

Employment Act

Commonwealth of the Bahamas

Act No. 27 of 2001

EMPLOYMENT

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Act No. 27 of 2001

EMPLOYMENT

An Act to establish minimum standard hours of working and vacation with pay for employees; to provide for the grant of maternity and family leave; to provide for redundancy payments to employees; to make provisions relating to notices to terminate contracts of employment; to make provisions relating to summary dismissal and unfair dismissal; to make provisions in respect of the employment of children and young persons; to make provisions in respect of the wages of employees; to make provisions relating to fingerprinting and lie detector tests; and for connected purposes

[Assent 31st December, 2001]

[Commencement 1st January, 2002]

PART I PRELIMINARY

Short title.

1. This Act may be cited as the Employment Act, 2001.

Interpretation.

2. (1) In this Act-

"basic pay" means the rate of pay of an employee exclusive of all bonuses,

overtime payments and allowances;

"business" includes a trade or profession and any activity carried on by a body of persons, whether corporate or unincorporated;

"contract of employment" means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing;

"day" means a period of twenty-four hours;

"employee" means any person who has entered into or works under (or, in the case of a contract which has been terminated, worked under) a contract of employment, whether the contract is for manual labour, clerical work or otherwise and whether it is a contract of service or apprenticeship, and any reference to employment shall be construed accordingly;

"employer", in relation to an employee, means any person or undertaking, corporation, company, public authority or body of persons including-

(a) the owner of a business in which the employee is employed:

(b) any managing agent of an employer

(c) in relation to a person engaged in plying for hire with any vehicle or vessel the use of which is obtained from the owner thereof under a contract of bailment (other than a hire-purchase agreement), the said owner;

(d) in relation to a person employed for the purposes of any game or recreation and engaged or paid through a club, the manager, or, where the club is managed by a committee, the members of the managing committee, of the club,

who or which employs any person to work under a contract of employment or uses the services of a commission agent or contract worker; and includes the heirs, successors and assigns of an employer;

"Minister" means the Minister responsible for Labour;

"redundancy" has the meaning assigned thereto by section 27;

"regulations" means regulations made under this Act and in the manner provided by this Act;

"remuneration" includes wages, benefits in kind and allowances;

"standard hours of work" means the hours of work described in subsection (1)

of section 8;

"the Tribunal" means the Industrial Tribunal established under the Industrial Relations Act;

"wages" includes every form of remuneration for work performed, but does not include tips, bonuses, or other gratuities;

"week" means a period of seven days;

"work" means work in the course of employment;

"year" means a period of fifty-two weeks.

2. (2) For the purposes of this Act, any two or more employers are to be treated as associated if they are "affiliated" as defined in section 2 of the Companies Act.

Application of Act.

3. (1) Subject to this Act, the provisions of this Act shall apply in relation to any employee employed in any form of employment in The Bahamas including any such employment by or under the Crown in right of the Government of The Bahamas or by a local government authority or by any body corporate established by law for public purposes:

Provided that this Act shall not apply to service or employment, or to persons serving or employed, in a disciplined force and for this purpose "disciplined force" has the meaning given to that expression in paragraph (1) of Article 31 of the Constitution.

3. (2) The Minister may by Order after consultation with a confederation, being, in the opinion of the Minister, a confederation representative of a majority of employers and associations of employers generally and after consultation with an association of registered trade unions being an association in the opinion of the Minister representative of employees provide that any provision of this Act as are mentioned in the Order shall or shall not apply in relation to persons or employments of such classes as may be specified in the Order subject to such exceptions or modifications as may be so specified.

Saving of more favourable terms of employment.

4. The provisions of this Act shall have effect notwithstanding any other law and notwithstanding any contract of employment, arrangement or custom (being a contract of employment, arrangement or custom made or in being whether before

or after the commencement of this Act) so, however, that nothing in this Act shall be construed as limiting or restricting-

- (a) any greater rights or better benefits of any employee under any law, contract of employment, arrangement or custom;
- (b) the right of any employee or trade union to negotiate on behalf of any such employee, any greater rights or better benefit; or
- (c) an employer from conferring upon any employee rights or benefits, that are more favourable to an employee than the rights or benefits conferred by this Act.

Conditions of employment.

5. (1) A person employed after the commencement of this Act shall be informed by his employer as soon as practicable of the following particulars-

- (a) the name of the employer or group of employers and where practicable of the undertaking and of the place of employment;
- (b) the name of the employee, the place of engagement and where practicable the place of origin of the employee, and any other particulars necessary for his identification;
- (c) the nature of the employment;
- (d) where a person is engaged for a fixed period or in appropriate circumstances, the duration of the employment and the method of calculating the duration;
- (e) the rate of wages and other benefits and method of calculation thereof, the manner and period of payment of wages and other benefits, the advances of wages and other benefits, if any, and the manner of repayment of any such advances;
- (f) where any work is to be performed not by the piece but by time, the number of hours of daily work, and the hours of the day at which such work is to commence and to terminate.

Non-discrimination and equal pay for equal work.

6. No employer or person acting on behalf of an employer shall discriminate against an employee or applicant for employment on the basis of race, creed, sex, marital status, political opinion, age or HIV/Aids by-

- (a) refusing to offer employment to an applicant for employment or not

affording the employee access to opportunities for promotion, training or other benefits, or by dismissing or subjecting the employee to other detriment solely because of his or her race, creed, sex, marital status, political opinion, age or HIV/Aids;

(b) paying him at a rate of pay less than the rate of pay of another employee, for substantially the same kind of work or for work of equal value performed in the same establishment, the performance of which requires substantially the same skill, effort and responsibility and which is performed under similar working conditions except where such payment is made pursuant to seniority, merit, earnings by quantity or quality of production or a differential based on any factor other than race, creed, sex, marital status, political opinion, age or HIV/Aids;

(c) pre-screening for HIV status:

Provided that this section does not affect any other law or contract term which stipulates a retirement age.

