illness.

(8) Where a contract of employment is terminated by either party to the contract of employment, the employer shall pay to a worker his or her basic pay —

(a) in respect of any period of leave accumulated under subsection (3) or which has otherwise accrued to the worker in the current leave cycle but has not been granted before the termination of such contract of employment; and

(b) at the rate of 1,25 days in respect of every month or pro rata for part of a month of continuous employment after the worker last became entitled to leave under subsection (2).

(9) The basic pay payable in respect of any period of leave for which this section applies, whether accumulated or otherwise, or in accordance with subsection (6) shall be the current basic pay.

(10) Where a worker falls ill while on annual leave with full pay, such leave shall be converted to sick leave:

Provided that the worker shall submit a medical certificate from a medical practitioner to the employer.

(11) An employer who contravenes this section commits an unfair labour practice and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both.

220. (1) Subject to the provisions of this Act or any other written law, a worker shall, after medical examination by a medical practitioner nominated by an employer, at the expense of the employer, or after medical examination at the expense of the worker by a medical practitioner nominated by such worker, be entitled to such sick leave as the medical practitioner may recommend, and the worker shall be entitled to be paid his or her basic pay for at least 20 working days of such sick leave in any one year of continuous employment.

Paid sick leave

(2) A worker who is admitted in a medical facility shall be entitled to be paid his or her basic pay for each day that the worker spends in a medical facility up to a period of 20 working days in any one year of continuous employment.

(3) Where a worker spends all the working days referred to in subsection (2) in a medical facility before the year ends and continues to be in a medical facility, the worker may take additional days as sick leave in terms of subsection (1) in relation to such worker's admission in a medical facility.

(4) Where a worker's sick leave given in terms of subsection (3) lapses before the year ends, and the worker continues to be in a medical facility, such worker may —

- (a) take additional days as annual leave in terms of section 219 for purposes of the worker's admission in a medical facility; or
- (b) take additional days as unpaid leave for purposes of the worker's admission in a medical facility.

(5) Subject to the provisions of this section, a worker who absents himself or herself from his or her place of employment on the grounds of illness shall —

- (a) inform his or her employer of his or her absence as soon as it is reasonably practicable to do so; and
- (b) where he or she is absent from his or her place of employment for 24 hours or more, provide his or her employer, upon his or her return to his or her place of employment, with a certificate signed by a medical practitioner or with other evidence to the employer's satisfaction accounting for the entire period of absence.

(6) An employer shall pay to a worker, his or her current basic pay for every day of paid sick leave granted under this section.

(7) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

221. (1) This section shall apply to a worker who —

Family
responsibility
leave

- (a) has been in employment with an employer for a period longer than four months; and
- (b) works for at least four days a week for an employer.

(2) An employer shall, at the request of a worker, grant the worker, during each leave cycle, three days' paid leave, which such worker shall be entitled to take if there is a death or serious illness in the family.

- (3) For the purposes of this section “family” means a —
- (a) child, including a child adopted in terms of custom or tradition or the Adoption of Children Act, or a commissioned child;
 - (b) spouse;
 - (c) parent, grandparent, brother or sister, including the adoptive parent, grandparent, brother or sister, of the worker; or
 - (d) father-in-law or mother-in-law of the worker.
- (4) Subject to subsection (5), an employer shall pay a worker for a day’s family responsibility leave —
- (a) the wage the worker would ordinarily have received for work on that day; and
 - (b) on the worker’s usual pay day.
- (5) A worker may take family responsibility leave in respect of the whole or a part of a day.
- (6) Notwithstanding subsection (2) a worker may take additional days as unpaid leave to attend to any family responsibility as may be authorised by the employer.
- (7) A worker’s unused entitlement to leave in terms of this section shall lapse at the end of the annual leave cycle in which it accrues.
- 222.** (1) Subject to the provisions of this section, a worker who is pregnant shall be entitled to a period of maternity leave of not less than 14 weeks.
- (2) A worker shall, at least six weeks before the expected date of birth, give notice to her employer of her intention to take maternity leave, which shall be supported by a written certificate signed by a medical practitioner or a registered nurse-midwife certifying the presumed date of birth.
- (3) On receipt of the notice under subsection (2), the employer shall permit the worker to commence maternity leave at any time from six weeks before the expected birth of her child and shall not permit or require her to return to work until the expiry of eight weeks after the birth of her child.
- (4) Within 21 days after the birth of her child, the worker shall inform her employer of the date of her child’s birth and provide a certificate signed by a medical officer or a registered nurse-midwife certifying that date.
- (5) Notwithstanding subsection (2), where a worker notifies her employer and provides a certificate signed by a medical practitioner or a registered nurse-midwife certifying that the worker is suffering from an illness or complication arising out of pregnancy or childbirth and is consequently unfit for work, the employer shall not permit or require such worker to return to work until the expiry of eight weeks following the birth of her child.
- (6) An employer shall pay a worker whilst a worker is absent from work in accordance with this section, maternity benefits not less than 70 per cent of her basic pay and other benefits the worker would otherwise have been entitled to receive:

Provided that this subsection shall apply notwithstanding the provision of any law for the time being in force relating to the determination and payment of a minimum wage.

(7) A worker who is absent from work in accordance with this section shall be deemed, for the purposes of this Act, not to interrupt the employment of the worker concerned.

(8) An employer who contravenes this section, or who knowingly permits or requires any worker to perform any work under her contract of employment within eight weeks after childbirth commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

(9) Where a worker works for another employer during a period of absence from work in terms of this section, the worker shall forfeit her entitlement to maternity benefits.

223. (1) A notice of intention to terminate employment without good cause to a worker within three months immediately before the presumed date of childbirth shall not affect the employer's obligations under this Part in respect of the payment of the maternity benefits related to the pregnancy of the worker.

Rights to maternity benefits unaffected by notice of termination of employment

(2) If any question arises as to whether, for the purposes of subsection (1), a notice of intention to terminate a contract of employment was or was not given for good cause, either the employer or worker may refer the question to the Commission for a ruling which, subject to subsection (3), shall be binding.

(3) An employer or a worker, aggrieved by a ruling of the Commission under subsection (2), may appeal to the Industrial Court.

224. (1) Where a worker is absent from work in terms of section 222 or remains absent from work for a longer period as a result of an illness which a medical practitioner or a registered nurse-midwife has certified in writing to be as a result of the worker's pregnancy or confinement and to render the worker unfit to return to work, an employer shall not give such worker notice of intention to terminate the worker's employment during her absence and any notice given to such worker before the period of absence from work which expires during that period or during such longer period shall not be valid:

Prohibition of serving notice of termination of employment during maternity leave

Provided that this subsection shall not apply in respect of any period of absence from work which exceeds such maximum period as the Minister may, by Order published in the *Gazette*, prescribe for the purposes of this subsection.

(2) An employer who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

225. Where a worker has more than one employer, the worker shall, in respect of the same confinement, be entitled to maternity allowance from more than one of the employers, and where such worker having more than one employer is entitled to a maternity allowance, the maternity allowance shall be paid by all employers.

Workers entitled to more than one maternity or allowance

Adoption
leave

226. (1) A worker, who is an adoptive parent of a child who is below the age of two is, subject to subsection (6), entitled to —

- (a) an adoption leave of at least 10 weeks consecutively; or
- (b) parental leave.

(2) A worker may commence an adoption leave on the date that —

- (a) an adoption order is granted by a competent court; or
- (b) a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of the child, whichever date occurs first.

(3) A worker shall notify an employer in writing, unless the worker is unable to do so, of the date on which such worker intends to —

- (a) commence adoption leave; and
- (b) return to work after adoption leave.

(4) A worker shall give notice in terms of subsection (3) —

- (a) at least one month before the date referred to in subsection (2); or
- (b) if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) Sections 222 to 225 shall, with the necessary modifications, apply to adoption leave benefits.

(6) If an adoption order is made in respect of two adoptive parents, one adoptive parent may apply for adoption leave and the other adoptive parent may apply for a parental leave:

Provided that the selection of choice shall be exercised at the option of the two adoptive parents.

Paternity
leave

227. (1) A worker shall, during any leave cycle, be entitled to at least five days paid paternity leave if the —

- (a) leave is taken within the 14 weeks of maternity leave; and
- (b) worker is the father of the child.

(2) An employer may, before paying a worker for leave in accordance with subsection (1), require any reasonable proof of paternity.

(3) Notwithstanding subsection (1), a worker may take additional days unpaid paternity leave as may be authorised by the employer.

(4) Where after the birth of a child, the mother of the child is incapacitated, falls ill or dies, during a maternity leave, and a medical practitioner has issued a medical certificate to that effect, or death certificate, the father of such child shall be entitled to paternity leave for the remainder of the maternity leave of the mother, and sections 222 to 225 shall, with the necessary modifications, apply:

Provided that in the case of incapacity or illness, if such mother recovers from the incapacitation or illness, and a medical practitioner has issued a medical certificate to that effect, the mother shall be entitled to such maternity leave for the remainder of the duration of the maternity leave.

(5) Section 222 (6) shall, with the necessary modifications, apply to a worker who is entitled to a paternity leave in terms of this section.

PART XXIII — *Employment Protection and Standards Related to
Pregnancy and Maternity*

228. (1) Subject to the provisions of this Act, a worker shall be entitled to return to the same position or an equivalent position paid at the same rate at the end of a maternity leave of the worker.

Employment
protection
related to
pregnancy and
maternity

(2) A worker who is pregnant or breastfeeding shall not perform work which is prejudicial to the health of the worker or the child of such worker, or where an assessment has established a significant risk to the worker's health or that of the child of such worker.

(3) An employer shall be prohibited from requiring a test for pregnancy or a certificate of such a test where a worker applies for employment except in respect of work that is —

- (a) prohibited or restricted for a pregnant or nursing worker in accordance with the provisions of any written law; or
- (b) where there is a recognised or significant risk to the health of the worker and the child of such worker.

(4) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P2 500 or to imprisonment for a term not exceeding six months, or to both.

