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MONTSERRAT

CHAPTER 15.03

EMPLOYMENT ACT **Subsidiary and Related Legislation**

Revised Edition
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act

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CHAPTER 15.03
EMPLOYMENT ACT

(Acts 19 of 1979, 5 of 1986, 10 of 1989 and 5 of 1996)

AN ACT TO AMEND AND UPDATE LABOUR LEGISLATION IN MONTSERRAT.

Commencement

[1 April 1980]

PART I
MISCELLANEOUS

Short title

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

Interpretation

2. In this Act—

"**dismissal**" includes any form of termination of a contract of service by an employer and termination by an employee in the circumstances mentioned in section 12 of this Act;

"**employee**" means any person working under a contract of service or of apprenticeship but shall not include permanent and pensionable civil servants or members of the Police Force. The term "employer" shall be construed accordingly and, shall include the Government of Montserrat of Montserrat;

"**Form A**" means the Form prescribed by section 16 of this Act, containing the particulars of terms of employment as set out in the First Schedule to this Act;

"**full week**" means a week worked by an employee in conformity with the terms set out in Form A.

"**Labour Advisory Board**" means the Board set up under section 45(1) of this Act;

"**Labour Commissioner**" means the Labour Commissioner appointed under section 3 of the Labour Act;

"**Labour Officer**" means the Labour Officer appointed under section 3 of the Labour Act; *(Inserted by Act 10 of 1989)*

"**pay period**" means the interval between the days upon which an employee receives wages from his employer;

"**Port Worker**" means an employee who is registered in the register of port workers kept by a Trade Union registered under the Trade Unions Act and who satisfies the Labour Commissioner that he is *bona fide* so employed;

"**Registrar**" means the Registrar of the Tribunal;

"**Tribunal**" means the Labour Tribunal set up under section 36 of this Act;

"**wages**" in Part III of this Act means the remuneration in money payable by the employer to the employee per pay period under his current contract of service.

Powers of Labour Commissioner

3. (1) The Labour Commissioner, or the Labour Officer, shall have the right to institute proceedings under

any provision of this Act creating an offence.

(2) The Labour Commissioner, or any person authorized in writing by him, shall have the right to conduct any proceedings instituted under subsection (1) of this section in the Magistrate's Court.

(Amended by Act 10 of 1989)

Contracting out

4. Any agreement between an employer and an employee purporting to contract out of any provision of this Act shall be void.

Continuity of employment

5. For the avoidance of doubt it is declared that the continuity of employment of an employee is not broken for the purposes of this Act by *inter alia*-

- (a) strikes;
- (b) lockouts;
- (c) sickness: provided that any continuous period of sickness exceeding one day shall be certified by a registered medical practitioner;
- (d) leave, paid or unpaid, taken with the permission of the employer;
- (e) the taking over of the business of the employer as a going concern by another employer,

but only by the employer or the employee terminating the contract.

PART II

WRITTEN PARTICULARS OF TERMS OF EMPLOYMENT

Written particulars of terms of employment

6. (1) Not later than four weeks after this Act comes into force every employer shall give to each of his employees a completed copy of Form A as prescribed by the First Schedule to this Act:

Provided that nothing in this Part of this Act shall apply to a merchant seaman duly engaged under the Merchant Shipping (Agreements) Act or any amendment thereto.

(2) After the coming into force of this Act every employer shall, within one week of employing a new employee, give that employee a completed copy of Form A.

(3) Both the employer and the employee shall sign Form A and the employer shall lodge the signed copy with the Labour Commissioner.

(4) In any dispute before the Tribunal, the entries on Form A in respect of any party to the dispute duly signed by the parties and certified by the Labour Commissioner as being the form lodged with him shall be conclusive evidence of the matters contained therein:

Provided that nothing in this Act shall be construed as deeming Form A to be a written contract of employment.

(5) When the terms of employment of an employee as set out in Form A are changed, the employer shall either

amend the copy of the form which has been lodged with the Labour Commissioner or prepare a new Form A and lodge it with the Labour Commissioner as prescribed by subsection (3) of this section. The new or amended copy of Form A shall be signed both by the employer and the employee.

(6) The Governor in Council may, by Order, add to or in any other way vary the particulars prescribed by the First Schedule to this Act.

Application to the Labour Commissioner and the Labour Tribunal

7. (1) When an Employee does not receive Form A in the manner prescribed by section 6 of this Act or when Form A has not been amended as required by subsection (5) of section 6 of this Act he may apply to the Labour Commissioner.

(2) The Labour Commissioner or the Labour Officer may on an application made by an employee or where he has reason to believe that an employer has not complied with the provisions of section 6 of this Act issue notice in writing that the employer has failed to comply with the provisions of section 6 of this Act and issue such directions as are necessary to enable him to comply with the provisions of this section.

(3) If an employer fails to comply with the provisions of section 6 of this Act within fourteen days of such notice being served on him by the Labour Commissioner or the Labour Officer as the case may be he shall make an application to the Labour Tribunal.

(4) If, on such application, the Tribunal is satisfied that the employee has not given a duly completed Form A by his employer or that Form A has not been amended as required, they shall decide what particulars should have been entered and shall complete or amend Form A on the employer's behalf. Form A shall then be deemed to have been completed or amended by the employer in accordance with subsection (1) or subsection (5) of section 6 of this Act and the Tribunal shall lodge it with the Labour Commissioner.

(5) An employer who fails to comply with the notice issued to him under subsection (3) above shall be committing an offence and is liable on summary conviction to a fine not exceeding \$500.

(6) It shall be lawful for the Labour Commissioner or the Labour Officer to institute proceedings against an employer for an offence under this section notwithstanding that an application has been made to the Tribunal under subsection (4) of this section.

(7) An employer or an employee who is aggrieved of any direction given by the Labour Commissioner or the Labour Officer under this section may appeal to the Tribunal which shall make such orders as are necessary in the circumstances.

(Substituted by Act 10 of 1989)

Right of employee to contest terms expressed in Form A

8. If Form A has been prepared by an employer and the employee contests the validity of the terms expressed therein the employee may apply to the Tribunal who will proceed as in section 7(2) of this Act.

PART III

NOTICE AND DISMISSAL

Right of employer and employee to minimum periods of notice

9. (1) From the date this Part of this Act comes into force the minimum notice required to be given by an employer to an employee to terminate the contract of employment where the employee has been continuously employed for thirteen weeks or more shall be—

- (a) not less than one week if the period of continuous employment is thirteen weeks or more but less than two years;
- (b) not less than two weeks if the period of continuous employment is two years or more but less than five years;
- (c) not less than four weeks if the period of continuous employment is five years or more but less than ten years;
- (d) not less than six weeks if the period of continuous employment is ten years or more but less than fifteen years;
- (e) not less than eight weeks if the period of continuous employment is fifteen years or more:

Provided that nothing in this subsection shall be deemed to take away the employer's right of summary dismissal that existed before this Act came into force:

Provided further that during the period of notice the employee shall, in good faith, carry out his normal duties so far as is possible to his normal standard of achievement.