Disabled employees

7. Section 6 shall apply mutatis mutandis to disabled employees unless the employer can show that the job requirements relied on as grounds for hiring the disabled person at a lesser rate of pay are reasonable or the disabled person cannot be accommodated without undue hardship.

PART II STANDARD HOURS OF WORK

Standard Hours.

8. (1) Except as otherwise provided by or under this Act, no employer shall cause or permit any employee to work in excess of eight hours in any day or forty hours in any week (in this Part referred to as the "standard hours of work") without the payment of overtime pay in respect of any such excess in accordance with section 10:

Provided that the standard hours of work shall be-

(a) forty-four hours in any week for the period February 1, 2002 to February 1, 2003;

(b) forty hours in any week after February 1, 2003.

8. (2) Notwithstanding subsection (1), where by reason of the nature of any employment the hours of any employee for the purposes of such employment are

required to be irregular, the standard hours of work in a day or week of any such employee may be calculated as an average over a period not exceeding four weeks.

8. (3) Notwithstanding subsection (1), in any industrial, construction, manufacturing or trans-shipment enterprise or in any essential service within the meaning of section 75(2) of the Industrial Relations Act or law enforcement service the hours of employment of an employee for the purposes of such employment may exceed the standard hours of work in a day up to a maximum of twelve hours and the Minister may by Order include other enterprises or services within this subsection as he deems fit.

8. (4) This section shall not apply to a person who holds a supervisory or managerial position.

Day Off.

9. In every seven-day period, an employer shall allow each employee at least forty-eight hours of rest with not less than twenty-four of such hours being consecutive and a period of twenty-four hours rest is in this Act referred to as a day off.

Overtime pay.

10. Where an employee is required or permitted to work in excess of the standard hours of work, he shall be paid in respect of such work at a rate of wages not less than-

(a) in the case of overtime work performed on any public holiday or day off, twice his regular rate of wages;

(b) in any other case, one and one-half times his regular rate of wages:

Provided that an employee in a tipped category in the tourism and hospitality industry shall be paid at his regular rate of pay other than in respect of his second day off in any week,

and any wages paid or to be paid as required by this section are in this Act referred to as overtime pay.

PART III

SICK LEAVE

Sick Leave

11. (1) An employee who has been employed for at least six months is entitled to one week sick leave with pay in any year where he is prevented by illness from performing his duties at his place of work:

Provided that no employee shall be entitled to receive payment in respect of periods of sick leave which is only one day long nor to accumulate such leave from year to year.

11. (2) Every employee shall be required to produce to his employer a medical certificate except in respect of the first day's sick leave for any period of sick leave:

Provided that notwithstanding the proviso in subsection (1) an employee shall be entitled to receive payment in respect of the first day's sick leave where he presents a medical certificate to his employer.

11. (3) An employer may, on processing a claim for sick leave by an employee, require such employee to be examined by an independent physician and may refuse such leave if the physician is of the opinion that the employee is fit for work.

PART IV VACATION LEAVE

Annual vacation.

12. (1) Every employer shall give a vacation of at least two weeks to each employee upon the completion of each twelve months of employment.

12. (2) The vacation given under subsection (1) shall be extended by one day for every public holiday that occurs during the vacation.

Vacation pay.

13. (1) An employer shall pay vacation pay to an employee entitled to a vacation under section 12.

13. (2) The vacation pay—

(a) in respect of an employee who has been employed for six months or more but under one year, shall be one week basic pay earned by the employee during the year of employment in respect of which he is entitled to the vacation;

(b) in respect of an employee who has been employed for one year or more but under seven years, shall be two weeks basic pay earned by the employee during the year of employment in respect of which he is entitled to the vacation;

(c) in respect of an employee who has been employed for seven years or more shall be three weeks basic pay earned by the employee during the year of employment in respect of which he is entitled to the vacation.

Commencement of vacation with pay

14. The employer shall at least one day before the beginning of the vacation, or such earlier time as may be prescribed, pay to the employee the vacation pay to which he is entitled in respect of that vacation.

Termination of employment during year.

15. (1) Where the employment of any employee ends before the completion of a year of employment, the employer shall forthwith pay to the employee—

(a) vacation pay then owing to such employee under this Part in respect of any completed year of such employment; and

(b) subject to subsection (2), on a pro rata basis of the basic pay earned by the employee during the incompleting year.

15. (2) Notwithstanding paragraph (b) of subsection (1), an employer is not required to pay to an employee any amount under that paragraph unless the employee has been continuously employed by him for a period of ninety days or more.

PART V

MATERNITY AND FAMILY LEAVE

Definitions for Part V.

16. In this Part—

"confinement" means labour resulting in the issue of a living child or labour after twenty-four weeks of pregnancy resulting in the issue of a child whether alive or dead;

"family leave" means a leave of absence under section 20.

"female employee" means any female employed for remuneration under a contract of employment;

"maternity leave" means leave granted to a female employee arising from or in contemplation of her confinement and includes additional leave granted under section 19;

"midwife" means a person who is registered as a midwife under the Nurses and Midwives Act;

"parent" includes a person with whom a child is placed for adoption or a

person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his or her own.

Grant of maternity leave.