229. (1) Where a worker wishes to nurse her child or otherwise feed her child herself, the employer shall permit the worker to do so for half-an-hour twice a day during the hours of work for six months immediately after the maternity leave and shall pay such worker basic salary in respect of each such period as if it were an ordinary working time:

Workers to be
permitted to
nurse child

Provided that the two-half-an-hour feeding periods may be aggregated and taken as one continuous hour, at the option of the worker and in agreement with the employer.

(2) An employer who contravenes subsection (1) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

230. Except in a personal capacity, an employer shall not be liable to pay the medical expenses or any part of such expenses incurred by a worker during the worker's pregnancy or childbirth.

When
employer
not liable
for medical
expenses

PART XXIV — *Persons with Disabilities*

231. An employer shall take reasonable steps, including reasonable accommodation, to eliminate discrimination in any employment policy or practice and to promote equal opportunity in the employment for persons with disabilities.

Reasonable
accommodation
for persons with
disability

232. The Minister may, after consultation with the Council and the Ministry responsible for the rights of persons with disabilities, make regulations in relation to the employment of persons with disabilities to give effect to the rights and obligations to ensure the equal protection benefit of the law for persons with disabilities.

Regulations
governing
employment of
persons with
disability

PART XXV — *Labour Health Areas*

Application of
employment
standards to
labour health
areas

233. (1) The Minister may, by Order published in the Gazette, declare any area of Botswana to be a labour health area for the purposes of this Act.

(2) The Minister may make Regulations that apply in relation to the employment of persons in a labour health area, and without prejudice to the generality of the foregoing, such Regulations may provide for —

- (a) the housing of workers, where it is impractical for workers to return to their ordinary places of residence at the end of a day's work or to obtain suitable accommodation;
- (b) the feeding of workers in cases where food is to be supplied by employers under or at the termination of any contract of employment and prescribe the description and scale of rations to be supplied;
- (c) all matters relating to the supply of water by employers to workers;
- (d) the description and scale of medicines, medical attention, accommodation, equipment, staff and treatment to be provided by employers to workers;
- (e) all matters relating to the return of workers from the place of employment to the place of origin or the place of engagement, whichever is nearer to the place of employment; and
- (f) the decontamination, disinfection and pest control of buildings.

PART XXVI — *Organisational Rights and Collective Bargaining: Organisational Rights and Rights of Trade Union Representatives*

Definitions for
purposes of
Part XXVI

234. For purposes of this Part —

- (a) “authorised representative” means an office bearer or official of a trade union or any other person authorised to represent the trade union;
- (b) “bargaining unit” means a group or unit of workers with a community of interest appropriate for collective bargaining purposes;
- (c) “good faith” in the context of collective bargaining includes making every effort to reach an agreement, conducting genuine and constructive negotiations, avoiding unjustified delays, complying with agreements that are concluded and applying them in good faith;
- (d) “reasonable access” means access by a trade union representative to the employer’s premises on conditions agreed with the employer that ensures, orderly activities for the purposes of this Part, and that work is not unduly interrupted;
- (e) “recognition” means employer or employers’ organisation recognises a trade union as the bargaining agent for all or some of its workers;

- (f) “sector” means the whole or part of a trade, industry or an occupation or service;
- (g) “trade union” includes two or more trade unions acting jointly; and
- (h) “workplace” means the place or places where the workers of an employer work:

Provided that if an employer carries on or conducts two or more operations that are independent of one another by reason of their size, function or organisation, then the place or places workers work in connection with each independent operation, constitutes the workplace for that operation.

235. The objects of this Part shall be to provide for a statutory framework to —

Objects of Part XXVI

- (a) promote the development of orderly sectoral collective bargaining through the establishment of a joint industrial council, and to provide for collective bargaining at the workplace or enterprise level; and
- (b) give effect to the right to organise.

236. (1) This Part shall apply to the extent that organisational rights and collective bargaining are not regulated in terms of any other law.

Application of Part XXVI

(2) Notwithstanding anything contained in this Act, a bargaining unit that includes a member of management shall contain no other workers, unless otherwise agreed to by the employer.

(3) A dispute regarding the appropriateness of a bargaining unit or whether a worker falls to be excluded from a bargaining unit may be referred to the Commission.

237. (1) An authorised representative of a trade union, including a trade union that is not registered in terms of this Act, shall, at the request of a member, be entitled to enter the premises of the member’s employer to —

Access to trade union members in workplace for purposes of organising

- (a) recruit members;
- (b) communicate with members;
- (c) hold meetings of workers on the premises;
- (d) provide for an approval process in terms of the constitution of the trade union for purposes of organising the administration and activities of such trade union.

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

(3) For purposes of this section, a trade union that is not registered may operate as such for a period not exceeding six months.

(4) A trade union that is not registered shall, after a period referred to in subsection (3) lapses, not —

- (a) be registered if such trade union fails to meet the requirements under section 82;
- (b) be recognised if such trade union fails to meet the threshold for recognition in terms of section 245; and
- (c) continue to carry out its activities in terms of this section.

Deduction of
trade union
dues

238. (1) An employer shall deduct any dues of a trade union from the wages of a worker if the worker has authorised the employer to do so in the prescribed form.

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

(3) Where an employer fails to remit a trade union dues within the time specified in subsection (2), and without reasonable grounds, the employer shall be liable to pay the trade union the equivalent of 5 per cent of the total amount due for each day the dues remain unremitted.

(4) A worker may revoke the authorisation referred to in subsection (1) by giving one month's written notice to the employer and the trade union.

(5) Where a worker revokes any authorisation under subsection (4), the employer shall cease to make any deductions after the expiry of the notice.

(6) An employer shall, with each monthly remittance, give a trade union a —

(a) list in the prescribed form of the names of the members in respect of whom deductions are required to be made; and

(b) copy of any notice of revocation under subsection (4).

Trade union
representatives

239. (1) The functions of an authorised representative of a trade union and a representative of a trade union appointed from among its members shall —

(a) represent members in any grievance and disciplinary hearing;

(b) represent the trade union in enquiries and investigations conducted by a labour officer in terms of this Act;

(c) monitor compliance with this Act by an employer;

(d) perform the functions of the trade union under the constitution of such trade union;

(e) further good labour relations; and

(f) perform any other function or role permitted in terms of this Act or agreed to by the employer.

(2) A member of a trade union shall be entitled to elect from among themselves a representative of the trade union in a workplace in which there are two to 25 members employed in the workplace, and one additional representative of such trade union for every additional 25 members employed in such workplace.

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

(4) Subject to section 237, an employer shall grant a representative of a trade union —

(a) access to the premises of the employer where such access is necessary for the proper exercise of the functions of the representative of the trade union; and

(b) reasonable and necessary facilities to conduct the activities of the trade union at the workplace.

(5) A representative of a trade union elected in terms of subsection (2) shall be entitled to a reasonable paid time off to perform any of the functions referred to in subsection (1).

(6) Subject to section 247 the employer shall disclose to a representative of a trade union any information relevant to the performance of the functions of the representative of the trade union.

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

240. (1) An employer shall grant a reasonable paid leave to a representative of a trade union referred to in section 239 to attend a training course relevant to the functions of the representative of the trade union, subject to an agreement between such trade union and the employer, and any reasonable limitations or conditions attached to such leave.

Leave for
trade union
activities

(2) A worker who is an office bearer of a trade union or federation of trade unions shall be entitled to take reasonable leave to perform the functions of the office of the trade union or federation of trade unions, subject to an agreement between the employer and such trade union or federation of trade unions as to the number of days of leave, the number of days of paid leave and the conditions attached to such leave.

241. (1) A trade union seeking to exercise a right conferred under this Part may, in the prescribed form, notify an employer of its intention to do so.

Procedure for
exercising
organisational
rights

(2) An employer shall, within 30 days of the receipt of a notice in subsection (1), meet with the trade union to conclude an agreement regarding the organisational rights and regulating the manner in which the rights are to be exercised.

(3) Where there is no agreement or an employer fails to meet with a trade union within 30 days in terms of subsection (2), the trade union may refer a dispute in relation to such failure to the Commission for mediation.

(4) Where the Commission fails to resolve a dispute in terms of subsection (3), a trade union may request the parties to the dispute to resolve such dispute through arbitration or may refer the dispute to the Industrial Court for an appropriate order.

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

242. Any organisational rights of a trade union that is a member of a joint industrial council may be regulated by a collective agreement between the parties to the joint industrial council.

Organisational
rights for trade
unions party to
joint industrial
council

Provided that the terms of the collective agreement shall not be less favourable than the rights provided for in this Part.

Disputes relating to organisational rights

243. (1) A party to a dispute about the interpretation or application of any provision of this Part may refer the dispute, in writing, to the Commission.

(2) A party to a dispute who refers the dispute to the Commission in terms of subsection (1) shall satisfy the Commission that a copy of such referral has been served on all the other parties to such dispute.

(3) The Commission shall attempt to resolve a dispute under this section through mediation.

(4) Where a dispute under this section remains unresolved, a party to the dispute may request the Commission to settle such dispute by arbitration or may refer the dispute to the Industrial Court for a decision.

Termination of organisational rights

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

- (a) refer the matter to the Commission for mediation; and
- (b) if the mediation fails to resolve the matter, apply to the Industrial Court for the —
 - (i) termination of any of the organisational rights granted to the trade union under a collective agreement, or
 - (ii) withdrawal of an award or an order made under section 241.

(2) An Industrial Court may make any appropriate order under section 241, including an order —

- (a) requiring a trade union to take measures to ensure compliance with the conditions for the exercise of the organisational rights;
- (b) suspending the exercise of the organisational rights for a period of time; or
- (c) amending or terminating the organisational rights contained in a collective agreement or an arbitration award or order.

PART XXVII – Organisational Rights and Collective Bargaining: Recognition for Purposes of Collective Bargaining at Workplace

Recognition for purposes of workplace bargaining

245. (1) A trade union that represents at least one third of the workers of an employer, who are eligible to be members of the trade union, shall apply to the employer for recognition for purposes of a workplace bargaining in terms of this section.

(2) Notwithstanding subsection (1), in the absence of any trade union that meets the requirements for recognition in terms of this section, a trade union that has more representatives of the workers of an employer may be recognised for purposes of workplace bargaining.