(2) The minimum notice required to be given by an employee who has been continuously employed for thirteen weeks or more shall not be less than one week or such longer period as may be specified in Form A.

(3) The Governor in Council after consultation with the Labour Advisory Board may, by Order, increase the period of notice required to be given by an employer or by an employee.

(4) The minimum periods specified in subsection (1) of this section shall not be reducible by agreement but the employer shall have the right to pay wages in lieu of notice if he so wishes.

(5) For the purposes of computing the length of the employee's employment, every week shall count in which he—

- (a) worked the number of hours or carried out the normal tasks required by his contract of employment; or
- (b) was sick: provided that any continuous period exceeding one day shall be certified by a registered medical practitioner; or
- (c) was on leave, paid or unpaid, with the permission of the employer; or
- (d) did not work because of a temporary cessation of work as defined in section 15(6) of this Act.

Rights of employee during period of notice

10. (1) During each pay period of the period of notice the employee shall be paid not less than his normal rate of wages.

(2) If the employer chooses to exercise his right under section 9(4) of this Act to pay wages in lieu of notice, the minimum payment shall be calculated as in subsection (1) of this section.

(3) During the period of notice the employee shall be allowed up to a maximum of four hours per week by his employer without loss of pay in order to seek other employment, up to a maximum of 16 hours in total.

Compensation for dismissal

11. (1) From the date this Part of this Act comes into force any employee who has been continuously employed by an employer for thirteen weeks or more and who is dismissed by his employer for any reason other than one or more of the reasons specified in subsection (2) of this section shall be entitled to compensation as assessed by the Tribunal.

(2) The reasons for dismissal which shall not give rise to a right to compensation are—

- (a) the incapability of the employee to do the work he is employed by his employer to do;
- (b) misconduct: Provided that no employee shall be dismissed for a first breach of discipline except in the case of gross misconduct;
- (c) subject to the provisions of section 15 of this Act, where the employee is redundant;
- (d) any other reason which in the opinion of the Tribunal makes it unreasonable for the employer to continue the employer-employee relationship.

(3) In this Act—

- (a) "incapability" shall be assessed by reference to skill, aptitude, productivity, health or any other physical or mental quality;
- (b) an employee is redundant if—
 - (i) the employer has ceased or intends to cease, to carry on the business for the purposes of which the employee was employed by him; or
 - (ii) the requirements of the employer's business for employees of a particular kind have ceased or diminished or are likely to cease or diminish.

(4) The following *inter alia* shall not constitute valid reasons for termination of employment—

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of laws or regulations; or
- (d) race, colour, sex, marital status, religion, political opinion, national extraction or social origin.

Conduct of employer

12. Where the conduct of the employer towards the employee has been such that the employee could no longer reasonably be expected to continue the employer-employee relationship and accordingly leaves the employment, then he shall be deemed, for the purposes of this Act, to have been dismissed.

Burden of proof

13. In any application by an employee to the Tribunal claiming compensation for dismissal it shall be for the employer to show that the reason for dismissal was one of those allowed by subsection (2) of section 12 of this Act and that taking into account all the relevant circumstances, it was reasonable for him to dismiss the employee for that cause:

Provided that it shall not be reasonable for an employer to dismiss an employee because of his misconduct unless the employer exercises his right to dismiss within a reasonable time after he learns of the misconduct.

Certificate of employment

14. (1) An employee who is dismissed by his employer for whatever cause shall be entitled to a statement in writing from the employer giving—

- (a) the dates between which the employee was employed; and
- (b) the nature of the work done by the employee.

(2) Nothing adverse to the employee shall be expressed in any certificate given in compliance with subsection (1) of this section.

Redundancy

15. (1) An employee who has been dismissed because he was redundant shall be entitled to severance pay from his employer at the relevant rate specified in the Third Schedule.

(2) For the purpose of subsection (1) the relevant rate is the rate appearing in Column 2 of the Third Schedule which corresponds with the number of years of continuous service given by the employee.

(3) For the avoidance of doubt there shall be for the purpose of calculating severance pay, one relevant rate for the total number of years of continuous service given, which rate is specified in subsection (2).

(4) The weekly rate of pay for the purpose of calculating severance pay is the average weekly rate of pay received by the employee during the last twelve months of his employment ending with the date of his dismissal for redundancy.

(5) For the purpose of this section the number of years of continuous service shall be calculated *pro rata* for the actual period served and no period shall be taken into account during which the employee did not work because of a temporary cessation of work.

(6) The rates of severance pay specified in the Third Schedule are minimum rates and nothing in this section shall prevent an employer from paying severance pay at a rate which exceeds the rates specified in that Schedule.

(7) An employee to whom a gratuity has been paid under section 18 by virtue of his having attained the age of 60 and who is subsequently dismissed on the grounds of redundancy shall only be entitled to severance pay for the period he

was employed after attaining the age of 60.

(8) Severance pay shall not be income for the purpose of the Income Tax Act.

(9) If the employer fails to pay the severance pay at the time the employee is dismissed, the employee shall have the right to apply to the Tribunal who shall assess the amount of severance pay and award it to the applicant.

(10) An employee shall not be entitled to severance pay—

- (a) if the employer offers him alternative employment which, in all the circumstances of the case, is suitable employment in relation to the employee;
- (b) where the business in which he is employed is taken over as a going concern and his employment is continued by the new employer without interruption.

(11) Without prejudice to the generality of subsection (10) of this section, the following shall, *inter alio*, be taken into account by the Tribunal in deciding whether alternative employment is suitable in respect of any employee—

- (a) the nature of the work to be done;
- (b) the rate of pay;
- (c) the location of the place of work;
- (d) the family circumstances of the employee.

(12) An employee shall not be entitled to severance pay by virtue of a temporary cessation of work.

(13) "Temporary cessation of work" in this section means that although the work of the business or part of the business of the employer has ceased or diminished, the employer-employee relationship is, in the opinion of the Tribunal, still in existence, and it is the intention of the parties to resume normal working as soon as possible.

(Amended by Act 5 of 1996)

Special provisions for port workers

16. (1) For the purposes of redundancy in this Part of this Act the period of service of a port worker shall be deemed to be the period during which his name was entered on the Register of Port Workers maintained by a registered trade union.

(2) For the purposes of section 15(1) of this Act, the employer of a port worker shall be deemed to be the persons who have jointly employed the port worker as a port worker in the twelve months immediately preceding the redundancy. These persons shall be jointly and severally liable for the payment of the severance pay *pro rata* on the basis of the actual amount each paid to the port worker during that year.

Notification of redundancy to Labour Commissioner

17. Where ten or more employees are likely to be redundant the employer shall, before dismissing the employees, notify the Labour Commissioner in writing.

Gratuity

18. (1) An employee who gives continuous service to an employer for a period of at least twenty years shall, subject to the provisions of this section be entitled to a gratuity from that employer at the rate specified in subsection (6).