17. (1) Every female employee is, in addition to her annual holiday arising under this Act or under any other law or agreement pertaining to the conditions of her employment, entitled to maternity leave upon delivering to her employer—

(a) a certificate issued by a medical practitioner setting forth the expected date of her confinement; or

(b) a certificate issued by a medical practitioner or a midwife setting forth the actual date of her confinement

and without prejudice to section 4 in addition to the grant of maternity leave the payment to her by the employer during such leave once in every three years of a minimum sum equivalent to thirty-three and one-third per cent of that portion of her wages which does not exceed the National Insurance ceiling on insurable wage:

Provided that where the employee is not entitled to any benefit under the National Insurance Act during such leave by reason of the neglect of or conduct on the part of her employer the minimum sum payable under this subsection shall be equivalent to the aggregate of the amount of benefit which would have been payable to her under that Act and the foregoing provisions of this subsection but for such neglect or conduct.

17. (2) Where an employee by reason of geographical or other circumstances beyond her control is unable to produce such certificates as are mentioned in subsection (1) an employer shall accept such other evidence as is produced by her in reasonable proof of her entitlement to maternity leave.

(3) A female employee—

(a) must in order to qualify for a grant of maternity leave, be employed for at least twelve months by the employer from whom she requests such leave; and

(b) is not entitled to maternity pay by the same employer more than once in every three years

Duration of maternity leave.

18. (1) Except where an employee otherwise desires, maternity leave shall be for a period of not less than twelve weeks and shall be so arranged that the employee is allowed—

(a) such period, not less than one week, as she desires before the expected date of confinement; and

(b) a period of not less than eight weeks from the date of confinement.

18. (2) Where-

(a) a confinement takes place without an employee having been granted maternity leave; or

(b) the period of maternity leave before her confinement amounts to less than four weeks,

the period of leave after confinement shall, if the employee so desires, be extended so that the total period of leave does not amount to less than twelve weeks.

18. (3) Where an employee has been granted maternity leave and the date of confinement is a later date than the date stated in the certificate issued pursuant to subsection (1) of section 17 as being the date on which confinement was expected, her maternity leave shall be extended to include the period that elapsed between those dates.

18. (4) Where an employee has been granted maternity leave and the employee dies during such leave, the guardian of the child shall be entitled to any unpaid maternity benefits due to the mother from her employer and the National Insurance Board.

Additional leave.

19. An employee who, after confinement, suffers any illness arising out of such confinement shall be granted, in addition to the maternity leave to which she is entitled under section 17, such additional unpaid leave not exceeding six weeks as a medical practitioner recommends.

Family leave.

20. (1) An employee who has been employed for at least six months is entitled to family leave without pay for a period not exceeding one week per annum following-

(a) the birth of a child; or

(b) the death or illness of a child, spouse or parent.

20. (2) Every employee shall be required to provide to the satisfaction of his

employer evidence of birth, death or illness, as the case may be.

Protection of employment.

21. (1) Subject to subsection (2), no employer shall—

(a) dismiss or give notice of dismissal to a female employee at any time between the date of her delivery to him of a medical certificate under section 17 and the date of the expiration of her maternity leave or additional leave granted under section 19;

(b) give notice of dismissal to an employee so that it would expire during her maternity leave or additional leave granted under section 19 or dismiss her during such leave;

(c) dismiss an employee or require an employee to resign on the ground that she is pregnant; or

(d) require an employee to resign during any of the times referred to in paragraph (a) or (b) and which paragraphs then apply to that employee.

21. (2) Subsection (1) does not apply where—

(a) there has been serious default, or gross negligence amounting to abandonment of duty, on the part of the female employee; or

(b) there has been an express contract of service for a fixed term between an employer and the female employee which has expired.

21. (3) Subject to subsection (2), it shall be presumed for the purposes of any proceedings unless the contrary is shown that the dismissal of a female employee, who was at the time of her dismissal not less than six months in her pregnancy, was in breach of subsection (1) (c) or (d).

Protection of seniority.

22. Where a female employee has been granted maternity leave she is, on her resumption of work after such leave, entitled to—

(a) her seniority rights;

(b) reinstatement in her former position or equivalent position,

and she shall not by reason only of the fact that she went on maternity leave, be paid a smaller remuneration than she received before she went on maternity leave.

Contravention of sections 21 and 22.

23. Any employer who contravenes or fails to comply with any of the provisions of section 21 or 22 shall be liable to a fine of five thousand dollars.

Power to order payment

24. An employer may in addition to the fine imposed on him be liable to pay to the female employee any payment due to such employee under this Act.

Application

25. Sections 21 to 24 shall apply mutatis mutandis to family leave.

PART VI

REDUNDANCY PAYMENTS

Right to redundancy payment.

26. (1) Where an employee who has been continuously employed for one year or more is dismissed by his employer because of redundancy, his employer is, subject to the provisions of this Part, liable to pay to him a sum (in this Act referred to as a "redundancy payment" or "redundancy pay") calculated in accordance with subsection (2).

26. (2) Subject to subsection (3), the amount of the redundancy payment shall be calculated by reference to the date of the employee's redundancy by starting on that date and reckoning backwards the number of complete years of employment and allowing-

(a) where the employee has been employed for twelve months or more-

- (i) two weeks' notice or two weeks' basic pay in lieu of notice; and
- (ii) two weeks' basic pay (or a part thereof on a pro rata basis) for each year up to twenty-four weeks;

(b) where the employee holds a supervisory or managerial position-

- (i) one month's notice or one month's basic pay in lieu of notice; and
- (ii) one month's basic pay (or a part thereof on a pro rata basis) for each year up to forty-eight weeks.

26. (3) Notwithstanding subsection (1), the employer shall have the right to appropriate any monies owing to him by the employee from any monies payable under subsection (1).

26. (4) Where an employer provides a gratuity or non-contributory pension for an employee, the employee is not entitled to both redundancy pay and the

gratuity or non-contributory pension but the employee shall select the one which he prefers.