(3) A trade union seeking recognition in terms of this section may, in the prescribed form, apply for recognition.

(4) The factors to be considered by an employer in determining whether a trade union is sufficiently representative for the purposes of this section, read with the necessary changes in the context of the public service, shall include —

- (a) the nature of the workplace;
 - (b) the nature of the rights that the trade union seeks to exercise;
 - (c) the extent of union organisation at the employer and in the industry generally;
 - (d) the nature of the sector in which the workplace is situated and arrangements for industry level bargaining including whether or not a joint industrial council has been established for the sector;
 - (e) the organisational history at the workplace or any other workplace of the employer;
 - (f) the composition of the workforce in the workplace taking into account the extent to which there are workers assigned to work by temporary employment services, workers employed on fixed term contracts, part-time workers or workers in other categories of non-standard employment;
 - (g) the financial and administrative burden of requiring an employer to grant organisational rights to more than one trade union; and
 - (h) whether a recognition would promote orderly collective bargaining and encourage development of a representative trade union in the workplace, or if it would result in the proliferation of trade union representation in a single workplace.
- (5) The factors to be considered in determining a workplace bargaining shall include —
- (a) the desire of the parties and the interests of an orderly and effective collective bargaining;
 - (b) the community of interest;
 - (c) the wages, hours, and other conditions of the employment;
 - (d) the operational or administrative structure of the employer and the degree of the integration of the operational or administrative structure;
 - (e) the history of collective bargaining and arrangements for sectoral collective bargaining including agreements reached in a joint industrial council on the appropriateness of a workplace bargaining for the sector; and
 - (f) any other information that may be required for workplace bargaining.
- (6) An employer shall, within 30 days of receipt of an application in terms of section (1), notify a trade union whether the employer —
- (a) grants the trade union recognition for purposes of a workplace bargaining in terms of this Act; or
 - (b) refuses to grant the trade union recognition.
- (7) An employer may refuse to recognise a trade union on the grounds that the —
- (a) employer disputes the appropriateness of the proposed trade union for purposes of a workplace bargaining;
 - (b) trade union does not represent at least one third of the workers of the employer;

Bargaining
rights and
duty to bargain
in good faith

(c) trade union has not demonstrated that it is sufficiently representative of the workers of the employer; or

(d) Industrial Court has authorised the withdrawal of recognition and the period provided in that order has not expired.

(8) Where a trade union is aggrieved by a decision to refuse to recognise a trade union, or by the employer's failure to respond to an application under subsection (3) within the 30 days, the trade union may, in the manner as may be prescribed, refer the dispute to the Commission.

(9) Where a dispute referred to in subsection (8) remains unresolved after 30 days of referral of the dispute, any party to such dispute may refer the dispute to the Industrial Court for determination.

(10) Where a dispute concerns whether a trade union represents at least one third of the employer's workers, who are eligible to be members of the trade union, the Industrial Court may direct the assigned mediator to provide for an approval process or an audit to determine the dispute.

(11) A recognition agreement in terms of this section shall be in writing and shall provide, for procedures for reviewing, amending or terminating the recognition agreement, and for the settlement of disputes between the workers and employers.

246. (1) An employer who has granted recognition to a trade union in terms of this Part shall bargain in good faith with the trade union on the following matters, the —

(a) remuneration and other terms and conditions of employment, including the physical conditions under which a worker is required to work;

(b) employment benefits;

(c) collective bargaining relationship including the —

(i) organisational rights, and

(ii) negotiation and dispute procedures; and

(d) any other agreed matter.

(2) A trade union that has been granted recognition for the purposes of a collective bargaining shall bargain in good faith with the employer in respect of any of the matters referred to in subsection (1).

(3) A dispute concerning the duty to bargain in good faith may be referred to the Commission for mediation in accordance with section 280.

(4) If the Commission fails to resolve a dispute in terms of subsection (3), the Commission may refer the dispute to the Industrial Court for determination.

(5) For purposes of this section, "failure to bargain in good faith" includes —

(a) cancellation of bargaining sessions without reasonable cause;

(b) delays or postponement of bargaining sessions due to unavailability without reasonable cause;

(c) withdrawal of any accepted offer;

(d) allowance of unauthorised representatives to bargain;

(e) bargaining without mandate;

- (f) representatives knowingly misleading each other at a bargaining session;
- (g) reneging on bargaining positions;
- (h) refusing to recognise a trade union as bargaining agent; or
- (i) any other related matter.

247. (1) Subject to subsections (2) to (8), an employer shall, on request by a recognised trade union, disclose any relevant information to the recognised trade union that is reasonably required to allow such trade union to consult or bargain collectively.

Disclosure of
information
to recognised
trade unions

(2) An employer shall notify a recognised trade union, in writing, where any of the information requested by the trade union is information which may not be disclosed in terms of subsection (3).

(3) An employer shall not disclose information that —

- (a) is legally privileged;
- (b) the employer cannot disclose without contravening a prohibition imposed on the employer by any law or order of court;
- (c) is, subject to subsection (7), confidential and which, if disclosed, may cause material harm to a worker or the employer; or
- (d) is, subject to subsection (7), private or personal information relating to a worker, unless the worker consents to the disclosure of that information.

(4) Unless otherwise provided in a collective agreement, any dispute concerning the provisions of this section shall be referred to the Commission for mediation in accordance with Part XXXI.

(5) Where a dispute referred to in subsection (2) is not resolved within 30 days of the referral, any party may refer the dispute to the Industrial Court for determination.

(6) In any dispute about the disclosure of information, the Industrial Court shall first decide whether the information is relevant.

(7) If the Industrial Court decides that the information required in terms of this section is relevant and if it is information referred to in subsection (3) (c) or (d), the Industrial Court shall balance the harm that the disclosure is likely to cause, against the harm that the failure to disclose is likely to cause to the ability of the recognised trade union to engage effectively in consultation or collective bargaining.

(8) If the Industrial Court decides that the balance of harm favours disclosure, the Industrial Court may order disclosure on the terms designed to limit the harm likely to be caused to the worker or employer.

(9) When making an order under this section, the Industrial Court shall take into account any breach of confidentiality in respect of information disclosed to a trade union in terms of this section and may refuse to order the disclosure of the information for a period specified in an order.

(10) In any dispute about an alleged breach of confidentiality, the Industrial Court may order that the right of disclosure of information in that workplace be withdrawn for such period as may be specified in an order.

Withdrawal of
recognition at
workplace

248. (1) An employer shall apply to the Commission to withdraw the recognition of a trade union as a bargaining agent on the grounds that the trade union no longer represents one third of the employers' workers or is no longer sufficiently representative.

(2) Notwithstanding subsection (1), an employer shall inform a trade union of its failure to meet the one third threshold, three months from the date of such failure and before applying to the Commission.

(3) Part XXXI shall, with the necessary modifications, apply to a mediation conducted in terms of this section.

(4) Where a dispute remains unresolved for 30 days, either party may refer the dispute to the Industrial Court for determination.

(5) Where a dispute has been referred to the Industrial Court in terms of subsection (4), the Industrial Court may, if the dispute concerns —

(a) the representativeness of a trade union —

- (i) direct the Commission to provide for an approval process to determine the question, or
- (ii) give the trade union an opportunity to achieve the one third, or sufficient representation threshold; or

(b) a material breach of a collective agreement —

- (i) suspend or authorise the withdrawal of any of the organisational rights granted to a trade union, or
- (ii) suspend or authorise the withdrawal of recognition.

(6) Where the Industrial Court authorises a withdrawal of recognition of a trade union as a bargaining agent, the Industrial Court shall include in its order, the period within which the trade union shall not be entitled to recognition.

PART XXVIII — Organisational Rights and Collective Bargaining: Collective Bargaining at Sectoral or Industry Level

Objects of Part
XXVIII

249. (1) The purpose of this Part shall be to promote the development of sectoral collective bargaining with a view to establish a joint industrial council that shall be responsible for setting the minimum terms and conditions for the sector as a whole, and to develop sector specific strategies to improve and encourage productivity, investment, research and development, efficiency and skills.

(2) The Council shall oversee the development of a coordinated system for sectoral collective bargaining and may facilitate the establishment of a joint industrial council and provide guidance to the joint industrial council in accordance with the provisions of this Act.

Joint
application
to establish
joint industrial
council

250. (1) One or more trade unions and one or more employers' organisations which may consist of the Government, if the Government is the employer in the sector, who consider themselves to be sufficiently representative of workers' and employers' interests in an industry, service or sector, may jointly apply, in writing to the Registrar for the establishment of the joint industrial council.

(2) The parties referred to in subsection (1) shall submit a copy of the proposed constitution of the joint industrial council together with the application and any other information that may assist the Registrar to determine whether the joint industrial council meets the requirements for registration.

(3) The Registrar may, for purposes of subsection (2), request further information in support of the application.

(4) On receipt of the application, and any further information requested in terms of subsection (3), the Registrar shall in the *Gazette*, as soon as practicable, publish a notice containing the material particulars of the application and submit a copy of the notice to the Council.

(5) A notice referred to in subsection (4) shall invite the general public to comment, within 30 days from the date of publication of the notice, on the application and specifically on –

- (a) the sector and, if relevant, the area in respect of which the application is made; and
- (b) whether the applicant is sufficiently representative in the sector, industry or service in respect of which the application is made.

(6) The Registrar may consult any other interested party and shall provide an applicant with an opportunity to respond to any comment he or she receives or objection to the establishment of a joint industrial council.

(7) The Registrar shall, as soon as is practicable, submit an application under this section and any objection, response from the applicant, and further information to the Council for its consideration.

(8) The Council shall, within 60 days of receiving the information referred to in subsection (7), consider the appropriateness of the sector and area if relevant in respect of which the application is made and may, in writing, inform the Registrar of its findings and recommendations.

(9) The Registrar shall, after consideration of an application under this section, and any additional information, together with any information submitted to the Registrar in terms of subsection (7), determine whether an applicant has complied with the provisions of this section and give notice to the applicant that –

- (a) such applicant meets the requirements for registration and that the joint industrial council has been registered in the register of councils; or
- (b) where the Registrar is not satisfied that such applicant meets the requirements for registration, the Registrar shall inform the applicant of the reasons for that decision, and that such applicant has 30 days from the date of the notice to meet such requirements.