(2) No gratuity shall be payable to an employee who was dismissed on any of the grounds specified in paragraph (b) of section 11(2).

(3) An employee who is dismissed on the grounds of redundancy after having given twenty years of continuous service to an employer shall be entitled to severance pay under section 15 and not to the gratuity otherwise payable under this section.

(4) Subject to subsection (5) a person shall be entitled to a gratuity notwithstanding that a part of the service which qualifies him for gratuity is given prior to January 1, 1996.

(5) Nothing in this section shall be taken to confer entitlement to gratuity on a person who gave service to an employer for a period of at least twenty years where, on January 1, 1995 that person was not employed by that employer.

(6) The rate of gratuity shall be a sum equivalent to two weeks wages for each year of service up to the date of termination of the employment.

(7) Gratuity is payable to an employee on attaining the age of 60 years or within 90 days after the termination of employment whichever is earlier.

(8) Where on attaining the age of 60 an employee has not given twenty years of continuous service to his employer, gratuity shall be payable when the employee has given twenty years of continuous service.

(9) Notwithstanding subsection (7) an employee who continues in employment after the age of 60 is entitled to a gratuity in respect of each year of employment beyond age 60 at the rate specified in subsection (6) and such gratuity shall be payable at the time when the employment terminates.

(10) Where an employee is entitled otherwise than under this section to a retirement benefit from an employer, the employee shall not be entitled to that benefit in addition to a gratuity under this section but shall elect to accept either the gratuity or retirement benefit.

(11) The benefit payable under this section shall be in addition to any retiring benefit to which an employee may be entitled under the Social Security Fund.

(12) In the event of death of a person entitled to gratuity under this section the gratuity shall be paid to his nominee or legal representative.

(13) Gratuity paid under this section shall not be income for the purpose of the Income Tax Act.

(Inserted by Act 5 of 1996)

Compensation

19. (1) Where the Tribunal is satisfied on application by a dismissed employee that the dismissal was not for one of the reasons permitted by subsection (2) of section 11 of this Act, they shall award compensation to the employee.

(2) The compensation shall be assessed by the Tribunal, taking into account—

- (a) the financial loss if any suffered by the employee; and
- (b) the circumstances of the dismissal:

Provided that the maximum compensation shall not exceed 52 times the wages of the dismissed employee if the pay period is one week, or twelve times the wages if the pay period is one month. Where the pay period is other than one week or one month the maximum compensation shall be assessed *pro rata*.

(3) An award by the Tribunal under this section shall not be income for the purposes of the Income Tax Act.

(4) An entitlement to compensation under this section shall be deemed to be a cause of action for the purposes of the Causes of Action (Survival) Act.

Tribunal's right to recommend reinstatement

20. (1) Where the Tribunal is satisfied that the dismissal of one employee was not for one of the reasons permitted by subsection (2) of section 11 of this Act they may, if it seems proper to them in all the circumstances of the case, recommend the reinstatement of the employee by the employer in substitution for or in addition to any compensation they may award.

(2) If either the employer or the employee refuses the recommendation for reinstatement the Tribunal shall take this into account in assessing the award of compensation.

Fixed contracts

21. (1) The provisions of section 11 of this Act shall not apply to the termination of a fixed term contract by virtue of the contract having come to an end.

(2) In this section the term "fixed term contract" means a contract of service either for a pre-determined period of time or a specific task or number of specific tasks intended to come to an end when the time has expired or the task or tasks are completed:

Provided that the Tribunal may deem a series of more than one fixed term contracts between an employer and an employee to be a contract for an indeterminate period and therefore subject to the provisions of section 11 of this Act, if in the Tribunal's opinion the series of contracts is a wilful attempt on the part of the employer to evade the provisions of this Part of this Act.

Saving as to common law rights

22. Nothing in this part of this Act shall be construed as derogating from the existing common law rights of the employer or employee.

PART IV HOLIDAYS WITH PAY

Employee's entitlement to paid holiday

23. (1) After each calendar year of continuous employment with an employer an employee shall be entitled to not less than two full weeks' paid holiday.

(2) For the purposes of this section the employment, of employees already employed by an employer when this Act comes into force shall be deemed to start on that date:

Provided that nothing in this subsection shall affect existing holiday rights of the employee in the year this Act comes into force.

(3) In this Part of this Act "**working week**" means a week in which the employee is employed by the employer for 21 hours or more.

(4) The Governor in Council may by Order, after consultation with the Labour Advisory Board, increase the paid holiday entitlement of all or any class of employees.

Calculation of holiday pay

24. (1) Where the paid holiday of the employee is two weeks, the amount of holiday pay shall be two weeks pay at the normal rate of wages of the employee. This sum shall be paid by the employer to the employee immediately before the start of the holiday.

(2) Where the holiday entitlement of the employee is more than two weeks, the holiday pay shall be calculated *pro rata* on a basis not less favourable to the employee than that set out in subsection (1) of this section.

(3) Holiday pay shall be deemed to be wages for the purposes of the Protection of Wages Act.

Employee's rights on termination of employment

25. Where an employee who has worked continuously for an employer for not less than thirteen working weeks, leaves his employment for whatever cause, the employer shall pay him his accrued holiday pay calculated on a basis not less favourable than that laid down in subsection (1) of section 24 of this Act:

Provided that no employee shall be entitled to holiday pay under this section unless he leaves his employment either with the permission of the employer or by giving the due notice specified on the copy of Form A relating to that employee or in the exercise of his right under section 12 of this Act.

Date paid holiday to be taken

26. The date of the start of the paid holiday shall be by arrangement between the employer and the employee:

Provided that the employer may, after consultation with his employees and with the written agreement of the Labour Commissioner, fix a common date for the start of his employees' holidays.

Holiday taken in more than one part

27. (1) The employee may, with the agreement of the employer, take his paid holiday in not more than two parts.

(2) Where the employee avails himself of his right under subsection (1) of this section he shall be paid the appropriate proportion of his holiday pay before the start of each part of the holiday.

Employee's right to payment during sickness

28. (1) After not less than thirteen weeks of continuous service with an employer an employee shall be entitled to not more than 24 days of paid sick leave during each year of service.

(2) Payment shall be at the normal rate of wages.

(3) No employee shall be entitled to wages during sickness unless his sickness is certified by a registered

medical practitioner:

Provided that an employer may at his expense require an employee to be examined by a registered medical practitioner of the employer's choice.

(4) After not less than one year of continuous service with an employer a female employee who is expecting a confinement shall be entitled to 28 days paid maternity leave in respect of each expected confinement and, at the end of that period, to the balance of any sick leave to which she is entitled under subsection (1) of this section. A female employee who returns to her employment not later than twelve weeks after the date of her confinement shall be entitled to resume that employment on terms not less favourable to her than at the beginning of her maternity leave.

Obligation on employee to take paid holiday

29. (1) It shall not be lawful for an employee to refrain from taking his paid holiday.