Meaning of redundancy

27. For the purposes of this Part, an employee shall be deemed to be dismissed because of redundancy if his dismissal is wholly or mainly attributable to—

- (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or
- (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish:

Provided that an employee shall not be deemed to be dismissed because of redundancy where such employee is required to carry out work for a fixed term of less than two years in respect of a specific construction project and such term has come to an end.

Recovery of redundancy payments.

28. (1) Payment of redundancy pay shall be made on or before the date of the employee's redundancy.

28. (2) A redundancy payment may be recovered as a debt due to the employee in proceedings before the Tribunal.

28. (3) A redundancy payment shall be a preferred debt in all cases involving bankruptcy or liquidation.

PART VII

TERMINATION OF EMPLOYMENT WITH NOTICE

Period of notice.

29. (1) For the purposes of this Act, the minimum period of notice required to be given by an employer to terminate the contract of employment of an employee shall be—

(a) where the employee has been employed for six months or more but less than twelve months—

(i) one week's notice or one week's basic pay in lieu of notice; and

(ii) one week's basic pay (or a part thereof on a pro rata basis) for the said period between six months and twelve months;

(b) where the employee has been employed for twelve months or more-

(i) two weeks' notice or two weeks' basic pay in lieu of notice; and

(ii) two weeks' basic pay (or a part thereof on a pro rata basis) for each year up to twenty-four weeks

(c) where the employee holds a supervisory or managerial position-

(i) one month's notice or one month's basic pay in lieu of notice; and

(ii) one month's basic pay (or a part thereof on a pro rata basis) for each year up to forty-eight weeks.

29. (2) An employee shall not terminate his employment until after the expiry of-

(a) two week's notice to the employer if the period of employment is one year or more but less than two years; or

(b) four weeks notice to the employer if the period of employment is two years or more,

unless the employer has been guilty of a breach of the terms and conditions of employment.

29. (3) Notwithstanding subsection (1), the employer shall have the right to appropriate any monies owing to him by the employee from any monies payable under subsection (1).

Provisions as to notices.

30. (1) Any notice which under this Part is required or authorised to be given by an employer to an employee may be given orally or in writing by being delivered to the employee, or left for him at his usual or last-known place of residence, or sent by prepaid registered post addressed to him at that place.

30. (2) Any notice which under this Part is required or authorised to be given by an employee to an employer may be given either by the employee himself or by a person authorised by him to act on his behalf, and, whether given by or on behalf of the employee-

(a) may be given orally or in writing by being delivered to the employer, or sent by prepaid registered post addressed to him at the place where the

employee is or was employed by him; or

(b) if arrangements in that behalf have been made by the employer, may be given by being delivered to a person designated by the employer in pursuance of the arrangements, or left for such a person at a place so designated, or sent by prepaid registered post to such a person at an address so designated.

PART VIII

SUMMARY DISMISSAL

Summary dismissal.

31. An employer may summarily dismiss an employee without pay or notice when the employee has committed a fundamental breach of his contract of employment or has acted in a manner repugnant to the fundamental interests of the employer:

Provided that such employee shall be entitled to receive previously earned pay.

Grounds for summary dismissal

32. Subject to provisions in the relevant contract of employment, misconduct which may constitute a fundamental breach of a contract of employment or may be repugnant to the fundamental interests of the employer shall include (but shall not be limited to) the following-

- (a) theft;
- (b) fraudulent offences;
- (c) dishonesty;
- (d) gross insubordination or insolence;
- (e) gross indecency;
- (f) breach of confidentiality, provided that this ground shall not include a report made to a law enforcement agency or to a government regulatory department or agency;
- (g) gross negligence;
- (h) incompetence;
- (i) gross misconduct.

Proof of misconduct

33. An employer shall prove for the purposes of any proceedings before the Tribunal that he honestly and reasonably believed on a balance of probability that the employee had committed the misconduct in question at the time of the dismissal and that he had conducted a reasonable investigation of such misconduct except where such an investigation was otherwise unwarranted.

PART IX

UNFAIR DISMISSAL

Right of employee.

34. Every employee shall have the right not to be unfairly dismissed, as provided in sections 35 to 40, by his employer.

Fairness of dismissal

35. Subject to sections 36 to 40, for the purposes of this Part, the question whether the dismissal of the employee was fair or unfair shall be determined in accordance with the substantial merits of the case.

Dismissal relating to trade union membership

36. (1) For the purposes of this Part, the dismissal of an employee by an employer shall be regarded as having been unfair if the reason for it (or, if more than one, the principal reason) was that the employee—

- (a) was, or proposed to become, a member of an independent trade union;
- (b) had taken, or proposed to take, part at any appropriate time in the activities of an independent trade union; or
- (c) was not a member of any trade union, or of a particular trade union, or of one of a number of particular trade unions, or had refused or proposed to refuse to become or remain a member.

36. (2) Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of subsection (1) is in this Part referred to as an "inadmissible reason".

36. (3) In subsection (1) "appropriate time" in relation to an employee taking part in the activities of a trade union, means time which either—

- (a) is outside his working hours; or
 - (b) is a time within his working hours at which, in accordance with prior arrangements agreed with or consent given by his employer, it is permissible for him to take part in those activities,
- and in this subsection "working hours", in relation to an employee, means any

time when, in accordance with his contract of employment, he is required to be at work.

36. (4) In this section, unless the context otherwise requires, references to a trade union include references to a branch or section of a trade union.

Dismissal on ground of redundancy.

37. Where the reason or principal reason for the dismissal of an employee was redundancy but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking who held positions similar to that held by him and who have not been dismissed by the employer and either-

(a) that the reason (or, if more than one, the principal reason) for which he was selected for dismissal was an inadmissible reason; or

(b) that he was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,

then for the purposes of this Part the dismissal shall be regarded as unfair.