(10) The Registrar shall, after the period referred to in subsection (9) –

- (a) refuse to register an applicant if the applicant has failed to meet the requirements for registration, and inform such applicant of that decision in writing; or

(b) where an applicant meets the requirements, register the applicant by entering the applicant's name in the register of councils.

(11) The Registrar shall, after registering an applicant –

(a) issue a certificate of registration and a certified copy of the registered constitution of the joint industrial council to the applicant; and

(b) by Notice published in the *Gazette*, register a joint industrial council for the sector or industry concerned.

251. (1) The constitution of a joint industrial council shall provide for –

(a) the industry and services to be provided by the joint industrial council;

(b) the appointment, number and method of selection of a representative of an employer and a representative of a worker, which shall consist of an equal number of representatives of a trade union and equal number of representatives from an employers' organisation;

(c) the appointment, and method of selection of a chairperson and vice chairperson of the joint industrial council;

(d) the appointment and method of selection of a secretary or joint secretaries of the joint industrial council;

(e) the procedure for the appointment of alternative members of the joint industrial council;

(f) the circumstances and manner in which representatives and office bearers shall vacate their seats and the procedure for the replacement of members;

(g) the term of office of members of the joint industrial council and office bearers;

(h) the rules for the convening and conducting of meetings of representatives, including the quorum required for such meetings, and the minutes to be kept of the meetings;

(i) the establishment and functions of committees of the joint industrial council;

(j) the manner in which decisions are to be made;

(k) the procedure to be followed where a dispute arises between the parties to the joint industrial council;

(l) the determination through arbitration of any dispute arising between the parties to the joint industrial council about the interpretation or application of such joint industrial council's constitution;

(m) the procedure to be followed where a dispute arises between a trade union that is party to the joint industrial council, or its members, or both, on the one hand, and employers who belong to an employers' organisation that is a party to the joint industrial council, on the other hand;

(n) the method by which persons affected by any collective agreement made or amended by the joint industrial council shall be informed;

(o) the procedure for exemption from any collective agreement;

- (p) the banking and investment of the funds of the joint industrial council;
- (q) the purposes for which the funds of the joint industrial council may be used;
- (r) the delegation of the powers and functions of the joint industrial council;
- (s) the admission of an additional trade union and employers' organisation as parties to the joint industrial council;
- (t) the procedure for changing the constitution of the joint industrial council;
- (u) the procedure by which the joint industrial council may resolve to wind up; and
- (v) such other matters as may be included in the constitution by the party making an application to, and approved by, the Registrar, or as may be advised by the Registrar.

(2) The Industrial Court may, on application by an interested party, and upon reasonable cause being shown, cancel or amend the registration of a joint industrial council.

(3) Any interested party aggrieved by a decision of the Registrar not to establish and register a joint industrial council, or a decision to cancel the registration of a joint industrial council, may appeal against such decision to the Industrial Court.

252. The functions of a joint industrial council shall be to —

- (a) negotiate the minimum terms and conditions of employment for a sector or industry concerned;
- (b) conclude any collective agreement;
- (c) enforce a collective agreement;
- (d) prevent and resolve a dispute;
- (e) resolve disputes through mediation and limited arbitration;
- (f) establish and administer a fund to be used for expenses relating to the resolution of disputes;
- (g) promote and establish any training and education scheme;
- (h) establish and administer a pension, provident, medical aid, sick pay, holiday, unemployment and training scheme or fund, or any similar scheme or fund for the benefit of one or more of the parties to the joint industrial council or their members;
- (i) develop any proposal for submission to the Council or any other appropriate forum on policy and law that affect the sector;
- (j) determine, by collective agreement, the matters which may not be an issue in dispute for the purposes of a strike or lock-out at the workplace;
- (k) confer on the workplace, any additional matters for consultation;

Functions of
joint industrial
council

Collective agreement to be binding on parties to joint industrial council

- (l) provide industrial support services within the sector; and
- (m) extend the services and functions of the joint industrial council to the workers in the informal sector and domestic workers.

253. Subject to the provisions of this Act, a collective agreement concluded in a joint industrial council shall bind –

- (a) the parties to the joint industrial council who are parties to the collective agreement;
- (b) each party to the collective agreement and their members in so far as the provisions of such collective agreement apply to the relationship between such party and the members of such other party; and
- (c) the members of a trade union that is a party to the collective agreement and the employers who are members of an employers' organisation that is a party to such collective agreement, if the collective agreement regulates the terms and conditions of employment and related conduct of such employers in relation to their workers or the conduct of the workers in relation to their employers.

Admission of parties to joint industrial council

254. (1) A trade union or employers' organisation may, in writing, apply to a joint industrial council for admission as a party to the joint industrial council.

(2) An application referred to in subsection (1) shall be accompanied by a certified copy of an applicant's registered constitution and a certificate of registration, and shall include –

- (a) any detail of the applicant's membership within the registered scope of the joint industrial council, and where such applicant is an employers' organisation, the number of workers that its members employ within that registered scope;
- (b) the reasons for admission of the applicant as a party to the joint industrial council; and
- (c) any other information which the applicant relies on to support the application.

(3) A joint industrial council shall, within 90 days of receiving an application for admission, decide whether to admit or refuse to admit an applicant, and shall advise the applicant of its decision, failing which the joint industrial council shall be deemed to have refused to admit such applicant.

(4) Where a joint industrial council refuses to admit an applicant, the joint industrial council shall, within 30 days of the date of the refusal, advise the applicant in writing of its decision and the reasons for that decision.

(5) An applicant may apply to the Industrial Court for an order admitting the applicant as a party to a joint industrial council.

(6) The Industrial Court may admit the applicant as a party to a joint industrial council, adapt the constitution of the joint industrial council and make any other appropriate order.

255. (1) For purposes of this section, a trade union includes two or more trade unions acting jointly.

Application by
trade unions
to establish
joint industrial
council

(2) Where a trade union has, as its members, at least one third of the workers in an industry, the trade union may, in the prescribed form, apply to the Registrar for the establishment of a joint industrial council in a sector in respect of which the joint industrial council is not registered.

(3) The Registrar shall, on receipt of an application referred to in subsection (2), apply section 250 to the application, read with the changes required by the context of such application.

(4) The Registrar shall, after considering an application under subsection (1), and any additional information, together with any information submitted to the Registrar in terms of section 250 (7), determine whether an applicant has complied with this section and give notice to the applicant that —

- (a) such applicant meets the requirements for registration and that the joint industrial council has been registered in the register of councils; or
- (b) where the Registrar is not satisfied that such applicant meets the requirements for registration, the Registrar shall inform the applicant of the reasons for that decision and that such applicant has 30 days from the date of the notice to meet those requirements.

(5) The Registrar shall, after the period referred to in subsection (4) —

- (a) refuse to register an applicant if the applicant has failed to meet the requirements for registration, and notify such applicant of that decision in writing; or
- (b) where an applicant meets the requirements, register the applicant by entering such applicant's name in the register of councils.

(6) The Registrar shall, after registering an applicant —

- (a) issue a certificate of registration and a certified copy of the registered constitution of the joint industrial council to the applicant; and
- (b) by Notice published in the *Gazette*, register a joint industrial council for the industry concerned.

(7) In the absence of an agreement to establish a joint industrial council, and where the Registrar is satisfied that a trade union represents at least one third of the workers in an industry, the Registrar shall issue a certificate of registration in the prescribed manner, certifying that the trade union is a recognised bargaining agent in the industry.

(8) A party aggrieved by a decision of the Registrar under this section may appeal to the Industrial Court against that decision.

256. (1) For the purposes of this section, a trade union includes two or more trade unions acting jointly.

Trade union
recognition
as bargaining
agent at
industry level

(2) In the absence of a joint industrial council that covers an industry, and where a trade union has, as its members, at least one third of the workers in the industry, the trade union may, in the prescribed form, apply to the Registrar for recognition as a bargaining agent in such industry.

(3) The Registrar shall, on receipt of an application referred to in subsection (2), call for representations of the trade unions by Notice published in the *Gazette* and a newspaper with national circulation.

(4) The Registrar shall, after considering the representations referred to in subsection (3), determine whether a trade union has at least one third of the workers in the industry as members.

(5) Where the Registrar is satisfied that a trade union represents at least one third of the workers in an industry, the Registrar shall issue a certificate of recognition in the prescribed form, certifying that the trade union is a recognised trade union in the industry for the period specified, and in respect of the subjects specified in the certificate.

(6) Where a trade union has been granted recognition as a bargaining agent in an industry under this section, any —

(a) employers' organisation representing the employers in the industry shall bargain in good faith with the trade union on matters provided in subsection (7); and

(b) employer in the industry not belonging to an employers' organisation shall bargain in good faith with the trade union on matters provided in subsection (7).

(7) The matters referred to in subsection (6) shall include remuneration and other terms and conditions of employment, and the physical conditions under which a worker is required to work for the purposes of concluding a collective agreement in terms of this Act.

(8) A party aggrieved by a decision of the Registrar in this section may appeal to the Industrial Court against that decision.

PART XXIX — *Organisational Rights and Collective Bargaining: Collective Agreements*

Collective
agreements to
be binding on
parties

257. (1) A collective agreement shall be in writing and shall be binding on the parties to the collective agreement, subject to this Act.

(2) The parties to a collective agreement may conclude the collective agreement for a fixed period, for an indefinite period or for a fixed term with a renewal clause, and may, by agreement, extend or vary such collective agreement.

(3) Unless otherwise agreed by the parties, a collective agreement for an indefinite period may be terminated in writing by either party by giving one month notice of termination of the collective agreement, and stating the reasons for the termination:

Provided that a notice under this section shall not be served before the expiry of six months immediately after the day on which such collective agreement came into effect.

Registration
of collective
agreements

258. (1) A party to a collective agreement or to an agreement extending or varying the terms of a collective agreement shall lodge a signed copy of the collective agreement or the extension or variation agreement with the Registrar within 28 days from the date such collective agreement or extension or variation agreement was concluded.