(2) It shall not be lawful for an employee to accept holiday pay or any other form of additional remuneration in lieu of paid holiday save as provided by subsection (3) of section 32 of this Act.

(3) Periods of incapacity resulting from sickness or injury shall not count as part of a holiday with pay.

Accumulation of holiday

30. Notwithstanding the provisions of section 29 of this Act the employee may, with the agreement of the employer, accumulate his paid holiday over a period not exceeding two years.

Application by employee to the tribunal

31. (1) Any employee who claims that he has not received his full entitlement under this part of this Act may make application to the Tribunal.

(2) After hearing the application the Tribunal may make such order as it sees fit stating

- (a) the holiday entitlements of the employee; and
- (b) how far they have been complied with by the employer; and
- (c) ordering the employer to pay any balance the Tribunal deems unpaid.

Paid public holidays

32. (1) In addition to his entitlements to annual paid holiday the employee shall be paid at his full normal rate of wages for any public holiday listed in the Schedule to the Public Holidays Act as at the commencement of this Act:

Provided that the employee shall not be entitled to such payment unless he works the remaining days required by his contract of employment in the pay period in which these public holidays fall:

Provided further that absence in the pay period in which a paid public holiday falls—

- (a) by permission of the employer; or
- (b) because of sickness duly certified by a registered medical practitioner;

shall not disentitle the employee to his paid public holiday in that pay period.

(2) The Governor in Council may, by Order, after consultation with the Labour Advisory Board, add to the paid public holidays specified in subsection (1) of this section.

(3) Where an employee is required by his employer to work on a public holiday within the meaning of this section he shall either receive payment for that day at not less than double the normal rate of wages or, if the employee so wishes, receive a full days' holiday on a date to be mutually agreed between the employer and the employee.

Special provisions for port workers

33. (1) In this section "**the Union**" means a trade union registered under the Trade Unions Act and maintaining a register of port workers.

(2) Notwithstanding any other provisions of this part of this Act the following subsections shall apply in respect of holiday and sick pay for port workers, and the other provisions of this Part, except section 31, shall not apply.

(3) Whenever an employer pays wages to a port worker he shall at the time of paying the wages pay to the Union an additional sum equal to four per centum of those wages calculated after the deduction of income tax and contributions to the Social Security Fund.

(4) A sickness fund for port workers shall be established to be used for the purpose of taking out a group insurance policy against the sickness of port workers. The sickness fund shall be kept and the group insurance arranged by the Union after consultation with the Labour Commissioner. The fund shall be formed from equal contributions from employers and port workers and shall be such percentage of the wages paid to port workers as shall be specified from time to time by the Governor in Council being the amount necessary to pay the premium of the insurance policy. Whenever an employer pays wages to a port worker, he shall at the time of paying the wages pay to the Union the employer's contribution and deduct and pay to the Union the port worker's contribution as provided for in this subsection.

(5) The Union shall credit all monies paid to them under subsections (3) and (4) of this section to special accounts which shall be subject to audit in the same way as all other accounts under the Trade Union Act.

(6) The Union shall further keep written records of all monies paid under this section in respect of each individual port worker.

(7) The Labour Commissioner or any other person authorized by him in writing shall have the right to inspect the records kept under subsections (5) and (6) of this section at any reasonable time and to make copies of all or any of them.

(8) The Labour Commissioner shall exercise his rights under subsection (7) of this section at least twice each calendar year.

(9) At the end of every 12 months during which a port worker has been employed as such, the Union shall pay him the whole of the monies paid to the Union under the provisions of subsection (3) of this section in respect of that port worker without any deduction of any kind whatsoever and shall obtain a receipt from the port worker showing the amount received by him. These receipts shall form part of the records to be kept by the Union under subsection (6) of this section.

(10) In the event of a port worker ceasing for any cause to be registered in the register kept by the Union, the Union shall pay to him all monies without any deduction whatsoever that have accrued to him under the provisions of

subsection (3) of this section.

Offences by employers

34. An employer who wilfully allows an employee to accumulate holiday or holiday pay in excess of that permitted by section 30 of this Act shall be guilty of an offence punishable on summary conviction by a fine not exceeding \$500.

Offences by employees

35. The following shall, if committed by an employee wilfully and without due cause, be offences punishable on summary conviction by a fine not exceeding \$100

- (a) failure to take a paid holiday in conformity with the provisions of this part of this Act;
- (b) accepting money in lieu of paid holiday:

Provided that nothing in this subsection shall be construed as making it an offence for an employee to work upon the paid public holidays specified by section 32 of this Act.

PART V

THE LABOUR TRIBUNAL

The Labour Tribunal

36. (1) There is hereby established a Labour Tribunal (hereinafter known as "The Tribunal").

(2) All disputes and ancillary matters arising out of this Act shall be decided by the Tribunal and save on appeal as provided by section 41 or as otherwise provided in this Act, no other court in Montserrat shall have jurisdiction over matters arising out of this Act.

Chairman of the Tribunal

37. (1) The Governor in Council after consultation with the chairman of the Judicial and Legal Services Commission shall appoint the Chairman of the Tribunal.*

(2) The appointment shall be for such period as the Governor in Council shall specify and shall be renewable at the discretion of the Governor in Council.

Members of the Tribunal

38. (1) The Governor in Council shall appoint six members of the Tribunal.

* By G.N. 79/1981, the person for the time being holding the office of Magistrate is appointed as the Chairman.

(2) Three of the members shall represent the interests of employees and three the interests of employers.

(3) Notwithstanding subsections (1) and (2) of this section the Governor in Council shall have power to vary the number of members by Order but not the balance between employers' and employees' representation.

Remuneration of members of the Tribunal

39. For each sitting the Chairman and members of the Tribunal shall receive such remuneration as is from time to time prescribed by the Governor in Council by Order and such remuneration shall be charged on and issued out of the Consolidated Fund without further appropriation other than this section:

Provided that where the Chairman is a public servant he shall not be entitled to any remuneration.

(Amended by Act 5 of 1986)

Appointment of staff to the Tribunal

40. The staff required to assist the Tribunal shall consist of such officers as the Governor may from time to time determine.

Appeals from Tribunal's decision

41. There shall be an appeal, on point of law only, by way of case stated from a decision of the Tribunal to the Court of Appeal.

Awards of the Tribunal

42. (1) Any award of the Tribunal shall be recoverable as a civil debt.

(2) A certificate signed by the Chairman of the Tribunal shall be conclusive evidence in any court of the debt.

Order by Tribunal

43. (1) The Tribunal shall have the power to make orders declaring the rights of the parties in any matter arising out of this Act.

(2) Failure of any party wilfully and without due cause to comply with such an order shall be an offence punishable on summary conviction by a fine not exceeding \$1,000.