Dismissal on ground of pregnancy

38. An employee shall be treated for the purposes of this Part as unfairly dismissed if the reason or principal reason for her dismissal is that she is pregnant or is for any other reason connected with her pregnancy.

Dismissal of replacement employee.

39. Where an employer-

(a) on engaging an employee informs the employee in writing that his employment will be terminated on the return to work of another employee who is, or will be, absent wholly or partly for any reason; and

(b) dismisses the first-mentioned employee on the return to work of that other employee,

then, for the purposes of this Part, the dismissal of the first-mentioned employee shall not be regarded as having been unfair.

Dismissal in connection with a lock-out, strike or other industrial action.

40. (1) The provisions of this section shall have effect in relation to an employee (in this section referred to as "the complainant") who claims that he has been unfairly dismissed by his employer where at the date of dismissal-

- (a) the employer was conducting or instituting a lockout; or
- (b) the complainant was taking part in a lawful industrial action.

40. (2) In any case mentioned in subsection (1), the Tribunal shall not determine whether the dismissal was fair or unfair unless it is shown-

- (a) that a relevant employee of the same employer has not been dismissed; or
- (b) that any such relevant employee has, before the expiry of the period of three months beginning with the date of dismissal of the complainant, been offered re-engagement and that the complainant has not been offered re-engagement.

40. (3) Where it is shown that the condition referred to in subsection (2) (b) is fulfilled, the provisions of sections 35 to 39 shall have effect as if in those sections for any reference to the reason or principal reason for which the complainant was dismissed there were substituted a reference to the reason or principal reason for which he has not been offered re-engagement.

40. (4) In this section-
"date of dismissal" means-

- (a) where the complainant's contract of employment was terminated by notice, the date on which the notice was given by the employer; and
- (b) in any other case, the effective date of termination;

"relevant employee" means-

- (a) in relation to a lock-out, an employee who was directly interested in the dispute in contemplation or furtherance of which the lock-out occurred; and
- (b) in relation to a strike or other industrial action, an employee at the establishment of the employer at or from which the complainant works who was taking part in it at the date of dismissal of the complainant,

and, in this section, any reference to an offer of re-engagement is a reference to an offer (made either by the original employer or by a successor of that employer or an associated employer) to re-engage an employee, either in the job which he held immediately before the date of dismissal or in a different job which would be reasonably suitable in his case.

Complaint.

41. Where, under the Industrial Relations Act, a trade dispute relating to

unfair dismissal is referred to the Tribunal such dispute shall be dealt with by the Tribunal as a complaint in accordance with the provisions of this Part.

Remedies for unfair dismissal

42. (1) Where on a complaint made under section 41 the Tribunal finds that the grounds of the complaint are proved it shall explain to the complainant what orders for reinstatement or re-engagement may be made under section 43 and in what circumstances they may be made, and shall ask him whether he wishes the Tribunal to make such an order, and if he does express such a wish the Tribunal may make an order under section 43.

42. (2) If on a complaint made under section 41 the Tribunal finds that the grounds of the complaint are proved and no order is made under section 43, the Tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with sections 46 to 48, to be paid by the employer to the employee.

Order for reinstatement or re-engagement

43. (1) An order made under this section may be an order for reinstatement (in accordance with subsections (2) and (3)) or an order for re-engagement (in accordance with subsection (4)), as the Tribunal may decide.

43. (2) An order for reinstatement is an order that the employer shall treat the complainant in all respects as if he had not been dismissed, and on making such an order the Tribunal shall specify-

(a) any amount payable by the employer in respect of any benefit which the complainant might reasonably be expected to have had but for the dismissal;

(b) any rights and privileges, including seniority and pensions rights, which must be restored to the employee; and

(c) the date by which the order must be complied with.

43. (3) Without prejudice to the generality of subsection (2), if the complainant would have benefited from an improvement in his terms and conditions of employment had he not been dismissed, an order for reinstatement shall require him to be treated as if he had benefited from that improvement from the date on which he would have done so but for being dismissed.

43. (4) An order for re-engagement is an order that the complainant be engaged by the employer, or by a successor of the employer or by an associated employer, in employment comparable to that from which he was dismissed or other suitable employment, and on making such an order the Tribunal shall specify the terms on which re-engagement is to take place.

Enforcement of order made under section 43 and compensation award

44. (1) If an order under section 43 is made and the complainant is reinstated or, as the case may be, re-engaged but the terms of the order are not fully complied with, then, subject to section 48, the Tribunal shall make an award of compensation, to be paid by the employer to the employee, of such amount as the Tribunal thinks fit having regard to the loss sustained by the complainant in consequence of the failure to comply fully with the terms of the order.

44. (2) Subject to subsection (1), if an order under section 43 is made but the complainant is not reinstated or, as the case may be, re-engaged in accordance with the order—

(a) the Tribunal shall make an award of compensation for unfair dismissal, calculated in accordance with sections 45 to 47 to be paid by the employer to the employee; and

(b) unless the employer satisfies the Tribunal that it was not practicable to comply with the order, the Tribunal shall make an additional award of compensation to be paid by the employer to the employee of an amount of not more than twenty-six weeks' pay.

Compensation for unfair dismissal

45. Where the Tribunal makes an award of compensation for unfair dismissal under subsection (2) of section 42 or subsection (2) (a) of section 44 the award shall consist of a basic award calculated in accordance with section 46 and a compensatory award calculated in accordance with section 47.

Calculation of basic award.

46. (1) Subject to the following provisions of this section, the amount of the basic award shall be the amount calculated by reference to the date the employee was dismissed by starting on that date and reckoning backwards the number of complete years of employment falling within that period, and allowing three weeks' pay for each year of employment

46. (2) Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall, except in a case where the dismissal was by reason of redundancy, reduce the amount of the basic award by such proportion as it considers just and equitable having regard to that finding.

