

No. of 2013

ANGUILLA LABOUR CODE, 2013

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SCHEDULE

No. of 2013 Labour Code, 2013

ANGUILLA

No. of 2013

PART 1

PRELIMINARY

Interpretation

It should be noted that the definitions in this Part only refer to terms that are used in more than 1 Part of the Code. Terms that are restricted to only one Part of the Code are defined in such Part.

1. In this Act, unless the context otherwise requires,

“bargaining agent” means a trade union that acts on behalf of employees for the purposes of collective bargaining;

[This definition is new and gives effect to regional, international labour standards, ILO Convention No. 98 and the Constitution of Anguilla relating to the right to organize and collective bargaining]

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

[This definition is new and gives effect to regional, international labour standards, ILO Convention No. 98 and the Constitution of Anguilla relating to the right to organize and collective bargaining]

“casual employee” means an employee whose employment is irregular, of short duration and sporadic

“certified trade union” means a trade union certified as a bargaining agent for a bargaining unit pursuant to Part.....

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

A child is defined in the Employment of Children (Restriction) Act Chapter E 50 as a person under the age of 14. ILO Convention No. 138 on the Minimum Age for the Admission to Employment and Convention provides that the maximum age for compulsory education should be used for the definition of a child. The Education Act Chapter E 25 provides that the maximum compulsory age for education in Anguilla is 17 years (which is higher than almost all the other countries in the Caribbean. Most countries have the maximum age and thus the definition of a child as a person under 16).

“collective agreement” means any contract between one or more employers or their representatives and two or more employees or their representative trade union concerning terms and conditions of employment or any other matter of mutual interest;

There is no definition of collective bargaining in the current labour laws. This provision is necessary to facilitate collective bargaining and give effect to ILO Convention No.98 on Right to Organise and Collective Bargaining, a core ILO Convention to which Anguilla is a party.

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

This is a new definition that has become necessary to ensure that all persons in an employment relationship are included in the scope of the definition of the term employee. This is particularly relevant to avoid any doubt that insurance agents and marketing agents who are in an employment relationship are granted protection of the Code.

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

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

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

“continuous employment” means an uninterrupted period of employment with an employer, and any predecessor-employer, provided that any break in employment not exceeding six months shall not be deemed to break continuity of employment;

Section 13 of the Fair Labour Standards Act does not specify the maximum period of days absent to be considered as not constituting a break in employment. This definition addresses the gap.

“constructive dismissal” means termination of a contract of employment by the employee as a result of conduct by the employer such as to make it unreasonable to expect the employment relationship to continue.

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

This definition is relevant to ensure that persons in common law relationships are not denied certain employment benefits addressed in the Part, which deals with Equality of Opportunity and Treatment in Employment and Occupation.

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

This definition is relevant to ensure that there is no disguised form of employment. For example, a consultant may be in an employment rather than commercial relationship depending on the terms of his engagement. Where he or she is in an employment relationship, he or she should be recognised as an employee for purposes of the Code. It is adapted from the CARICOM Model Law on Termination of Employment.

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

- (a) terms and conditions of employment or the physical conditions in which an employee is required to work;
- (b) engagement or non-engagement, or termination or suspension of employment, of one or more employees;

- (c) allocation of work as between employees or groups of employees; or
- (d) any matter affecting the privileges, rights and duties of any employer or organisation representing employers or of any employee or organisation representing employees;

“employee” means any person who enters into or works under, or where a contract of employment has been terminated for any reason, a person who entered into or worked under, a contract with an employer, personally to perform any services or labour, whether the contract be oral or written, expressed or implied or classified as casual, part-time or temporary; and the term may include:

- (a) a person whose services or labour have been interrupted by a suspension of work during a period of leave, temporary lay-off, strike or lockout;
- (b) an apprentice whose services or labour may be designed primarily to train such apprentice;
- (c) a commission agent;
- (d) a dependent contractor; and
- (e) a managerial employee who is not responsible for policy formulation or in effective control of a department or branch of the undertaking;

provided that such person is in an employment relationship.

This definition is adapted from the CARICOM Model Law on termination of Employment. It is slightly different from the definition in Anguilla Fair Labour Standards Act. It addresses the concerns arising from disguised forms of employment, which are intended to exclude bona fide employees from the coverage of employment protection legislation. This definition is intended to ensure that workers, regardless of their classification, are not excluded from the coverage of the Act, once they are in an employment relationship.