(2) The Registrar shall —
(a) in such manner as may be prescribed, register a copy of the collective agreement or extension or variation agreement; and
(b) serve notice of registration of the collective agreement or extension or variation agreement on each party.
(3) Where the Registrar is of the opinion that a collective agreement or extension or variation agreement lodged in terms of this section is contrary to any provision of this Act or any other written law, the Registrar shall withhold registration of the collective agreement or extension or variation agreement and shall notify the parties to such collective agreement or extension or variation agreement of the reason for the decision.

(4) A party aggrieved by a decision of the Registrar under subsection (3) may appeal such decision to the Industrial Court.

259. (1) A collective agreement or extension or variation agreement that compels a worker to become a member of a trade union shall not be enforceable.

Agency shop
agreements

(2) A trade union that represents the majority of the workers or recognised trade union in an appropriate collective bargaining unit may conclude a collective agreement or extension or variation agreement with the employer providing for an agency shop.

(3) The requirements for a binding collective agreement or extension or variation agreement that provides for an agency shop agreement shall be —

- (a) the collective agreement or extension or variation agreement applies to a worker in the bargaining unit;
- (b) a worker who is not a member of a trade union shall not be compelled to become a member of the trade union;
- (c) any agency fee deducted from the remuneration of a worker, who is not a member of a trade union, shall be equivalent to, or less than, the trade union dues deducted by an employer from the remuneration of the member;
- (d) the amount deducted from a member of a trade union and from a worker who is not a member of the trade union under paragraph (c) shall be paid into a separate account administered by such trade union, and
- (e) the monies in the account referred to in paragraph (d) may only be used to advance or defend the socio-economic interests of the workers in the relevant workplace and shall not be used to pay —
 - (i) an affiliation fee to a political party, or
 - (ii) any contributions to a political party or for a person standing for political office.

(4) Notwithstanding anything contained in any law or contract of employment, an employer shall deduct an agency fee under a collective agreement that provides for an agency shop that complies with this section from the wages of a worker without the consent of the worker:

Provided that such deduction complies with the terms and conditions as may be prescribed.

(5) A trade union that is party to a collective agreement providing for an agency shop shall —

- (a) appoint a registered auditor to audit the account referred in subsection (3) (d) annually;
- (b) submit the auditor's report to the Registrar within 30 days from the date of the report; and
- (c) permit any interested person to inspect the auditor's report at the office of the trade union during business hours.

(6) An auditor's report under this section shall include an opinion on whether the provisions of this section have been complied with.

(7) A collective agreement providing for an agency shop shall be —

- (a) suspended for the period during which a trade union is not a representative of any workers; or
- (b) terminated once the recognition of a trade union is withdrawn in accordance with section 248.

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

(9) For the purposes of this section, "agency shop" means a recognised trade union security arrangement in terms of which a worker who is not a member of the recognised trade union is required to pay an agency fee to such recognised trade union.

Workers'
participation
agreements

260. (1) A trade union that represents the majority of the workers in an appropriate collective bargaining unit may conclude a collective agreement with an employer or the employers' organisation to establish a forum for workers' participation in a workplace.

(2) Where a trade union, employer or employers' organisation wishes to establish a forum for workers' participation in any workplace, the trade union, employer or employers' organisation may request the assistance of the Director of Labour to facilitate any discussion between such trade union, employer or employers' organisation.

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

Disputes
concerning
collective
agreements

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

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

- 262.** (1) A claim that —
- (a) the terms and conditions of employment in any trade or industry, either generally or in a particular area, have been settled by a collective agreement or by a decision of the Industrial Court;
 - (b) the parties to the collective agreement or the parties bound by the decision of the Industrial Court are, or represent, either generally or in a particular area, a substantial proportion of the employers, and workers in a trade or industry, being workers of the description to which the collective agreement or the decision of the Industrial Court relates; or
 - (c) in respect of any worker referred to in paragraph (b), an employer engaged in that trade or industry, or where the operation of the collective agreement or of the decision of the Industrial Court is limited to a particular area, an employer so engaged in that area fails to observe the terms and conditions of employment, may, in writing, be referred by or on behalf of any employer or worker who is adversely affected by such failure, to the Industrial Court.
- (2) A claim provided under subsection (1) may be referred by the interested party to the Industrial Court where the claim has —
- (a) been referred to the Commission for mediation; and
 - (b) not been resolved within 30 days of the referral to the Commission or within the extended period provided under section 264 (2).
- (3) Where, in the opinion of the Industrial Court, a claim lodged with the Industrial Court for the purposes of this section does not contain sufficient particulars, the Industrial Court may require to be provided with further particulars of the claim and, where it does so, such claim shall be deemed, for the purposes of this Act, not to have been lodged with the Industrial Court in accordance with this section until the Industrial Court is satisfied that it has been provided with the particulars required.

Claims relating to failure to observe terms and conditions of employment

PART XXX — *Industrial Action: Strikes and Lockouts, Essential Services and Picketing*

- 263.** (1) The objects of this Part shall be to regulate the industrial action and the right to strike, and to promote compliance with international labour standards and international law obligations on freedom of association and the right to organise to which Botswana is party.
- (2) For the avoidance of doubt, this Part in so far as it applies to the right to strike, shall, with the necessary modifications, also apply to lockouts.
- (3) For the purposes of this Part —
- (a) “essential service” means the service the interruption of which endangers the life, personal safety or health of the whole or any part of the population; and
 - (b) “minimum service” means the service and minimum number of workers necessary to —

Objects and interpretation of certain terms in Part XXX

- (i) ensure that the life, personal safety or health of the whole or part of the population is not endangered,
- (ii) protect the legitimate interests of the community where the extent and duration of a strike may result in an acute national crisis endangering the normal living conditions of the population,
- (iii) prevent material destruction of physical plant or machinery or a working area,
- (iv) maintain the adequate provision of public services of fundamental importance, or
- (v) provide for support staff.

Provided that minimum service shall not form part of the essential service.

Right to strike
and lockout

264. (1) Subject to this Part, a party to a dispute of interest shall have the right to strike or lockout where —

- (a) the dispute of interest has been referred to the Commission in accordance with Part XXXI and subject to subsections (2) and (3), such dispute of interest still remains unresolved after 30 days of the referral;
- (b) after the 30 days referred to in paragraph (a) has expired, 48 hours' notice of the commencement of the strike or lockout has been given in the prescribed form to the other parties to the dispute of interest; and
- (c) the strike or lockout conforms to —
 - (i) this Part, and
 - (ii) any agreed rules regulating the conduct of a strike or lockout, or
 - (iii) any rules determined by the mediator in terms of section 281(5).

(2) Where a party referring a dispute of interest fails to attend a mediation hearing provided under section 278, the period of 30 days referred to under subsection (1) (b) shall be extended for a further 30 days commencing from the date of the hearing.

(3) Where a party to a dispute of interest, other than the party referring the dispute of interest, fails to attend a mediation hearing provided under section 278, the mediator shall not be obliged to grant an extension provided under subsection (2).

Regulation
of strikes and
lockouts

265. (1) A mediator assigned to mediate a dispute of interest shall, where the dispute of interest cannot be resolved before the expiry of the 30 days period provided under section 264 (1) (b), attempt to reach an agreement on the —

- (a) rules to regulate the conduct of the strike or lockout, failing which the mediator shall determine the rules in accordance with any guidelines published in terms of section 290; and
- (b) provision of a minimum service.

(2) The rules provided in subsection (1) (a) shall include rules concerning the conduct of the strike or lockout and any conduct in contemplation or furtherance of the strike or lockout, including, subject to subsection (4), picketing and the use of replacement labour.

(3) In the absence of an agreement on a minimum service provided in subsection (1) (b), a party to a dispute of interest may refer the dispute of interest to the Council to determine whether the minimum services is to be maintained.

(4) Where a strike or lockout complies this Part, an employer shall not take any person into employment to do the work of a worker who is on strike or who is locked out.

(5) Notwithstanding subsection (4), an employer may take any person into employment to the extent that it is necessary to maintain a minimum service, or in the circumstances where a disruption of service constitutes an acute national crisis.

(6) Unless otherwise agreed or permitted in terms of this Part, a trade union shall not picket the premises of the employer during a strike or lockout.

(7) Where a dispute of interest concerns the unilateral change to terms and conditions of employment, the party referring the dispute of interest to the Commission may require an employer not to unilaterally implement the change to the terms and conditions of employment; or, if the employer has already implemented the change unilaterally, require such employer to restore the terms and conditions of employment that applied before the change; and the employer shall comply with the requirement within 48 hours of service of the referral.

266. (1) A person may not take part in a strike or lockout if the —

- (a) strike or lockout is —
 - (i) not in compliance with this Part or an agreed procedure between the employer and workers, or
 - (ii) in breach of a peace clause in a collective agreement; or
- (b) subject matter of the strike or lockout is —
 - (i) not a trade dispute,
 - (ii) regulated by a collective agreement,
 - (iii) a matter that is required by this Act to be referred to arbitration or to the Industrial Court for adjudication, or
 - (iv) a matter that the parties to a dispute of interest have agreed to refer to arbitration.

(2) The Industrial Court may interdict a —

- (a) strike or lockout that is not in compliance with this Act; or
- (b) conduct —
 - (i) in contemplation or in furtherance of a strike or lockout, and
 - (ii) that is not in compliance with this Act.

(3) An interdict provided under subsection (2) may not be granted unless —

Prohibition of
certain strikes
and lockouts

Strikes and
lockouts in
compliance
with Part XXX

- (a) an applicant has given the prescribed notice to the respondent of the applicant's intention to apply for an interdict;
- (b) an applicant has served a copy of the notice and the application on the Director of Labour; and
- (c) the Industrial Court has given the respondent a reasonable opportunity to be heard before a decision is made.

267. (1) A worker does not commit a delict or breach of contract by taking part in a strike or lockout in compliance with this Part.

(2) A worker who takes part in a strike or lockout may not be dismissed for doing so, but such participation shall not preclude the employer from dismissing the worker during a strike or lockout for any other reason that is valid and fair.