46. (3) Where the Tribunal finds that the complainant has refused an offer by the employer which if accepted would have the effect of reinstating or re-engaging the complainant in his employment in all respects as if he had not been dismissed, the Tribunal shall not make an award.

46. (4) Where the Tribunal considers that any conduct of the complainant before the dismissal (or, where the dismissal was with notice, before the notice was given), other than conduct taken into account by virtue of subsection (3), was such that it would be just and equitable to reduce or further reduce the amount of the basic award to any extent, the Tribunal shall reduce or further reduce that amount accordingly.

46. (5) The amount of the basic award shall be reduced or, as the case may be, be further reduced, by the amount of any payment, made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of Part VI or otherwise.

Calculation of compensatory awards

47. (1) Subject to section 48, the amount of the compensatory award shall be such amount as the Tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.

47. (2) Such loss shall be taken to include—

(a) any expenses reasonably incurred by the complainant in consequence of the dismissal; and

(b) subject to subsection (3), loss of any benefit which he might reasonably be expected to have had but for the dismissal.

47. (3) In determining, for the purposes of subsection (1), how far any loss sustained by the complainant was attributable to action taken by the employer no account shall be taken of any pressure which, by calling, organising, procuring or financing a strike or other industrial action, or threatening to do so, was exercised on the employer to dismiss the employee, and that question shall be determined as if no such pressure had been exercised.

47. (4) Where the Tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding.

47. (5) If the amount of any payment made by the employer to the employee on the ground that the dismissal was by reason of redundancy, whether in pursuance of Part VI or otherwise, exceeds the amount of the basic award which would be payable but for subsection (4) of section 46 that excess shall go to reduce the amount of the compensatory award.

Limit on compensation

48. (1) The amount of compensation awarded to a person calculated in accordance with section 46 and of a compensatory award to a person calculated in accordance with section 47, shall not exceed eighteen months pay: Provided that where the employee holds a supervisory or managerial position the award shall not exceed twenty-four months pay.

48. (2) It is hereby declared for the avoidance of doubt that the limit imposed by this section applies to the amount which the Tribunal would, apart from this section otherwise award in respect of the subject matter of the complaint after taking into account any payment made by the respondent to the complainant in respect of that matter and any reduction in the amount of the award required by any written law.

48. (3) Where the Tribunal considers that any conduct of the complainant after the dismissal was such that it would be just and equitable to reduce the amount of the award to any extent, the Tribunal shall reduce that amount accordingly.

PART X

CHILDREN AND YOUNG PERSONS

Definitions for Part X.

49. In this Part—

"child" means any person under the age of fourteen years;

"industrial undertaking" includes—

(a) a mine, quarry, or distillery, or a sugar, spirit compound, match, soap, cigar or cigarette factory, or any undertaking in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed, including shipbuilding and the generation, transformation and transmission of electricity and motive power of any kind, or any agricultural undertaking;

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

(c) transport of passengers or goods by road or rail or inland waterway including the handling of goods at docks, quays, wharves and warehouses but

excluding transport by hand;

"night work" means work in an industrial undertaking during any time between the hours of eight o'clock in the evening and six o'clock in the morning;

"parent" includes guardian or other such person who is liable to maintain or has actual custody of a child or young person;

"ship" means any sea-going ship or boat of any description registered in The Bahamas as a Bahamian ship and includes sea-going fishing boats;

"young person" means a person who is fourteen years of age and upwards and under the age of eighteen years.

Prohibition of employment of a child.

50. (1) A child shall not be employed in any undertaking except as expressly provided in the First Schedule.

50. (2) The Minister may by Order after consultation with a confederation, being, in the opinion of the Minister, a confederation representative of a majority of employers and associations of employers generally and after consultation with an association of registered trade unions being an association in the opinion of the Minister representative of a majority of employees subject to affirmative resolution of the House of Assembly, amend the First Schedule.

Prohibition of employment during school hours

51. A child or young person shall not be employed in any work to be performed during any hours during which any school at which such person is a pupil is ordinarily in session, or during such other periods as may prejudice his attendance at such school or render him unfit to obtain the full benefit of the education provided for him.

Penalty for employment.

52. (1) If any person employs a child or young person contrary to any of the provisions of this Part, he shall be liable to a fine of one thousand dollars.

52. (2) If any parent or guardian of a child or young person has consented to the commission of the alleged offence by wilful default, or by habitually neglecting to exercise due care, he shall be liable to the like fine.

Liability of agent or employer.

53. Where the offence of taking a child or young person into employment contrary to any of the provisions of this Part is committed by an agent or employee of the employer, such agent or employee shall be liable to a fine as if he were the employer.

False certificate or representation as to age.

54. Where a child or young person is taken into employment in contravention of this Part, on the production, by or with the consent of the parent or guardian, of a false or forged certificate, or on the false representation of his parent or guardian that the child or young person is of an age at which employment is not in contravention of this Part, that parent or guardian shall be liable to a fine of one thousand five hundred dollars.

Presumption of age.

55. If in a charge for an offence under this Part it is alleged that the child or young person in respect of whom the offence was committed was under the age of fourteen or eighteen years, as the case may be, at the date of the commission of the alleged offence he shall, unless the contrary is proved, for the purposes of this Part be presumed at that date to have been under the age of fourteen or eighteen years, as the case may be.

Prohibition of employment on ships.

56. It shall not be lawful to employ any young person under the age of sixteen upon any ship other than a ship-

(a) upon which only members of the same family are employed; or

(b) within the waters of The Bahamas.

General prohibition of night work.

57. (1) It shall not be lawful to employ a child in night work.

57. (2) It shall not be lawful, except as expressly provided in this Part and the Second Schedule to employ young persons in night work.