It should be noted that independent contracts are not to be considered to be employees. Only the dependent contractor is caught by the definition of employee. The definition of a dependent contractor clearly states that the terms and conditions of the person engaged should more closely resemble the relationship of employee than that of an independent contractor.

There are legal criteria and international labour standards that differentiate a dependent contractor from an independent contractor. Those criteria might include:

(a) the fact that the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker's availability; or involves the provision of tools, materials and machinery by the party requesting the work;

(b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker.

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

There is no definition of employer in the Fair Labour Standards Act. The disguised forms of employment, which have become fashionable today makes it necessary to have a definition of employer in the labour laws.

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

“employment relationship” is deemed to exist where one or more of the following characteristics are present –

- (a) the work:
 - is carried out according to the instructions and under the control of another party;
 - involves the integration of the worker in the organization

of the enterprise;

- is performed solely or mainly for the benefit of another person;
- must be carried out personally by the worker;
- is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work;
- is of a particular duration and has a certain continuity; requires the worker's availability;
- or involves the provision of tools, materials and machinery by the party requesting the work;

(b) periodic payment of remuneration to the worker;

- the fact that such remuneration constitutes the worker's sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays;
- payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or
- absence of financial risk for the worker.

This is a new definition to clarify the definition of employee. It is adapted from the ILO Employment Relationship Recommendation, 2006 (No. 198).

“essential services” means services whose interruption could endanger the life, personal safety or health of the whole or a part of the population in Anguilla and is limited to Air Traffic (including meteorological, telecommunications, security, fire and crash services connected with airports), Electricity, Water, Fire, Medical and Health, Telecommunication Services

This definition is taken from the Digest of the Decisions and Principles of the Freedom of Association Committee of the ILO and is taken from the Essential Services Act. According to the Digest, the prohibition of strikes could only be acceptable in the case of public servants exercising authority in the name of the State or of workers in essential services in the strict sense of the term, i.e. services whose interruption could endanger the life, personal safety or health of the whole or part of the population.

Government and other stakeholders may wish to review this definition.

“service charge” means the fee or gratuity charged by a restaurant or hotel or other service provider, based on a percentage of the basic fee, that is additional to the basic fee or charge for food, accommodation or related services.

This is a new definition related to the distribution of service charge. The stakeholders requested a change in the nomenclature from gratuity to service charge for greater clarity on the term and to differentiate it from what may be considered to be other forms of gratuity such as tips.

“inspector” means any person appointed as Labour Inspector under the Code;

“lockout” means

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

with a view to inducing his or her employees, or any person in the employ of any other employer or employers, to agree to, or to comply with, any demands or proposals relating to any dispute, or to abandon any demand or modification of any demand.

This is a new definition. This has become necessary to give effect to fundamental principles of international labour law concerning freedom of association and the right to organize and collective bargaining (ILO Conventions Nos. 87 and 98).

“Minister” means the Minister responsible for Labour;

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

This definition is consistent with Employment of Women, Young Persons and Children Act, Chapter E55.

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

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

This is a new definition. It is connected with a new provision to make parent or guardian responsible for certain contraventions in relation to child labour.

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

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

“probationary period” means the period which is required for an employer to assess the suitability and competence of a new employee for the job for which he or she is employed and shall not exceed four weeks in the case of household employment, manual or clerical employees or three months in the case of other employment;

“redundancy” means the loss of employment as defined in the Code;

"remuneration" means the wage and any additional benefits, allowance or emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employee's employment;

“seasonal employment” means any employment provided by an employer during a specific part (commencing at approximately the same

time shall be each year) of three or more consecutive years and “season” shall be construed accordingly;

“serious misconduct” includes fraud, dishonesty, wilful damage to property, possession of illegal drugs or firearms while on duty, breach of confidentiality, wilful neglect of reasonable instructions from the employer or any other act of such a nature that is unreasonable to expect the employer to continue employment during the notice period.

“severance pay” means remuneration to which an employee whose employment is terminated under the circumstances on grounds of redundancy;

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

“strike” means the cessation of work by a group of employees, acting in concert, with a view to inducing the employer to agree to demands or proposals relating to a dispute;

[This is a new definition. This has become necessary to give effect to fundamental principles of international labour law concerning freedom of association and the right to organize and collective bargaining.](#)

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

"wage" means all earnings, commissions and allowances payable for the work or services performed by an employee, but does not include -

(a) the value of any accommodation, supply of electricity, water, medical attention or amenities, supplied at the sole expense of the employer;

(b) any contribution paid by the employer to any pension or provident fund scheme or Social Security;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum paid to an employee to defray special expenses incurred by the employee due to the nature of the employment;

(e) any tips, severance benefits or retirement benefits from the service of the employer.