(3) Notwithstanding subsection (1), an employer shall not be obliged to remunerate a worker for services that the worker does not render during the strike or lockout in compliance with the provisions of this Part:

Provided that, if such worker's remuneration includes payment in kind in respect of accommodation, the provision of food and other basic amenities of life, the employer shall not discontinue payment in kind during the strike or lock-out.

(4) After the end of the strike or lock-out, the employer may recover the monetary value of the payment in kind made at the request of a worker during the strike or lock-out from the worker by way of civil proceedings instituted in the Industrial Court.

(5) Any civil proceedings may not be instituted against a worker for participating in a strike or lockout carried out in compliance with this Part except any act in contemplation or furtherance of a strike that constitutes defamation or an offence.

Conspiracy in
trade disputes

268. (1) Any agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be punishable as a conspiracy if such act committed by one person would not be punishable as a crime.

(2) An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without such agreement or combination, would be actionable.

(3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any enactment.

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(4) Nothing in this section shall affect the law relating to riots, unlawful assembly, breach of the peace or sedition or any offence against the President or in contravention of Part II, Division I, of the Penal Code.

(5) For the purposes of this section, a "crime" means an offence the commission of which renders the offender liable to be imprisoned either absolutely or at the discretion of the court as an alternative to some other punishment.

269. (1) For the purposes of this section, “service” includes any part of the service.

Designation
of service
as essential
service

(2) The following services are designated essential services —

- (a) air traffic control services;
- (b) health services;
- (c) fire services;
- (d) the provision of food to pupils of school age and the cleaning of schools;
- (e) electricity services (electricity teams for generation, transmission and distribution);
- (f) water and sanitation services;
- (g) any transport and telecommunications services required for the provision of the foregoing services; and
- (h) services necessary to the operation of any of the foregoing services.

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

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

- (a) give notice in the manner to be prescribed, of the investigation inviting any interested party to make representations relating to the service to be designated as an essential service;
- (b) conduct an investigation in the manner to be prescribed;
- (c) make any written representations available for inspection of a service to determine whether that service can be designated as essential service;
- (d) hold a public hearing at which any interested party may make oral representations; and
- (e) consider the representations made in terms of this subsection.

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

(6) The Council may vary or cancel a designation made under this section.

(7) A party to a dispute as to whether a service is an essential service or whether an employer, or a worker is engaged in an essential service may refer the dispute to the Council for a determination.

(8) The party who refers the dispute to the Council under subsection (7) shall satisfy the Council that a copy of the dispute has been served on all the other parties to the dispute.

(9) The Council shall determine the dispute as soon as possible.

Declaration
of essential
service during
strike

270. (1) The Council may, on application by a party to a dispute, after an investigation declare any service not referred to in section 269 (2) as an essential service in the event that the interruption of the service which, as a result of the duration of a strike, endangers life, safety or health of the whole or part of the population.

(2) For the purposes of subsection (1), “duration of a strike” means at least seven continuous days or more.

(3) Where a service is declared essential in accordance with subsection (1) —

(a) a dispute involving the service shall be resolved in accordance with section 283; and

(b) upon resolution of the dispute, the service shall cease to be an essential service.

Prohibition
of strike or
lockout in
essential
services

271. (1) Subject to this Part, —

(a) a worker in an essential service shall not take part in a strike; and

(b) an employer in an essential service shall not take part in a lockout.

(2) Notwithstanding subsection (1), if the parties to a dispute have concluded a collective agreement providing for the maintenance of a minimum service during a strike or lockout, and the Council has approved the agreement, or if the Council has determined the minimum service that is required to be maintained in an essential service, the agreed or determined minimum service shall be regarded as an essential service, and workers who are not included in such minimum service shall not be prohibited from participating in a strike action.

Dispute of
interest in
essential
services

272. (1) Unless a collective agreement provides otherwise, where there is a dispute of interest involving an employer, employers’ organisation or a worker in an essential service, a party to the dispute of interest may refer such dispute of interest to the Commission for mediation.

(2) If the mediation fails, any party to the dispute may refer the dispute to arbitration by the Commission, or by agreement, the Industrial Court.

Breaches
of contracts
affecting
essential
services
during strike

273. (1) A worker who wilfully breaches his or her contract of employment knowing or having reasonable cause to believe that the probable consequence of his or her doing so, either alone or in combination with others, shall be to —

(a) deprive the public or any section of the public, either wholly or to a substantial extent, of an essential service or substantially to diminish the enjoyment of the essential service by the public or by any section of the public; or

(b) endanger human life or public health or to cause serious bodily injury to any person or to expose valuable property, whether movable or immovable, to the risk of destruction, deterioration, loss or serious damage, commits an offence and is liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding three years, or to both.

(2) A person who causes, procures, counsels or influences any worker to breach his or her contract of employment, knowing or having reasonable cause to believe that the probable consequence of the worker's breach of his or her contract of employment, either alone or in combination with others, or of the lockout, as the case may be, will be any of the consequences specified in subsection (1), commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

274. (1) An employer in an essential service shall cause to be conspicuously displayed in accordance with this section, in all premises used for the purposes of the essential service, a printed notice containing a copy of section 273 together with a Setswana language translation of the notice.

Notices to be displayed

(2) A notice referred to in subsection (1) shall be displayed in a conspicuous place where it may conveniently be read by persons employed in the premises in question and, in the event of the notice being lost, destroyed, removed, defaced, obliterated or otherwise damaged, the employer shall immediately cause it to be replaced.

(3) An employer in an essential service shall take every reasonable step to ensure that any worker in the essential service who is illiterate is regularly informed of and understands section 273.

(4) A person who, without reasonable excuse, destroys, removes, defaces, obliterates or otherwise damages any printed notice displayed in accordance with this section commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

(5) In any proceedings for an offence under subsection (4), the court shall presume the absence of a reasonable excuse on the part of the person charged unless the contrary is proved.

(6) An employer who contravenes this section commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

275. (1) Notwithstanding anything contained in this Act or any other law, it shall —

Peaceful picketing and prevention of intimidation

- (a) be lawful for one or more persons, acting on their own or on behalf of a trade union or employers' organisation, or of an individual employer or a firm in contemplation or furtherance of a dispute, to attend at or near a house or place where a person resides, works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading or inducing any person to work or to abstain from working; and

Secondary
strike

(b) not be lawful for one or more persons, whether acting on their own behalf or on behalf of a trade union, or of an individual employer or a firm, and notwithstanding that they may be acting in contemplation or furtherance of a dispute, to attend at or near a house or place where a person resides, works or carries on business, or happens to be, for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they so attend in such numbers or otherwise in such manner that is —

- (i) in breach of any agreement, rules by the mediator or published guidelines, or
- (ii) likely to lead to a breach of the peace, or may result in the strike ceasing to be peaceful and to a disturbance of public order; and is accompanied by violence or coercion of non-strikers interfering with their freedom to work.

(2) A person who contravenes subsection (1) (b) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

276. (1) For the purposes of this section, “secondary strike” means a strike that is in —

- (a) support of a lawful strike (hereinafter referred to as the “primary strike”) by other workers against their employer (hereinafter referred to as the “primary employer”); or
- (b) opposition to a lockout (hereinafter referred to as the “primary lockout”) imposed by another employer (hereinafter referred to as the “primary employer”) against the workers of the employer.

(2) A trade union may only call a secondary strike if —

- (a) 72 hours’ notice of the commencement of the secondary strike has been given to the secondary employer;
- (b) there is a relationship between the secondary employer and the primary employer that may permit the exercise of pressure; and
- (c) the secondary strike is proportional taking into account the —
 - (i) effect of the strike on the secondary employer, and
 - (ii) possible effect that the strike may have on resolving the dispute giving rise to the primary strike or primary lockout

(3) A worker engaged in the —

- (a) essential services referred to in section 270 in respect of which there is no approved collective agreement as provided in this Act; or
- (b) agreed or determined minimum service as provided in section 271(2), shall be prohibited from engaging in a secondary strike.

(4) Nothing in this section shall prevent a trade union and an employer or an employers’ organisation from agreeing to its own requirements and procedure in a collective agreement, in which case the provisions of the collective agreement shall apply and the provisions of subsections (1) and (2) shall not apply.

277. (1) A party to a dispute concerning the interpretation or application of any provision in this Part may refer the dispute to the Commission.

Procedure
for disputes
concerning
Part XXX

(2) The Commission shall attempt to resolve the dispute referred to in subsection (1) through mediation in terms of section 281.

(3) Where a dispute remains unresolved, a party to the dispute may refer such dispute to arbitration or to the Industrial Court for a decision.

PART XXXI — Prevention and Resolution of Disputes: Mediation and Arbitration

278. (1) In this section, “apprehended dispute” includes a dispute that exists but has not been referred to the Commission in terms of this Act.

Mediation by
Commission

(2) Where the Commissioner General is satisfied that a dispute is apprehended, the Commission may mediate between the parties to the apprehended dispute if the —

- (a) parties invite the Commission to mediate; or
- (b) Commissioner General is satisfied that the apprehended dispute may cause harm to workers, employers, the community or property.

(3) The Commissioner General may delegate a mediator from the Commission to mediate between the parties provided under subsection (2).

(4) The mediation under this section shall be directed towards assisting the parties —

- (a) to a dispute to reach a settlement of the dispute principally by their own efforts; and
- (b) on the incorporation of the terms of the settlement of the dispute into a collective agreement or an agreement.

279. The Commission may, in order to promote the prevention and resolution of a dispute —

Promotion of
prevention and
resolution of
disputes

- (a) provide an organisation with advice and training relating to, amongst other things —
 - (i) the design and establishment of an in-house procedure for the prevention and resolution of the dispute,
 - (ii) the recognition of a trade union,
 - (iii) the design and content of a collective agreement, and
 - (iv) any codes and procedures, including any disciplinary and termination of employment procedures; or
- (b) assign a mediator from the Commission, to provide the advice or training under paragraph (a).

280. (1) A party to a dispute may, in the prescribed form, refer the dispute to the Commission.

Referral of
disputes to
Commission

(2) A party under subsection (1) who refers a dispute concerning the termination of employment shall refer the dispute within 90 days of the date of such termination.