(3) Without derogation from the right given to the Labour Commissioner by section 4 of this Act, the Chairman of the Tribunal shall have the power to instruct the Labour Commissioner to take action under this section on the Tribunal's behalf

Rules of the Tribunal

44. The rules of the Tribunal shall be as set out in the Second Schedule to this Act.

PART VI

THE LABOUR ADVISORY BOARD

The Labour Advisory Board

45. (1) There is hereby established a Labour Advisory Board (hereafter known as "the Board") the

composition of which shall be as specified in subsection (4) of this section.

(2) It shall be the duty of the Board to advise the Governor in Council on all matters relating to the employment of labour and the Governor in Council shall be obliged to consult the board on all such matters before making any Regulation or Order or proposing legislation on labour matters to the Legislative Council.

(3) Without prejudice to the generality of subsection (2) such matters shall include—

- (a) any proposed amendment to this or any other Act relating to the employment of labour;
- (b) technical training of employees;
- (c) productivity;
- (d) location and types of industry or trade in Montserrat.

(4) The composition of the Board shall be as follows—

- (a) two representatives of Government to be appointed by the Governor in Council, one of whom shall be appointed Chairman of the Board;
- (b) one representative of each trade union registered under the Trade Unions Act;
- (c) representatives nominated by the Chamber of Commerce the same in number as the Trade Union representatives nominated under paragraph (b) above;
- (d) one representative of the construction industry nominated by the Chairman of the Board;
- (e) one representative of the staff of the Technical College nominated by the Chief Education Officer;
- (f) one further member appointed by the Governor in Council, representing the interests of workers;
- (g) the Labour Commissioner or the Labour Officer.

(Amended by Act 10 of 1989)

Forum for Labour Advisory Board

46. (1) A quorum for the Board shall be—

- (a) one representative of Government;
- (b) one representative of trades unions;
- (c) one representative of either the Chamber of Commerce or the construction industry.

(2) Subject to subsection (1) of this section the Board may regulate its own proceedings.

PART VII

MINIMUM WAGE

Right of Labour Commissioner to apply to the Tribunal

47. (1) When the Labour Commissioner has reason to believe that the minimum wage of any class of employee

should be regulated he shall have the right, after consultation with the Labour Advisory Board, to apply to the Tribunal.

(2) Notwithstanding any other provisions of this Act, the Tribunal in respect of such an application shall include a representative of employers and a representative of employees in the trade or trades under consideration, and if the Tribunal as constituted does not include such representatives additional *ad hoc* appointments shall be made by the Governor in Council.

Notification of interested parties by Chairman of the Tribunal

48. On receipt of an application under section 47 of this Act the Chairman of the Tribunal shall notify such parties as he considers to have an interest in the application, including any interested representative organizations of employers and employees, shall cause a notice of the application to be printed in a newspaper (if any) in Montserrat not less than two weeks before the date fixed for the hearing of the application, and shall further cause an announcement to be made on a radio broadcasting station operating in Montserrat on five consecutive days not less than two weeks before the hearing of the application.

Right of any person to be heard by the Tribunal

49. Any person, whether or not notified by the Chairman of the Tribunal under section 48 of this Act, shall have the right to be heard by the Tribunal in any application under section 47 of this Act:

Provided that any person wishing so to be heard shall notify the Registrar in writing not less than one week before the date fixed for the hearing.

Orders of the Tribunal

50. (1) After hearing any application made under section 47 of this Act the Tribunal may recommend to the Governor in Council the making of an Order prescribing a minimum wage for the Class of employee named in the application.

(2) On receipt of a recommendation from the Tribunal, the Governor in Council may make an Order prescribing the minimum wage for that class of employee, or may refer the matter back for further consideration by the Tribunal.

(3) The Order may specify time rates, piece rates or any combination of the two.

(4) Without prejudice to the discretion given to the Tribunal by subsection (1) of this section the Tribunal shall take into account, *inter alia*, the following considerations in arriving at its decision—

- (a) the needs of workers and their families;
- (b) the general level of wages in Montserrat;
- (c) the cost of living and changes therein;
- (d) social security benefits;
- (e) the relative-living standards of other social groups;
- (f) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Publication of Order

51. (1) Any Order made under section 50(2) shall be published in the *Gazette* and in a newspaper (if any) in Montserrat.

(2) Any such Order shall become effective from the date of publication in the *Gazette*.

Penalty for not paying wages in accordance with minimum rate which is effective

52. (1) Where a minimum rate of wage fixed by an Order under section 50 of this Act has become effective, an employer shall pay wages to employees covered by the Order at not less than the minimum rate, and if he fails to do so, he shall be liable on summary conviction in respect of each offence to a fine not exceeding \$500 and to a fine not exceeding \$50 for each day on which the offence is continued after conviction therefor.

(2) On the conviction of an employer under subsection (1) of this section the Court may order the employer convicted to pay, in addition to any fine, such sum as appears to the Court to be due to the person employed on account of wages, the wages being calculated on the basis of a minimum rate, but the power to order the payment of wages under this provision shall not be in derogation of any right of the person employed to recover wages by any other proceedings.

Offences by agents

53. Where an offence for which under this Part of this Act an employer is liable to a fine has in fact been knowingly committed by some agent of the employer or by some other person, that agent or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer, and either together with, or before or after the conviction of the employer, shall be liable on conviction to the same punishment as that to which the employer is liable:

Provided that no such agent or other person shall be liable to pay any deficit in wages under the provisions of section 54 of this Act.

Recovery of arrears

54. Where an employer has been convicted for failing to pay wages at not less than the minimum rate to any person employed by him, then if notice of intention so to do has been served with the summons, warrant or complaint, evidence may be given of any failure on the part of the employer to pay wages at not less than the minimum rate to that employee at any time during the two years immediately preceding the date on which the information was laid or the complaint was served. On proof of the failure the Court may order the employer to pay such sum as in the opinion of the Court represents the difference between the amount which, having regard to the provisions of this Act, ought properly to have been paid to the employee by way of wages during those years, and the amount actually so paid.

Saving as to employer when agent convicted

55. Where an employer who is charged with an offence against this part of this Act proves to the satisfaction of the Court that he has used all due diligence to enforce the execution of this Act and that the offence was in fact committed by his agent or some other person without his knowledge, consent or connivance, he shall, in the event of the

conviction of that agent or other person for the offence, not be convicted in respect of the offence but without prejudice, however, to the power of the Court under section 54 of this Act to adjudge him to pay any sum which appears to the Court to be due to the person employed on account of wages.

Record of wages to be kept

56. It shall be the duty of every employer in an occupation to which a minimum rate of wages is applicable to keep written records of wages to show that the provisions of this Act are being complied with as respects persons in his employment, and if he fails to do so he shall be liable on summary conviction in respect of each offence to a fine not exceeding \$100 and also to a fine not exceeding \$20 for every day during which the default continues after conviction.

Burden of proof

57. On any prosecution of a person for failing to pay wages at not less than the minimum rate, the burden of proof shall lie on the accused.