There is no definition of wages in the Fair Labour Standards Act. There is need for such a definition to avoid inconsistent definition. The Government and stakeholders have to consider whether service charge should be included in the definition of wages or remuneration. This will have implications for calculation of annual holiday pay, severance pay, income tax, and Social Security contributions.

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

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

Application

2. The Code shall apply to all employers and employees except –

- 240. the police;
- 241. employees of the Crown whose employment is governed by General Orders;
- 242. persons entitled to diplomatic immunities under the Diplomatic (Representatives of overseas Countries) Act, Chapter D 20 of the laws of Anguilla;
- 243. the master or member of the crew of a vessel if he is paid otherwise than by a share in the profits;

providing however that those Parts relating to the Protection of Child Labour, Occupational Safety and Health, Equality of Opportunity and Treatment in Employment, Freedom of Association, Trade Unions and Collective Bargaining and any other Part for which there is no provision in the General Orders shall bind all employers and employees.

This provision is an adaptation from section 2 of the Fair Standards Act. No mention is made of the specified relatives living in the employer’s household and directors who are not employees and manager of the co-

operative. The touchstone is whether the person is in an employment relationship.

Clarity is needed regarding employees at the Health Authority and other public authorities. If they are not governed by the General Orders, then the entire Code will apply to them.

This provision is in keeping with international labour standards. It should be noted here that the Constitution makes provision for the Public Service but only in relation to appointments, terms and conditions and discipline and termination.

It is proposed that persons with diplomatic immunities are excluded from application of the Code as is the case in other Caribbean jurisdictions, the Code does not apply to diplomatic agents.

More favourable terms and conditions not precluded

3. (1) The provisions in the Code are the minimum standards that apply to employment relationships and nothing precludes an employer from conferring upon his or her employees more favourable terms and conditions of employment.

(2) A provision in a contract of employment or a collective agreement shall be void to the extent that it purports to exclude or limit the minimum standards set out in the Code.

This provision is consistent with section 3 of the Fair Labour Standards Act and is standard provision in labour laws in the Caribbean.

PART 2

ADMINISTRATION

This section is adapted from the Labour Department Act, Chapter L5. It updates the functions of the Commissioner

Establishment of Labour Department

4. (1) There shall be a Labour Department [under the direction of the Minister].

(2) The Governor, acting after consultation with the Public Service Commission, shall appoint a Labour Commissioner and such

other officers and clerks of the Labour Department as from time to time may be necessary.

[This provision is consistent with section 3 of the Labour Department Act](#)

Duties and responsibilities of the Commissioner

5. The Commissioner shall be in charge of the day-to-day administration of the Labour Department, and subject to the Direction of the Minister, and shall -

- (a) ensure the due enforcement of the Code and such other laws that he or she may be required to enforce;
- (b) assist in the resolution of any question arising out of employer-employee relationships, including disputes;
- (c) bring to the notice of the Minister promptly any matter, which in his or her opinion is or is likely to be prejudicial to the welfare of any class or group of employees or employers;
- (c) receive and process applications for work permits in accordance with established policy and procedures;
- (d) provide professional advice and make recommendation to the Minister on labour matters;
- (e) provide technical advice to employers and employees and their respective organisations at their request on matters relating to the Code;
- (f) promote social dialogue and effective co-operation between the Government, employers and employees on administration of the Code;
- (h) collect data and statistics in relation to
 - (i) applications for, and the granting of, work permits;
 - (ii) complaints received and settled;

- (iii) inspections completed;
 - (iv) violations of the Code;
 - (v) accidents and injuries;
 - (vi) occupational diseases;
 - (vii) strikes and work days lost due to strikes;
and
 - (viii) any other key indicators of the labour
market;
- (i) provide job registration and placement services and
promote employment opportunities for nationals of
Anguilla;
 - (j) promote regional and international co-operation in
labour matters and ensure preparation of reports on
application of Conventions of the International
Labour Organisation that are extended to Anguilla;
 - (k) prepare and furnish the Minister with the annual
report of the work of the Labour Department;
 - (l) do any other thing reasonably necessary for the
effective administration of the Code and the
promotion of good industrial relations practices,
the promotion of international labour standards and
the decent work agenda of Anguilla.