(3) A party referring a dispute shall, in writing, satisfy the Commission that a copy of the referral has been served on the other party to the dispute, unless the Commission is satisfied that it was not possible to serve the referral on that other party.

(4) Notwithstanding subsections (1) and (2), a party who cannot read or write may refer a dispute concerning a grievance or a termination of employment orally, and the Commission shall complete the prescribed form on the party's behalf.

(5) The Commission shall, upon receiving a dispute referred to it in accordance with subsection (1) or (2) —

- (a) immediately assign a mediator from the Commission referred to resolve the dispute through mediation;
- (b) determine the venue, date and time of the first mediation hearing; and
- (c) inform the parties to the dispute, in writing, of the details provided under paragraphs (a) and (b).

(6) Notwithstanding subsection (5), the Commission shall appoint an arbitrator if the dispute is one that is required to be determined by arbitration by —

- (a) a collective agreement;
- (b) any other agreement; or
- (c) this Act.

(7) A party referring a dispute concerning the payment of an entitlement in terms of a contract of employment shall refer the dispute within 90 days from the date when non-payment of the entitlement first came to his or her knowledge or from the date when the worker's right to payment of the entitlement accrued, whichever is the earlier date.

281. (1) Subject to subsection (2), a mediator shall mediate a dispute assigned to him or her, within 30 days of the date the dispute was referred to the Commission in accordance with this Act.

(2) The period referred to in subsection (1) may be extended by an agreement between the parties to the dispute.

(3) Where a mediator fails to mediate a dispute within the period referred to in subsection (1) or (2), or if the dispute remains unresolved, the referring party may request the Commission to arbitrate such dispute or may refer the dispute to the Industrial Court.

(4) Where a party to a dispute chooses to refer the dispute to arbitration or to the Industrial Court in accordance with subsection (3), the mediator shall, before such dispute is referred, explain in detail to the parties the implications of referring the dispute to arbitration or to the Industrial Court.

(5) Subject to any prescribed rules or guidelines published in terms of section 290, the mediator shall determine how the mediation shall be concluded, and may require further hearings to be held within the period referred to in subsection (1) or (2).

(6) Any statement made and any information divulged by a party to a dispute during the mediation process shall be confidential and without prejudice unless the information is publicly available or the party making the statement or divulging the information states otherwise.

(7) Subject to subsection (6), a party to a mediation process or any other person concerned in or present at the mediation process, shall not disclose any statement made or any information divulged to any person.

(8) A person who contravenes subsection (7) commits an offence and is liable to a fine not exceeding P5 000 or to imprisonment for a term not exceeding 12 months, or to both.

(9) A mediator may, in dealing with a dispute assigned to him or her —

- (a) determine any question concerning —
 - (i) whether a dispute has been referred in terms of this Act,
 - (ii) the date on which the dispute was referred for mediation, or
 - (iii) the jurisdiction of the mediator to mediate the dispute;
- (b) allow an application for the condonation of a late referral, where the applicant shows good cause for such late referral;
- (c) dismiss a referral if the referring party fails to attend a mediation hearing;
- (d) give a default award on any matter, except an award for reinstatement, if a party upon whom a referral has been served in terms of subsection (3) fails to attend a mediation hearing;
- (e) reverse, on good cause —
 - (i) any dismissal of a referral, or
 - (ii) default award, provided under paragraphs (c) and (d) respectively;
- (f) recommend a settlement; or
- (g) make an advisory award if —
 - (i) the parties request it, or
 - (ii) it is in the interests of settlement to do so.

(10) A default award made pursuant to subsection (9) (d) shall be confirmed or varied by the Commissioner General after the expiry of the period referred to in subsection (12).

(11) The mediator may vary a default award where there is an ambiguity, error or omission in the default award at any stage prior to the expiry of the period referred to in subsection (12) and before such default award is confirmed or varied by the Commissioner General in terms of this Act.

(12) Any party affected by a dismissal of a referral or by a default award may, within 30 days of the date of the dismissal of the referral or the default award, apply to the Commission, upon notice to the other party in whose favour the dismissal of such referral or default award was made, for the reversal, on good cause, of the dismissal of referral or the default award.

(13) Where the parties have reached an agreement or a settlement has been recommended to the parties by a mediator, in accordance with subsection (9) (f), the terms of the agreement or settlement shall have the same force and effect as a judgment or order of the Industrial Court and be enforceable in like manner as such judgment or order.

(14) A default award by a mediator and confirmed by the Commissioner General shall have the same force and effect as a judgment or order of the Industrial Court and shall be enforceable in like manner as such judgement or order.

(15) A party to a dispute may appeal to the Industrial Court in respect of a decision made pursuant to subsection (9) (a) (iii), (b) or (e).

(16) A mediator shall not be a compellable witness in any legal proceedings in respect of anything said or information divulged during the mediation process relating to a dispute he or she mediated upon, except to provide the Industrial Court with a prescribed form and signed by the referring party, setting out the claims that the referring party had referred for mediation and the claims that were mediated on to enable the Industrial Court to establish jurisdiction.

(17) Subject to subsection (18), the mediator shall issue a certificate of failure to settle if the dispute is not settled within the period provided under subsection (1) or (2).

(18) A mediator may issue a certificate of failure to settle before the expiry of the period provided under subsection (1) or (2), to the effect that either party may refer a dispute to arbitration or to the Industrial Court, if the mediator is satisfied that there are no prospects of settlement at that stage of the dispute.

Representation
in mediation

282. In any mediation proceedings, a party to a dispute may appear in person or be represented by a —

- (a) member or officer of that party's organisation;
- (b) colleague, if the party is a worker; or
- (c) member of management or worker of that person, if the party is a juristic person.

Process of
arbitration

283. (1) The Commission shall appoint an arbitrator to arbitrate a dispute referred to the Commission in terms of this Act, where the —

- (a) parties to the dispute have agreed to have such dispute settled by arbitration, or the referring party has requested arbitration;
- (b) parties to the dispute are engaged in an essential service and such dispute concerns a dispute of interest;
- (c) the trade dispute concerns a dispute of interest, except in the case of a collective dispute of interest where the employees are represented by a trade union; or
- (d) Industrial Court has directed the Commission to arbitrate the dispute

(2) The Commission shall —

- (a) after consultation with the parties to a dispute, assign an arbitrator appointed to the Mediation and Arbitration Board in terms of section 60 to arbitrate the dispute;

- (b) determine the venue, date and time of the arbitration hearing; and
- (c) advise the parties to a dispute of the details provided under paragraphs (a) and (b).

(3) Notwithstanding that a dispute has been mediated, if the arbitrator is of the view that there are prospects of settlement, he or she may attempt to resolve the dispute through mediation before commencing the arbitration hearing.

(4) Where a dispute has not been mediated, the arbitrator may attempt to resolve the dispute through mediation before the commencement of the arbitration hearing.

(5) Subject to any codes or guidelines published in terms of section 290, the arbitrator may conduct the arbitration in a manner that he or she considers appropriate, but shall deal with the substantial merits of the dispute with the minimum of legal formalities.

(6) An arbitrator shall hear a dispute referred to him or her for arbitration within 30 days of the dispute being referred to him or her.

(7) Subject to the discretion of the arbitrator as to the appropriate form of proceedings, a party to the dispute may give evidence, call witnesses, question the witnesses of any other party and address concluding arguments.

(8) An arbitrator shall have the power to —

- (a) give such directions to parties to a dispute or do such things as may be necessary or expedient for the expeditious and just hearing and determination of any dispute before him or her;
- (b) make an award for a specific period or such other award as he or she considers appropriate;
- (c) vary or rescind an award if it —
 - (i) was erroneously made by a mediator in the absence of any party affected by the award,
 - (ii) is ambiguous or contains an error or omission, to the extent of that ambiguity, error or omission, or
 - (iii) was made by a mediator as a result of a mistake common to the parties to the mediation proceedings;
- (d) dismiss a referral if the referring party, after notice to the other party to attend the hearing, fails to attend an arbitration hearing;
- (e) give a default award if a party upon whom a referral has been served fails to attend an arbitration hearing; or
- (f) reverse, on good cause —
 - (i) any dismissal of a referral, or
 - (ii) a default award, provided under paragraphs (d) and (e), respectively.

(9) An arbitrator shall, upon the conclusion of an arbitration hearing, make an award and shall, within 30 days of the hearing, give reasons for the award.

(10) The Commissioner General may, where he or she considers it appropriate, extend the number of days within which an award is to be made under subsection (9).

(11) An arbitration shall not include an order of costs in an arbitration award unless —

- (a) the parties to the dispute agree; or
- (b) a party or a person representing a party in the arbitration proceedings acted in a frivolous or vexatious manner —
 - (i) by proceeding with or defending the dispute in the arbitration proceedings, or
 - (ii) in the party's or person's conduct during the arbitration proceedings.

(12) An arbitration award shall have the same force and effect as a judgment or order of the Industrial Court and shall be binding on the parties and shall be executed as an order of the Industrial Court.

(13) A person aggrieved by a decision of an arbitrator under this section may appeal against such decision to the Industrial Court, within 14 days of the arbitrator's decision.

(14) An appeal referred to under subsection (13) shall lie only in respect of a decision —

- (a) to join a party to the arbitration proceedings; or
- (b) concerning the jurisdiction of the arbitrator to make an award.

Representation
in arbitration

284. (1) In any arbitration proceedings, a party to a dispute may appear in person or be represented by a —

- (a) member or officer of that party's organisation;
- (b) colleague, if the party is a worker; or
- (c) member of management or worker of that person, if the party is a juristic person.

(2) Notwithstanding subsection (1), an arbitrator may permit a legal representative to represent a party to a dispute in arbitration proceedings if —

- (a) the parties to the trade dispute agree; or
- (b) at the request of a party to the dispute, the arbitrator is satisfied that —
 - (i) such dispute is of such complexity that it is appropriate to allow the party to have a legal representation, and
 - (ii) the other party will not be prejudiced.

PART XXXII — *Prevention and Resolution of Disputes: Dispute Resolution in Collective Agreements*

Dispute
resolution
procedures
in collective
agreements

285. (1) Nothing in this Part shall prevent a trade union and an employer or employers' organisation from concluding a collective agreement that provides for the resolution of a dispute not provided in Part XXXI.