57. (3) The Minister may by Order after consultation with a confederation, being, in the opinion of the Minister, a confederation representative of a majority of employers and associations of employers generally and after consultation with an association of registered trade unions being an association in the opinion of the Minister representative of a majority of employees subject to affirmative resolution of the House of Assembly, amend the Second Schedule.

Exceptional circumstances

58. In all industrial undertakings in the case of exceptional circumstances demanding it, the Minister may, by Order, after consultation with a confederation, being, in the opinion of the Minister, a confederation representative of employers and associations of employers generally and after

consultation with an association of registered trade unions being an association in the opinion of the Minister representative of employees subject to affirmative resolution of the House of Assembly, suspend the prohibition of night work for such period as he may deem necessary.

Conditions in respect of young persons

59. A young person may work outside school hours under the following conditions-

- (a) in a school day, for not more than three hours;
- (b) in a school week, for not more than twenty-four hours;
- (c) in a non-school day, for not more than eight hours;
- (d) in a non-school week, for not more than forty hours.

PART XI

WAGES

Wages to be paid in the currency of The Bahamas.

60. (1) In any contract of service hereafter to be made for the employment of any employee for the performance of any work within The Bahamas the wages of such employee shall be made payable and be paid at regular intervals of not more than one month to the individual employee in the currency of The Bahamas and not otherwise.

60. (2) Subsection (1) shall not be construed so as to prevent or render invalid any contract for the payment, or any actual payment, to such employee as aforesaid of the whole or any part of his wages, in drafts or orders for the payment of money to the bearer on demand, drawn upon any person lawfully carrying on the business of a banker in The Bahamas, if such employee freely consents, to receive such drafts or orders and all such payments shall for the purposes of this Act be as valid and effectual as if such payments had been made in the currency of The Bahamas.

60. (3) If any draft or order as mentioned in subsection (2) shall be dishonoured or not paid on presentation to such person lawfully carrying on the business of a banker the employer to whom such draft or order has been delivered in such part payment or payment of wages shall in addition to any other liability which such employer may incur by reason of such dishonour or non-payment pay to such employee or to a holder in due course of any such draft or order so dishonoured or unpaid as aforesaid a sum of money equal to

fifteen per cent of the amount specified in such draft or order and such sum shall be recoverable before the magistrate of the district in which any such employee resides.

Register of wages

61. (1) Every employer shall keep a register of wage payments and accounts in respect of each employee for a period of three years.

61. (2) This section shall not apply in the case of domestic employees.

Order for goods as a deduction from wages illegal

62. (1) In any action brought by an employee for the recovery of his wages, the employer shall not be entitled to any set-off or counter-claim in respect of any goods supplied to the employee by the employer or by any person under any order or direction of the employer, or any agent of the employer, and the employer or any agent of the employer, or any person supplying goods to the employee, under any order or direction of such employer or agent, shall not be entitled to sue the employee for or in respect of any goods supplied by such employer or agent, or under such order or direction, as the case may be.

62. (2) Nothing in subsection (1) shall be deemed to apply to any tools or implements supplied to any such employee employed as aforesaid, or to goods not exceeding the value of fifty dollars supplied to any such employee at the request of such employee when there shall not be within five miles of such employment any store at which such employee could have purchased the goods so supplied.

Requirements relating to payment of wages.

63. (1) Payment of wages shall be made on working days only and shall be made by cash, cheque or by deposit in the employee's bank account.

63. (2) Except in the case of an employee who is ordinarily employed therein, wages shall not be paid to any employee on any premises licensed for the sale of intoxicating liquor under the provisions of the Liquor Licences Act or in any shop or store.

Restrictions on deductions from wages of employees.

64. (1) An employer may make deductions from wages payable to an employee in accordance with the terms of any agreement made with such employee for the repayment of money advanced to him by way of loan from the employer, but the total amount of all such deductions made in any one period for which any payment of wages is made shall not exceed one-fifth of the amount of the wages payable to such employee in respect of such period.

64. (2) This section shall not affect any arrangements for deductions entered into before the commencement of this section.

No contracts with employees as to spending wages at any particular shop, etc
65. No employer shall directly or indirectly by himself or his agent impose as a condition, express or implied, in or for the employment of any employee any terms as to the place or the manner in which, or the person with whom, any wages or portion of wages paid to the employee are or is to be expended, and no employer shall by himself or his agent dismiss any employee from his employment for or on account of the place at which, or the manner in which, or the person with whom, any wages or portion of wages paid by the employer to such employee are or is expected or fail to be expended.

Penalty.

66. If any employer or his agent contravenes any of the provisions of this Part the employer or agent, as the case may be, is guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars for the first offence and to a fine of one thousand dollars for a second or subsequent offence.

PART XII

FINGERPRINTING AND LIE DETECTOR TEST

Prohibition

67. No employer shall, as a requirement for employment or continued employment, require any person to furnish a set of his fingerprints or take a lie detector test.

Exception.

68. The provisions of sections 67 shall not apply to an employer who employs a person on any premises in respect of which licences are issued under the Lotteries and Gaming Act.

Offence.

69. Any person who contravenes section 67 is guilty of an offence and shall be liable to a fine of five thousand dollars.

Return of records

70. (1) Where the fingerprints of any person have been furnished to an employer prior to the commencement of this Act, such fingerprints and all copies and records thereof shall be returned to that person within fourteen days after the commencement of this Act.

70. (2) An employer who fails to comply with subsection (1) is guilty of an offence and shall be liable to a fine of five thousand dollars.

PART XIII

GENERAL PROVISIONS

Information and returns.

71. Every employer shall—

(a) make and keep for such period as may be prescribed after the work is performed, such records of the names, addresses, ages, wages, hours worked, annual vacations and other conditions of work of each of his employees as may be prescribed; and

(b) if requested by the Minister, furnish to the Minister such information in respect of his employees relating to the matters mentioned in paragraph (a), and make such returns thereon in such manner as may be prescribed.