The statutory duties of the Commissioner are expanded to include all the labour administration requirements of the Code.

Institution of proceedings

6. Subject to the Constitution of the Anguilla, the Commissioner [under the direction of the Attorney-General] may commence proceedings in respect of any offence committed under the Code and a legal representative or a police officer may prosecute such proceedings on his or her behalf.

This is consistent with section 5 of the Labour Department Act.

Commissioner to have powers of inspector

7. The Commissioner shall have the powers conferred upon an inspector.

This is consistent with section 6 of the Labour Department Act

Designation of labour inspectors

8. (1) The Minister may, by Order published in the *Gazette*, designate a public officer who is trained and certified as a labour inspector to assist the Commissioner in the execution of his or her duties.

(2) There shall be two categories of inspectors –

- (a) inspectors to monitor and enforce basic terms and conditions of employment specified in Part....; and
- (b) inspectors to monitor and enforce occupational safety and health requirements specified in Part...

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

This provision is adapted from section 8 of the Labour Department Act. It provides for the Minister to designate a public officer who is trained and certified as a labour inspector. It is envisaged that Officers in the Public Health Department, Fire Service Officers and persons employed in emergency services may be called upon to assist the Labour Department in the enforcement of safety and health issues.

Duties and responsibilities of inspectors

9. An inspector shall, under the general directions of the Commissioner,

- (a) ensure that the laws in force concerning conditions of employment and the protection of employees in their occupation are being duly applied;

- (b) give technical information and advice, whenever necessary, to employers and employees as to the most effective means of complying with existing laws;
- (c) submit to the Commissioner written inspection reports, indicating difficulties or abuses not specifically covered by the existing laws;
- (d) keep records, compile statistical data and make returns in the course of his or her duties as instructed by the Commissioner; and
- (e) assist, as required, in the resolution of disputes or complaints.

The Code will call for two categories of labour inspectors. One category will deal with compliance with minimum wages and basic terms and conditions of employment. The second category will address occupational safety and health compliance. The Government will ensure that the inspectors are properly trained to fulfil their functions.

Powers of inspectors

- 10.** (1) An inspector shall have the power to -
- (a) enter freely without previous notice at any hour of the day or night during the working hours of the of the business, any workplace liable to inspection;
 - (b) interrogate alone or in the presence of witnesses, the employer or any person at a workplace on any matter concerning the application of the Code;
 - (c) carry out any examination, test or enquiry which he or she may consider necessary in order to ensure that compliance with the Code;
 - (e) require the production of any books, registers or documents, required by the Code relating to conditions of employment, to investigate whether they comply with the Code, and copy such documents or make extracts from them;
 - (f) enforce the posting of notices as required by law;

- (g) take or remove from any workplace for purposes of analysis, samples of materials and substances used or handled, subject to the employer or the employer's representative being notified at the time of such taking or removal of any such samples or substances;
- (h) require from any employer, information regarding the number, wages, hours and conditions of employment of the employees or returns of such information; and
- (i) arrange to be accompanied by a police officer or any other employee of the Crown designated by the Minister into any place in or on which the inspector has reasonable cause to apprehend serious obstruction in the execution of his or her duty.

This provision is consistent with international and regional labour standards. It is necessary for effective enforcement. If an inspector has to give notice before entering a work place, the employer could ensure that any contravention of the Code is covered up.

This section also strengthens the powers of the Inspector expressed in the Labour Department Act. He or she would have the express power to interrogate an employer or any person in the workplace, take or remove from any workplace samples of materials or substances for the purposes of analysis, subject to the employer being notified, and could arrange to be accompanied by a police officer where the inspector has reasonable cause to apprehend serious obstruction in the execution of his or her duty.

(2) A person aggrieved by the action of an inspector in the exercise of a power under this section may seek redress from the Commissioner.

(3) Where the aggrieved person is dissatisfied with the decision of the Commissioner, he or she may apply to the Tribunal for an appropriate remedy.

Inspection of premises where domestic servants are employed

11. Notwithstanding section 10 (1) (a) and (b), an inspector shall not visit or inspect any private premises where domestic servants are employed or believed to be employed except between the hours of

9:00 a.m. and 6:00 p.m. and in the presence of the employer or his or her representative.