(2) A collective agreement may depart from Part XXXI:

Provided that a dispute shall be mediated or arbitrated in an independent, neutral, expedited and professional manner.

(3) A person bound by a collective agreement in this section may not refer a dispute to the Commission in terms of Part XXXI:

Provided that, any dispute which is not resolved may be referred by any party to the dispute to the mediator or arbitrator, or to the Industrial Court for adjudication, decision and execution.

(4) Subject to subsection (3) any resolution or award made by the mediator or arbitrator respectively, shall be binding on the parties and shall be executed as an order of the Industrial Court.

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

PART XXXIII — General Provisions

286. In respect of each year commencing on 1st January, the Minister shall, within one year immediately after the end of the year, lay before the National Assembly a report on the work of the Department responsible for the regulation of employment.

Submission of
annual reports
to National
Assembly

287. The Minister may, by Order published in the *Gazette*, declare that this Act or any provision of the Act shall not apply to any premises or to premises belonging to any class or description of the premises specified in the Order:

Power of
Minister
to restrict
application of
Act

Provided that the Minister shall, before making such Order —

- (a) agree with the Council that the Order is necessary; and
- (b) take every reasonable step to ensure that the Order is not in conflict with any international agreement or other international obligation to which Botswana is a party or otherwise bound.

288. (1) The Director of Labour shall keep prescribed statistics on the mediation, arbitration and adjudication of trade disputes.

Statistics
and reports
on dispute
prevention and
resolution

(2) The Director of Labour shall prepare an annual written report for submission to the Council on the state of the dispute prevention and resolution.

(3) The Director of Labour shall provide the Council with further information on the prevention and resolution of disputes at the request of the Council.

289. A prosecution for an offence under this Act shall not be instituted except by or with the written consent of the Director of Public Prosecutions:

Consent of
Director
of Public
Prosecutions
for
prosecutions

Provided that a person may be arrested for and charged with such an offence and remanded in custody or on bail notwithstanding that the consent of the Director of Public Prosecutions to the institution of a prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

290. (1) The Minister may, after consultation with the Council, publish codes of good practice, policies, guidelines, rules and model procedures and agreements to guide employers, workers and their representative organisations.

Codes and
guidelines

Regulations

(2) In making any decision under this Act, a mediator, arbitrator or the Industrial Court shall take any Code of Good Practices, policy, guideline or model agreement into account.

291. (1) The Minister may make regulations providing for any matter under this Act which is to be prescribed or which is necessary or convenient to be prescribed for the better carrying out of the objects and purposes of this Act, or to give force and effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the regulations may provide for the —

- (a) payment of compensation by employers to workers for injury arising out of and in the course of their employment where such provision is not made by any written law and for the recovery of such compensation;
- (b) requirement of employers to report any accident involving the death of or injury to workers where the employers are not required to do so by any written law;
- (c) circumstances and conditions under which any person may be employed on a short-term, fixed-term, part-time, temporary or casual basis;
- (d) requirements for the maintenance of registers and records;
- (e) measures relating to public health;
- (f) forms and the manner in which such forms or any other document shall be produced or displayed;
- (g) method of collecting statistics by any Department of the Government for the time being principally concerned with the regulation of employment, either in cooperation with or independently of any other Department of the Government, and provide the persons to be employed, the duties to be performed and the publications to be issued in connection with such provision;
- (h) exemption from any obligation imposed under this Act to furnish information or particulars, either wholly or to the prescribed extent, any employer belonging to any class or description of employers specified in the Regulations;
- (i) fees payable in connection with the registration under this Act;
- (j) hours during which and the conditions subject to which any document in the custody of the Registrar shall be open to inspection by members of the public and the fees to be paid in respect of such inspection;
- (k) basic agreements and arrangements in respect of the system commonly known as “check-off” and the subscription to trade unions or federation of trade unions, and employers’ organisations or federation of employers’ organisations;
- (l) remuneration and allowances payable to persons, other than public officers, appointed by the Minister under this Act;

- (m) form in which statistics on the mediation, arbitration and adjudication of trade disputes shall be kept;
- (n) hours of work;
- (o) provision of social security schemes; and
- (p) provision of any other related matter.

(3) The regulations made under this section may prescribe for any person who, without reasonable cause, fails to comply with the regulations to have committed an offence and liable to a fine not exceeding P200 000 or to imprisonment for a term not exceeding five years, or to both, and in the case of a continuing offence, to a fine of P350 per day for every day during which such offence continues but such fine shall not exceed P200 000.

292. The Employment Act is hereby repealed.

Repeal of Cap.
47:01

293. (1) Notwithstanding the repeal under section 292, all subsidiary legislation made under the Employment Act, and in force immediately before the coming into operation of this Act, shall, in so far as the subsidiary legislation is consistent with the provisions of this Act, continue to be in force as if made under this Act.

Savings and
transitional
provisions

(2) Every decision made under the Employment Act shall continue to have force and effect according to its substance as if it was made under this Act.

(3) Any right of appeal which subsisted immediately before the commencement of this Act is to be treated as subsisting by virtue of the corresponding provisions in this Act.

(4) Any appeal which commenced under the Employment Act shall be prosecuted and disposed of as though commenced in terms of the provisions of this Act.

(5) Every contract of employment made in terms of the Employment Act shall, in so far as it is consistent with this Act, be deemed to have been made under this Act.

(6) Any award or decision made under the Employment Act shall, in so far as it is consistent with this Act, be deemed to have been made under this Act.

(7) A member of the Labour Advisory Board appointed as such under the Employment Act shall continue to be a member of the Employment and Labour Relations Council for the period for which, and subject to the conditions under which, such member was appointed as a member of the Labour Advisory Board.

(8) Any responsibility or function of the Labour Advisory Board under the Employment Act, which has been or is performed by any other person shall be deemed to be transferred to the Employment and Labour Relations Council established by, or as provided for in, this Act.

(9) A member of the Minimum Wages Advisory Board appointed as such under the Employment Act shall continue to be a member of the Employment and Labour Relations Council for the period for which, and subject to the conditions under which, such member was appointed as a member of the Minimum Wages Advisory Board.

(10) Any responsibility or function of the Minimum Wages Advisory Board under the Employment Act, which has been or is performed by any other person shall be deemed to be transferred to the Employment and Labour Relations Council established by, or as provided for in this Act.

(11) Any person who is an officer or employee of the Department of Labour immediately before the coming into operation of this Act shall not be an officer or employee of the Commission but shall continue to be such officer or employee in the public service and shall be deemed to be on secondment to the Commission for a period not exceeding 12 months from the coming into operation of this Act.

(12) A person seconded to the Commission under subsection (11) who, within 12 months from the coming into operation of this Act —

- (a) has been offered and has accepted to enter into a written contract of service with the Commission, shall be deemed to have terminated his or her service with the Government without right to severance of pay but without prejudice to all other remunerations and benefits payable upon the termination; or
- (b) has not been offered, or has not accepted, to enter into a written contract of service with the Commission shall be redeployed by the Government.

(13) A person engaged in terms of subsection (12) (a) shall be employed on such terms and conditions as may be offered by the Commission and agreed to by the Commission and the person.

(14) A person referred to in subsection (12) (a) who is transferred from the public service to the employment of the Commission shall be permitted to continue the contribution to such pension, superannuation, provident or other funds which they are contributing to immediately before the transfer, subject to such terms and conditions as the Mediation and Arbitration Board, with the approval of the Minister, may determine.

(15) Any penalty in respect of an offence under the Employment Act shall be imposed as if this Act had not come into operation, but where, under this Act, the penalty in respect of the offence is reduced or mitigated in relation to the penalty or punishment that would have been applicable before the coming into operation of this Act, the provisions of this Act relating to penalties shall apply.

SCHEDULES

Schedule 1 (sections 2 (1), 6 (2) and 8)

Hazardous Work

The following amounts to hazardous work –

- a. garbage collecting (clinical and industrialised);
- b. handling of animal manure as fertilisers;
- c. unsupervised herding, dipping, dehorning, castration, branding, spanning and milking, of livestock;
- d. handling and spraying of pesticide and herbicide;
- e. collecting and selling veld products;
- f. brick moulding, blacksmithing and hammer smiths;
- g. exposure to chemicals, toxic dust, fumes and gases;
- h. lifting heavy loads or weights;
- i. excessive work for longer than prescribed hours;
- j. brewing alcohol beverages;
- k. unsupervised fishing and extraction of water from wells;
- l. working underground, at night or in heights;
- m. gambling, working in discotheques and night clubs;
- n. building or construction work;
- o. cleaning toilets;
- p. soliciting for funds from the public;
- q. caring for the sick and aged;
- r. bonded labour;

- s. mining or excavation;
- t. operation of dangerous machinery and equipment; and
- u. power driven and handling of hazardous chemicals or radioactive substances.

Schedule 2
(sections 2 (1) and 7)

Light Work

The following amounts to light work —

- a. assistant role in a hotel or restaurant, including setting of a table, serving and assisting in sales;
- b. minor assistant task in an industry which do not involve working with, or in close contact with, substances or implements that may be harmful or hazardous to health;
- c. receiving, sorting, handling and dispatching of light goods, labelling and preparing an inventory, in a warehouse or a similar facility;
- d. planting, picking and providing assistance, feeding domestic animals that are not dangerous, in horticultural and agricultural work;
- e. performances and other work at artistic, cultural or similar events; and
- f. running errands, distributing documents and promotional material.

Schedule 3
(section 175)

Persons to whom Property of Deceased or Missing Worker may be Delivered

1. The Director of Labour
2. Any labour officer
3. District Commissioner

Schedule 4
(section 216 (1) and (5))

Paid Public Holidays

1. New Year's Day
2. Good Friday
3. Easter Monday
4. 1st May
5. President's Day
6. Day following President's Day
7. Botswana Day
8. Christmas Day

PASSED by the National Assembly this 15th day of July, 2025.

DR. GABRIEL G. G. MALEBANG,
Clerk of the National Assembly.