Right of Labour Commissioner to entry and inspection

58. (1) The Labour Commissioner or any person appointed by him in writing shall have power to enter at all reasonable times upon the premises of any employer in an occupation to which a minimum wage is applicable and to require the production of the written record of wages by any such employer and to inspect and examine the same and copy any material part thereof

(2) If any person hinders or molests any person in the exercise of the powers given by this section or fails or refuses to produce any wages sheet or other record of wages, that person shall be liable on summary conviction in respect of each offence to a fine not exceeding \$500 and if any person makes or causes to be made or knowingly allows to be made any wages sheet or record of wages or record of payments which is false in any material particular, or produces or causes to be produced or knowingly allows to be produced any such sheet or record to any officer acting in exercise of the powers given by this section knowing the same to be false he shall be liable on summary conviction to a fine not exceeding \$1,000 or six months imprisonment.

FIRST SCHEDULE

(Section 2)

Form A (Front)

1. Name of Employer
2. Name of Employee
3. Date of Birth of Employee
4. Date employment began
5. Social Security Fund Number
6. Full description of work to be done by employee
7. Rate of pay in the case of work paid for by results, how to assess the pay for each pay period
.....
8. Pay period
9. Pay during sickness
10. Hours of work
11. Holiday entitlement
12. (a) Length of notice the employee is entitled to receive
- (b) Length of notice the employee is required to give
13. Pension scheme or gratuity (if any)

- NOTES:*
1. Where any of the above headings are inapplicable NIL should be entered alongside them.
 2. Under Head 12 it is sufficient to refer to any reference document which is readily available to the employee at all reasonable times.

14. Any further terms or conditions of employment that either party wishes to have included
.....

Signed. Employer or Authorized agent

..... Employee

..... Witness

SECOND SCHEDULE
(Section 43)
RULES OF THE LABOUR TRIBUNAL
Applications to the Tribunal

1. Persons wishing to make application to the Tribunal shall do so in writing to the Registrar. There is no prescribed form for the application.
2. Each application shall have postage stamps of Montserrat to the value of \$1 affixed to it.
3. On receipt of an application the Registrar will send a copy of it to the respondent and to the Chairman.
4. The Chairman will decide the date, time and place for the hearing.

Sittings of the Tribunal

5. The Tribunal may sit in any place in Montserrat at the discretion of the Chairman.
6. When hearing any application the Tribunal shall consist of the Chairman and two members chosen by the Chairman. One member shall be from the panel of members representing employers and the other from the panel of members representing employees.
7. The rules of evidence shall not apply in hearings before the Tribunal.
8. Any person may represent another in hearings before the Tribunal.
9. Decisions of the Tribunal shall be by majority.

Powers of the Tribunal

10. The Tribunal shall have the same powers as a Magistrate's Court in respect of the summoning of witnesses and the taking of evidence on oath.

Costs

11. The Tribunal shall not normally award costs but may do so if it considers an application or the defence thereto to be frivolous or vexatious or unreasonable.

General

12. Subject to the foregoing Rules the Tribunal shall have power to regulate its own procedures.

THIRD SCHEDULE

(Section 15)

(Inserted by Act 5 of 1996)

Years of Service

One year up to and including five years

Over five years up to and including ten years

Over ten years up to and including fifteen years

More than fifteen years

Rate of severance pay

Two weeks pay for every year of service

Two and one half weeks pay for every year of service

Three weeks pay for every year of service

Three and one half weeks pay for every year of service

EMPLOYMENT (INDUSTRIAL TRIBUNAL)

(REMUNERATION OF MEMBERS) ORDER— SECTION 39

(S.R.O.s 59/1982 and 63/1982)

Short title

1. This Order may be cited as the Employment (Industrial Tribunal) (Remuneration of Members) Order.

Commencement of Members

2. For each sitting of the Industrial Tribunal, the Chairman and Members thereof shall respectively each receive the sum of \$150 per day or part thereof:

Provided that no payment shall be made to either the Chairman or any Member who is a public officer for any time spent sitting on the Industrial Tribunal during normal office hours of the public service.

(Amended by S. R.O. 63/1982)

CHAPTER 15.03
EMPLOYMENT OF
YOUNG CHILDREN PROHIBITION ACT
(Acts 5 of 1939, 24 of 1956 and 10 of 1984)

Commencement

[29 December 1939]

Short title

1. This Act may be cited as the Employment of Young Children Prohibition Act.

Interpretation

2. In this Act—

"guardian" includes any person who is liable to maintain or has the actual custody of the young child;

"young child" means a person who in the opinion of the Court, in a prosecution for an offence against this Act, is under the age of fourteen years.

(Amended by Act 10 of 1984)

Prohibition of employment of a young child

3. No person shall take into his employment or employ in any occupation whatsoever any young child:

Provided that a young child may be employed in domestic work or agricultural work of a light nature at home by the parents or guardian of such young child.

Penalty

4. Any person contravening the provisions of this Act shall on summary conviction be liable to a fine not exceeding \$200. *(Amended by Act 10 of 1984)*

CHAPTER 15.03

EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Determination of industrial undertaking
4. Prohibition of employment of children
5. Prohibition of employment of children on ships
6. Liability of parent or guardian
7. Restrictions on employment at night of young persons
8. Registers to be kept
9. False certificate or representation as to age
10. Restrictions on employment at night of women
11. Liability of agent or workman
12. Reduction of night period
13. Suspension of prohibition of night work
14. Inspection of premises
15. Regulations
16. Penalty

CHAPTER 15.03

EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN ACT

(Act 5 of 1938, S.R.O. 15/1956, Acts 10 of 1984, 13 of 1987 and 4 of 1989)

Commencement

[1 February 1939]

Short title

1. This Act may be cited as the Employment of Women, Young Persons and Children Act.

Interpretation

2. In this Act—

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

"guardian" includes any person who is liable to maintain or has the actual custody of a child or young person;

"industrial undertaking" includes

- (a) mines, quarries, and other works for the extraction of minerals from the earth;
 - (b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including shipbuilding, and the generation, transformation and transmission of electricity or motive power of any kind;
 - (c) 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, waterwork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure;
- and, in relation to the employment of young persons and children, also includes—
- (d) transport of passengers or goods by road or rail, or inland waterway, including the handling of goods at docks, wharves, and warehouses, but excluding transport by hand;

"Labour Commissioner" means the Labour Commissioner appointed under section 3 of the Labour Act;

"Labour Officer" means the Labour Officer appointed under section 3 of the Labour Act;

"night" signifies a period of at least eleven consecutive hours including the interval between ten o'clock in the evening and five o'clock in the morning;

"ship" means any seagoing ship or boat of any description registered in Montserrat;

"woman" includes all persons of the female sex without distinction of age;

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

Determination of industrial undertaking

3. The Governor in Council may by order, define the line of division which separates industry from commerce and agriculture, and declare any class of undertaking to be an industrial undertaking for the purposes of this Act.