This provision is consistent with section 11 of the Labour Department Act and is necessary for the protection of domestic servants.

Notification of presence

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

Limitations and restrictions on inspectors

13. (1) An inspector shall

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

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

This is consistent with section 13 of the Labour Department Act. The current fine is \$1000.00. The fine needs to be sufficiently dissuasive.

Records and returns

14. (1) An employer shall, at an address in the Anguilla, keep in such form as the Commissioner may approve,

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

and, where applicable, shall keep at that address a copy of each written statement of working conditions furnished to an employee under the Code.

This is a new provision, which would assist the inspectors in their inspections.

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

This is a new provision. It is required for legal purposes.

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

or his or her representative, in the presence of the employer or his or her representative.

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

(5) The Commissioner may, within such period as he or she may specify by notice in the *Gazette*, or any local newspaper circulating in the Anguilla, require employers to submit returns containing such particulars and information contained in the employers' records kept under subsection (1) as he or she may specify in the notice.

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

Obligations of employers

15. An employer whose premises are being visited by an inspector shall

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

Annual reports

16. The Commissioner shall, on or before 31 March in each year, prepare and furnish the Minister with a report, in such form as the Minister may approve, on the operations of the Labour Department during the preceding calendar year, including

- (a) unaudited revenue and expenditure statements,
- (b) the number of

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

and the report shall be laid before Parliament by the Minister not later than three months after receiving the Report.

[This provision is intended to ensure accountability to Parliament and the people of the Anguilla.](#)

Offences and penalties in relation to Commissioner and inspectors

17. A person who

- (a) hinders or obstructs the Commissioner or an inspector in the exercise of the powers and duties conferred on him or her by the Code,
- (b) fails or refuses to permit his or her employees free access to and communication with an inspector while on a visit of inspection,

- (c) refuses or wilfully neglects to furnish the Commissioner or an inspector, any information or return or particular that may be required of the employer under the Code, or
- (d) knowingly furnishes, or causes, or allows to be furnished to the Commissioner or an inspector, any information or return which is false in any material particular,

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

The fine must be a sufficient deterrent and appropriate in today's circumstances.

Liability of agent

18. Where any act or default is committed by an agent, which constitutes an offence, the employer is liable, unless the employer proves that the offence was committed without his or her consent or connivance.

Limitation of liability

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

This provision is consistent with legal principle, which protects agents of the Crown for official acts done in good faith.

Victimisation

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

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

- (a) on the ground that the employee -

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

This is a new provision to protect persons who have lodged a complaint or participate in any proceedings under the Code. This is intended to strengthen enforcement and the rights of employees.

PART 3

SETTLEMENT OF DISPUTES

Procedure for settlement of disputes

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

(2) Upon receipt of the notice of dispute, the Commissioner shall investigate the matter and facilitate a voluntary settlement by conciliation in accordance with industrial relations practice, and in pursuance thereof he or she may

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

(3) Where the Commissioner fails to achieve a settlement after twenty-one days from the date of reference under subsection (2) or such longer period as the parties may agree, he or she shall transmit the matter as an unresolved dispute, with a full written report on the matter, to the Minister.

Action by Minister

22. (1) On receipt of a report of an unresolved dispute transmitted by the Commissioner under section 21 (3), the Minister may

- (a) himself or herself attempt to achieve a voluntary settlement of the issue, taking whatever steps he or she deems appropriate, including consultation with the Commissioner; or
- (b) refer the matter to a Board of Inquiry or the Tribunal within twenty-one days, or
- (c) permit the parties to submit their dispute to mediation.

(2) Except for disputes in the essential services or disputes in the opinion of the Minister that are likely to endanger health and safety of the public, the consent of the Parties will be required before the Minister refers an unresolved dispute to the Tribunal or Board of Inquiry.

Referral to Arbitration Tribunal or Board of Inquiry

23. (1) Where, after the expiration of a period of twenty-one days from the date of transmission in accordance with the provisions of section 21(3) or such longer period as the parties may agree, the Minister fails to achieve a settlement using the processes set out in section 22 (a), he or she may

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

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

(3) A strike shall not take place in an essential service.