Change of ownership of business.

72. (1) Where a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of any business for the purposes of which an employee is employed, and after such change of ownership such employee continues to be so employed without interruption, the person who immediately after the change occurs is the owner of the business shall be deemed to be the employer ("the new employer") of that employee, and the employment shall be deemed to be continuous, notwithstanding the change.

72. (2) Any change in the ownership of a business shall be binding upon any successor, administrator, transferee, executor and assign of the company, or surviving entity in the control of the company regardless of the nature of transfer or control including but not limited to purchase, sale, merger, consolidation, acquisition, leasing of operation, reorganisation, arrangement for the benefit of creditors, or bankruptcy.

72. (3) Any dispute filed with the Tribunal and subsisting at the time of the change between the employee or his trade union and the former employer shall be deemed to be transferred to the new employer, notwithstanding the change and notwithstanding any agreement to the contrary between the former employer and the new employer.

Pay statements

73. (1) An employer shall, at the time of making any payment of wages to an employee, furnish to the employee a statement in writing setting out—

(a) the period for which the payment of wages is made;

(b) the number of hours for which payment is made;

- (c) the rates of wages
- (d) details of any deductions made from the wages; and
- (e) the actual sum being paid to the employee

73. (2) The Minister may, by Order, exempt any class of employer from any or all of the requirements of subsection (1).

73. (3) This section shall not apply in the case of domestic workers.

Notice to furnish information

74. (1) Where the Minister or any person is authorised to require a person to furnish information under this Act or the regulations, he may require the information to be furnished by a notice to that effect served personally or sent by registered mail addressed to the last known address of the person for whom the notice is intended, and such person shall furnish the information within such reasonable time as is specified in the notice.

74. (2) A certificate of the Minister or other person as aforesaid certifying—

(a) that a notice was sent by registered mail to the person to whom it was addressed, accompanied by a true copy of the notice and by an identifying certificate of such registration issued by or on behalf of the Postmaster-General; or

(b) where the Minister or other person is authorised to require a person to furnish information under this Act or the regulations, that the information has not been furnished,

shall be prima facie evidence in any proceedings of the facts stated in the certificate

74. (3) A certificate of the Minister or other person aforesaid certifying that a document was made by or on behalf of the Minister shall be admissible in any proceedings as prima facie evidence of that fact.

74. (4) A certificate under this section signed or purporting to be signed by the Minister or other person aforesaid shall be admissible in evidence in any proceedings without proof of his appointment or signature.

Offences.

75. Any person who—

(a) contravenes any provision of this Act or the regulations or any order made thereunder for the contravention of which no penalty is prescribed elsewhere in this Act or in the regulations or order; or

(b) dismisses or threatens to dismiss any employee or reduces his wages or alters the terms or conditions of his employment to terms or conditions less favourable to him, or alters his position relatively to other employees employed by that person, because such employee-

(i) has testified or is about to testify in any proceedings had or taken under this or any other Act; or

(ii) has given any information to the Minister or an inspector as required under any law regarding the wages, hours of work, annual vacations or other conditions of work of the employee or any of his fellow employees,

is guilty of an offence and shall be liable, to a fine of five thousand dollars.

Additional powers of convicting court

76. Where an employer is found guilty of an offence under this Act in respect of any employee, the court may, in addition to any other penalty, order the employer to pay to the employee any overtime pay, vacation pay, or other wages to which the employee is entitled under this Act, the non-payment or insufficient payment of which constituted the offence.

Savings.

77. (1) No civil remedy of any employee against his employer for arrears of wages or for breach made under this Act shall be suspended or otherwise be affected by this Act.

77. (2) This Act shall not apply to any industrial agreement registered with the Tribunal on the coming into operation of this Act but shall apply on the expiration of such an agreement.

Annual report

78. The Minister shall, within six months from the end of every year, prepare an annual report on the administration of this Act and cause such report to be laid before both Houses of Parliament.

Regulations.

79. The Minister may make regulations for carrying out the purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations-

(a) for calculating and determining, otherwise than for the purposes of this Act, wages received by an employee in respect of his employment;

(b) providing for the payment of any wages of an employee to the Minister or to some other person in the event that the employee cannot be found, or in any other case;

(c) providing for the establishment of committees to advise the Minister on any matters arising in relation to the administration of this Act; and

(d) for any other matter required or authorised by this Act to be prescribed

Repeals and amendments

80. The Acts mentioned in the Third Schedule are repealed or amended to the extent specified therein.

FIRST SCHEDULE (Section 50)

EMPLOYMENT OF CHILDREN

For a period of five years from the coming into operation of this Act, a child may be employed in the following undertakings—

(a) grocery packers;

(b) gift wrappers;

(c) peanut vendors;

(d) newspaper vendors.

SECOND SCHEDULE (Section 57)

EMPLOYMENT OF YOUNG PERSONS IN NIGHT WORK

A young person may be employed in the following undertakings—

(a) hotels;

(b) restaurants;

(c) food stores;

(d) general merchandise stores;

(e) gas stations.

THIRD SCHEDULE (Section 80)

REPEALS

Chapter Acts Extent of Repeal

Ch. 288 Truck Act The whole Act

Ch. 289 Contracts of Service Act The whole Act

Ch. 291 Employment of Children Prohibition Act The whole Act

Ch. 292 Employment of Young Persons Act The whole Act

Ch. 295 Fair Labour Standards Act The whole Act

Ch. 296 Industrial Relations Act Section 53E (3), (4) and (5)

Act No. 8

of 1988 Female Employees (Grant of Maternity Leave) Act The whole Act