Prohibition of employment of children

4. (1) No child shall be employed or work in any public or private industrial undertaking, or in any branch thereof, other than an undertaking being an undertaking that is not dangerous in which only members of the same family are employed, and any person who employs any child or permits him to work in contravention of this section shall be guilty of an offence. *(Amended by Act 13 of 1987)*

(2) The provisions of this section shall not apply to the exercise of manual labour by any child under order of detention in a reformatory or industrial school, or by any child receiving instruction in manual labour in any school, provided that such work is approved and supervised by public authority.

Prohibition of employment of children on ships

5. No child shall be employed or work on any ship other than a ship upon which only members of the same family are employed; and any person who employs any child or permits him to work in contravention of the provisions of this section shall be guilty of an offence.

Liability of parent or guardian

6. Any parent or guardian of a child who, by wilful default, or by habitually neglecting to exercise due care, has conduced to the commission of the offence of taking a child into employment in contravention of this Act shall be guilty of an offence.

Restrictions on employment at night of young persons

7. (1) Except as hereinafter provided, no young person shall be employed or work during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed, and any person who employs any young person or permits him to work in contravention of the provisions of this section shall be guilty of an offence.

(2) Young persons over the age of sixteen years may be employed or work during the night in the following industrial undertakings on work which, by reason of the nature of the process, is required to be carried on continuously day and night, that is to say—

- (a) manufacture of raw sugar;
- (b) any other undertaking which may be declared to come under the exception created by this subsection by order of the Governor in Council.

(3) The provisions of subsection (1) shall not apply to the night work of young persons over the age of sixteen years in cases of emergencies which could not have been controlled or foreseen, which are not of a periodical character, and which interfere with the normal working of the industrial undertaking.

Registers to be kept

8. (1) Every employer in an industrial undertaking shall keep a register of all persons under the age of sixteen years employed by him, and every shipmaster shall keep a register, or a list in the articles of agreement, of all such persons employed on board his ship. (*Amended by Act 13 of 1987*)

(2) Such register or list, as the case may be, shall contain particulars of the names, addresses, and dates of birth of all such persons, and of the dates on which they enter and leave such employment, and shall on request at any reasonable time be produced for inspection by the Labour Commissioner, the Labour Officer or any police or any police officer. (*Amended by Act 4 of 1989*)

(3) Any employer or shipmaster failing to comply with or acting in contravention of the provisions of this section shall be guilty of an offence, and shall be liable on summary conviction to a penalty not exceeding \$96.

False certificate or representation as to age

9. Where a child or young person is taken into employment in contravention of this Act on the production, by or with the privity of the parent or guardian, of a false or forged certificate, or on the false representation of his parent or guardian that such child or young person is of an age at which such employment is not in contravention of this Act, that parent or guardian shall be guilty of an offence.

Restrictions on employment at night of women

10. (1) Except as hereinafter provided, no woman shall be employed or work during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed, and any person who employs any woman or permits her to work in contravention of the provisions of this section shall be guilty of an offence.

(2) The provisions of this section shall not apply—

- (a) to women holding responsible positions of management who are not ordinarily engaged in manual work;
- (b) in cases of *force majeure*, when in any undertaking there occurs an interruption of work which it was impossible to foresee, and which is not of a recurring character;
- (c) in cases where the work has to do with raw materials or materials in course of treatment which are subject to rapid deterioration, when such night work is necessary to preserve such materials from certain loss.

Liability of agent or workman

11. (1) Where the offence of taking a woman or young person or child, as the case may be, into employment in

contravention of this Act is committed by an agent or workman of the employer, such agent or workman shall be liable to a penalty as if he were the employer.

(2) Where an employer is charged with any offence under this Act, he shall be entitled upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the Court is satisfied that the employer used due diligence to comply with the provisions of this Act and that the other person committed the offence in question without the employer's knowledge, consent or connivance, the other person shall be summarily convicted of the offence, and the employer shall be exempt from any penalty.

Reduction of night period

12. In industrial undertakings which are influenced by the seasons of the year, and in all cases where exceptional circumstances demand it, the Governor in Council may, by proclamation, declare that the prohibition of the night work of women shall extend to a period of ten hours only instead of eleven hours on 60 days of the year.

Suspension of prohibition of night work

13. When in case of serious emergency the public interest demands it, the Governor in Council may, by proclamation, suspend the prohibition of night work in relation to young persons over the age of sixteen years as respects all industrial undertakings for such period as he may deem necessary.

Inspection of premises

14. (1) The Labour Commissioner, the Labour Officer or any police officer authorized in that behalf by any general or special order of the Superintendent of Police or of an Assistant Superintendent of Police shall have power to enter any premises or place wherein any industrial undertaking is carried on, or to board any ship, for the purpose of ascertaining whether any woman, young person, or child is employed in contravention of this Act, and to inspect such premises, place or ship, and examine any person therein touching the employment of any woman, young person or child.

(2) Any person refusing admission to or obstructing a duly authorized police officer or the Labour Commissioner or the Labour Officer in the execution of any duty under this Act shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding \$96.

(Amended by Act 4 of 1989)

Regulations

15. The Governor in Council may make regulations with respect to—

- (a) the cleanliness, freedom from effluvia, overcrowding, ventilation and general sanitary conditions of any premises or place wherein women, young persons or children are employed;
- (b) the maximum hours of employment of women, young persons or children and the times allowed for meals;
- (c) the age limit of children and young persons who shall not be employed in any dangerous work

whether in undertakings in which members of the same family are employed or not; (*Inserted by Act 13 of 1987*)

- (d) generally for the better carrying out of the provisions of this Act.

Penalty

16. Any person guilty of an offence against this Act or any regulations made thereunder for which no penalty is expressly provided shall be liable on summary conviction to a fine of \$200 for a first conviction for an offence under this section, and in the case of a second or subsequent conviction for such an offence to a fine of \$500. (*Amended by Act 10 of 1984*)

CHAPTER 15.03
PROTECTION OF WAGES ACT
ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Interpretation
3. Wages to be paid in legal tender
4. Agreements to place and manner of spending wages illegal
5. Wages to be paid entirely in legal tender
6. Worker's right to recover
7. Interest on advances prohibited
8. Deductions or payment in respect of fines restricted
9. Deductions authorised in certain cases
10. Illegal advances to be irrecoverable
11. Saving as to judgment debts
12. Agreements of co-operation
13. Remuneration other than wages
14. Wages not to be paid on certain premises
15. Penalties
16. Time of and period for payment of wages
17. Exemption of employer on conviction of actual offender
18. Register of wage payments
19. Regulations
20. Deduction for provident or pension funds
21. Prosecution to be instituted within one year of offence

CHAPTER 15.03
PROTECTION OF WAGES ACT
(Acts 6 of 1962 and 12 of 1963)

AN ACT TO MAKE PROVISION FOR THE PROTECTION OF WAGES OF WORKERS.