(4) A strike shall not take place in an undertaking that is not an essential service unless

- a. the Commissioner has failed to achieve a settlement within the period specified under section 21 (3);
- b. fifty per cent plus one, of the votes cast voted in favour of a resolution for that action; and
- c. at least one day written notice is given to the Minister and any other interested party, of an intention to embark on that action.

(5) A lockout shall not take place in an essential service.

(6) A lockout shall not take place in an undertaking that is not an essential service unless

- (a) the Commissioner has failed to achieve a settlement within the period specified under section 20 (3); and
- (b) at least three working days written notice is given to the Minister, the employees and any other interested party, of an intention to embark on that action;

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

(8) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

This is a new provision that is acceptable to all stakeholders consulted. It provides for an independent arbitration of disputes. The tribunal and board of inquiry will be mandated to settle disputes expeditiously.

The tribunal will deal with rights disputes (individual complaints of denial of a specific right such as the unfair dismissal, discrimination, etc.). The board of inquiry will deal with interest issues such as the determination of wages and terms and conditions of service.

The provision relating to essential services is to ensure that there is no risk to the health and safety of the population and is in keeping with international and regional standards.

Establishment of Arbitration Tribunal and Appointment of Members

24. (1) There shall be established a Tribunal to settle any dispute or complaint transmitted to it under the Code.

(2) The Tribunal shall comprise a chairperson and two other members.

(3) The chairperson shall be [the Senior Magistrate] [an attorney-at-law of at least ten years' standing and shall be appointed by the Minister].

(4) The two other members shall be appointed by the Governor in Council upon recommendation of the parties to the dispute.

This provision is to ensure that due process is observed in the proceedings of the tribunal.

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

(6) In the exercise of its functions, the Tribunal shall not be subject to the control or direction of any other person or authority.

This provision is necessary to insulate the tribunal members from undue political interference and to protect their independence.

(7) The Governor in Council shall provide administrative support for the Tribunal.

(8) The Governor in Council shall determine allowances to be paid to members of the Tribunal.

Findings of Tribunal binding

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

(2) The Tribunal [shall] [may] in the exercise of its powers

- (a) make an order or award as it considers fair and just having regard to the interests of the persons concerned and the community as a whole; and
- (b) act in accordance with equity, good conscience and the substantial merits of the case before it having regard to the principles and practices of good industrial relations.

(3) The Tribunal, in determining what are the principles and practices of good industrial relations, shall take account of relevant Conventions and Recommendations of the International Labour Organization.

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

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

This is in keeping with legal principle and international and regional standards.

Appointment of Board of Inquiry

26. (1) For the purpose of inquiring into, reporting on and making recommendations for the settlement of any dispute or complaint which has been transmitted to him or her under the Code, the Governor in Council may appoint a Board of Inquiry (referred to as “a Board”).

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

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

This is in keeping with the intention to promote tripartism and partnership among government, employers and employees.

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

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

Powers of Tribunal and Board to summon witnesses and administer oaths

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

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

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

[These powers are required for the effectiveness of the Tribunal and Board.](#)

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

Summons of Tribunal and Board to be obeyed

28. Any party appearing or any person summoned pursuant to section 27(1) to attend and give evidence or to produce any document or other record before a Tribunal or a Board shall be

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

Failure to obey summons of Tribunal or Board

29. A person who fails to obey a summons served upon him or her pursuant to section 28(1) commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

[This promotes effective enforcement.](#)

Tribunal and Board to regulate own proceedings

30. A Board or Tribunal, as the case may be, shall regulate its own proceedings and publish general guidelines concerning the procedures to be observed.

Arbitration Act Chapter A 105 not to apply.

31. The Arbitration Act Chapter A 105 shall not apply to any proceedings of a Tribunal under this Code or to any award made by it.

PART 4

ADVISORY COMMITTEE

Tripartite consultation

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

[This Part promotes social dialogue and partnership among government, employers and employees. This is a priority international labour standard practised throughout the Caribbean with few exceptions.](#)

Advisory Committee

33. (1) The Minister may appoint an Advisory Committee to consider and recommend

- (a) policies for the effective administration of the Code;

- (b) policies for the promotion of greater collaboration and cooperation between employees and their trade unions on the one part and employers and their organisations on the other part;
- (c) policies for the promotion of productivity;
- (d) measures for the effective application of Conventions of the International Labour Organisation extended to Anguilla;
- (h) general questions relating to migration to Anguilla for employment and the condition of migrant workers.

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

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

(4) The members representing employers and employees shall be freely chosen the employers and employees organisations.