Commencement

[5 September 1962]

Short title

1. This Act may be cited as the Protection of Wages Act.

Interpretation

2. In this Act—

"Labour Commissioner" means the Labour Commissioner appointed under section 3 of the Labour Act;

"manual labour" includes work ordinarily performed by mechanics, artisans, handicraftsmen, seamen, boatmen, transport workers, domestic servants and all labourers and any other similar work associated therewith but does not include clerical work;

"wages" means the remuneration or earnings payable in money by an employer to a worker under a contract of employment;

"worker" means a person, whether under or above the age of 21 years, who performs manual labour.

Wages to be paid in legal tender

3. In all contracts of employment the wages of a worker should be made payable in legal tender and not otherwise and if in any such contract the whole or any part of such wages is made payable in any other manner such contract shall be illegal, null and void.

Agreements to place and manner of spending wages illegal

4. No employer shall impose in any contract for the employment of any worker any terms as to the place at which, or the manner in which, or the person with whom, any wages paid to the worker are to be expended, and every contract between an employer and a worker containing such terms shall be illegal, null and void.

Wages to be paid entirely in legal tender

5. Except where otherwise expressly permitted by the provisions of this Act the entire amount of the wages earned by, or payable to any worker in respect of any work done by him shall be actually paid to him in legal tender, and every payment of, or on account of, any such wages made in any other form shall be illegal, null and void:

Provided that payment of wages by cheque on a bank in Montserrat or by postal order shall be deemed to be payment in legal tender in cases in which payment in such manner is customary or necessary or is consented to by the

worker.

Worker's right to recover

6. Every worker shall be entitled to recover in a court so much of his wages exclusive of sums lawfully deducted in accordance with the provisions of this Act as shall not have been actually paid to him in legal tender.

Interest on advances prohibited

7. No employer shall make any deduction by way of discount, interest or any similar charge on account of any advance of wages made to any worker in anticipation of the regular period of payment of such wages.

Deductions or payment in respect of fines restricted

8. Except where otherwise expressly permitted by the provisions of this Act or of any other Act no employer shall make any deduction or make any agreement or contract with a worker for any deduction from the wages to be paid by the employer to the worker, or for any payment to the employer by the worker, for or in respect of any fine, or for bad or negligent work or for injury to the materials or other property of the employer save when such injury is occasioned by the wilful misconduct or neglect of the worker.

Deductions authorised in certain cases

9. Any employer may deduct or stop from the wages payable to a worker under any contract of employment in respect of the following—

- (a) the actual or estimated cost to the employer of any materials, tools and implements supplied by the employer to the worker at the latter's request to be employed by him in his occupation; or
- (b) any money advanced by way of loan by the employer to the worker (whether paid to the worker himself or to some other person at his request) in anticipation of the regular period of payment of his wages:

Provided that the total amount which may be stopped or deducted from the wages of a worker in any pay period under the provisions of this section shall not exceed one-third of the wages of the employee in that pay-period.

Illegal advances to be irrecoverable

10. All advances made otherwise than in accordance with the provisions of this Act or of any regulations made hereunder shall be unlawful and shall be irrecoverable in a court of law whether by way of counter claim, set-off or otherwise.

Saving as to judgment debts

11. During the period of his contract, a worker receiving an advance under this Act shall not by reason only of such advance be deemed to have or to have had means and ability to pay any sum due by him under any judgment of a

court.

Agreements of co-operation

12. Nothing in this Act shall be held to apply to any body of persons working on an agreement of co-operation.

Remuneration other than wages

13. Nothing in this Act shall render illegal an agreement or contract with a worker for giving to him food, a dwelling place or other allowances or privileges in addition to money wages as a remuneration for his service, but so that no employer shall give to a worker any noxious drugs or intoxicating liquor by way of such remuneration.

(Amended by Act 12 of 1963)

Wages not to be paid on certain premises

14. No employer shall pay wages to any worker at or within any retail shop or place for the sale of any spirits, wine, beer or other spirituous or fermented liquor, or any office, or place belonging thereto or occupied therewith, save and except such wages as are paid by the resident owner or occupier of such retail shop or place to any worker *bona fide* employed by him therein.

Penalties

15. Any employer who—

- (a) enters into any agreement or contract or gives any remuneration for employment contrary to the provisions of this Act or declared by the provisions of this Act to be illegal; or
- (b) makes any deduction from the wages of any worker or receives any payment from any worker contrary to the provisions of this Act; or
- (c) contravenes the provisions of section fourteen of this Act,

shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding \$48 or for a second or subsequent offence to a fine not exceeding \$96. *(Amended by Act 12 of 1963)*

Time of and period for payment of wages

16. (1) The payment of wages shall be made on ordinary working days only.

(2) No period in respect of which wages earned by a worker is payable shall exceed one month.

(3) Every employer who contravenes any of the provisions of subsections (1) and (2) of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding \$48.

Exemption of employer on conviction of actual offender

17. (1) Where an employer is charged with an offence under the provisions of this Act he shall be entitled, upon

information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he has used due diligence to enforce the provisions of this Act and that the other person has committed the offence in question without his knowledge, consent or connivance, the said other person shall be summarily convicted of such offence and the employer shall be exempt from any penalty.

(2) When it is made to appear to the satisfaction of the Labour Commissioner at the time of discovering the offence that the employer has used due diligence to enforce the provisions of this Act and also by what person such offence has been committed, and also that it has been committed without the knowledge, consent or connivance of the employer, then the Labour Commissioner shall proceed against the person whom he believes to be the actual offender in the first instance without first proceeding against the employer.

(3) If with the lodging of a complaint charging an offence under paragraph (b) of section 15 of this Act, a notice in the prescribed form is served by the complainant in the prescribed manner on the employer, the Magistrate may on the offence being proved order the employer to pay to the worker concerned that part of the wages found to have been deducted or as the case may be received as payment contrary to the provisions of this Act.

(4) Payment of any sum ordered by the Magistrate to be paid under subsection (3) of this section may be enforced in the same manner as a judgment or order in a civil case under the Magistrate's Court Act.

(5) The power of the Magistrate to make an order under subsection (3) of this section shall not be in derogation of any right of the worker concerned to recover the sum by any other proceeding:

Provided that no worker shall be entitled in any other proceedings to recover any amount which the Magistrate has ordered to be paid under the provisions of subsection (3) of this section.

Register of wage payments

18. (1) Every employer shall keep a Register of wage payments and workers accounts and every worker shall be entitled, on demand, to a copy of his account in any pay-period.

(2) Every employer who contravenes the provisions of subsection (1) of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty not exceeding \$48.

Regulations

19. (1) The Governor in Council may make regulations for the purpose of carrying out the provisions of this Act.

(2) All Regulations made under this Act shall be laid before the Legislative Council as soon as may be after they are made.

Deduction for provident or pension funds

20. Notwithstanding anything in this Act contained an employer may with the consent of the worker make deductions from the wages of the worker and pay to the appropriate person any contributions to provident or pension funds or schemes agreed to by the worker and approved of by the Labour Commissioner.

Prosecution to be instituted within one year of offence

21. No prosecution for any offence under this Act shall be instituted after the expiration of one year from the date of the commission of the offence.