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

(6) A Committee shall seek to determine by consensus all questions arising at its meetings.

Reports of Committee

34. (1) The Committee shall

- (a) issue reports with recommendations upon any matter referred by the Minister; and
- (b) issue an annual report with recommendations issues relating to the administration of the Code and employment relations in Anguilla.

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

PART 5

FUNDAMENTAL PRINCIPLES AND POLICY

Promotion of core labour standards and fundamental Conventions of the International Labour Organization

35. (1) The Code shall give effect to, be applied and interpreted in accordance with the fundamental Conventions of the International Labour Organisation, namely:

- (i) Forced Labour Convention, 1930 (No. 29)
- (ii) Abolition of Forced Labour Convention, 1957 (No. 105)
- (iii) Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- (iv) Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- (v) Equal Remuneration Convention, 1951 (No. 100)
- (vi) Equality of Opportunity and Treatment in Employment and Occupation, 1958 (No.111)
- (vii) Minimum Age for Admission to Employment Convention, 1973 (No. 138); and
- (viii) Elimination of the Worst Forms of Child Labour, 1998 (No. 182).

(2) Notwithstanding any other law, but subject to the provisions of the Code, the Conventions of the International Labour Organization extended to Anguilla as certified by the Governor in Council, [shall have] [have] the force of law in Anguilla.

Policies underlying the Code

36. The following expressions of national policy provided in this section shall be used in interpreting the Code.

(a) The legitimate employment interests of citizens of Anguilla shall be paramount and shall override all competing concerns.

This will be relevant in the administration of the work permit regime as well as retrenchment that may arise from restructuring of businesses. Citizens of Anguilla, where qualified, must be given preference for employment in all areas of operations of businesses. This principle was stressed in stakeholders' consultation.

(b) The system of labour administration shall promote social dialogue among Government, employers and employees through their representative organizations and labour management partnerships within workplaces.

This will be necessary for promoting awareness of the provisions of the Code, monitoring and reviewing the application of the Code, and developing appropriate employment related policies at the national and workplace level for the economic success of the country, viability of employers' businesses, and promotion of workers' interests within the workplace.

(c) The system of labour administration and dispute settlement shall seek to reconcile competing interests of employers and employees in a fair and equitable manner, having regard to the need to promote competitiveness of the economy of Anguilla, the viability of employers' businesses and security of employment and decent working conditions for employees.

It is of strategic importance given the economic circumstances of globalisation and trade liberalisation that the common interests of employers and employees be recognised and collaborative actions be pursued to promote the competitiveness of the country, the viability of businesses and the security of employment of employees. This was a point emphasized by several stakeholders during the consultations.

(e) The system of labour administration shall be implemented in a manner, which is neutral, objective and independent of improper external influences.

There misconception that the Labour Department has served the partisan interests of workers has to be dispelled. To be effective and demand respect, its officers should be seen as competent, professional and

independent and shed any historical image that may be inconsistent with this objective. In addition, Ministerial intervention must be consistent with the imperatives of the Code.

(f) The Code shall be administered so as to provide all employees and employers with access to a fair, inexpensive and efficient system of dispute settlement.

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

The Labour Commissioner will have to submit Annual Reports. The Parliament and the Advisory Committee will monitor the operations of the Code and the Labour Department.

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

The rights enshrined in ILO Conventions Nos. 87 and 98 on freedom of association and the right to organize and the right to organize and collective bargaining are to be respected, protected and promoted.

PART 6

BASIC CONDITIONS OF EMPLOYMENT

Application of Part

37. (1) Subject to the Code, this Part applies to all contracts of employment, which may include

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

(2) This Part does not apply to an employee who is employed for a specified period of less than six weeks or for a specific task to be performed within six weeks.

This provision seeks to remedy the hardships caused by the exclusion of persons classified as casual worker or employees who worked for long periods with the same employer. Casual employees were excluded from the Fair Labour Standards Act. However, attention was drawn during the stakeholders' consultations of persons classified as casual employee who worked for years with the same employer and denied the benefits of the Fair Labour Standard Act. The proposal here is that only workers who work for less than six weeks with an employer should be excluded from the Code.

Family members

38. (1) Subject to subsection (2), where a family member of the employer is engaged in the work of an enterprise, he or she may not be treated as being an employee engaged under a contract of employment in accordance with the provisions of this Part unless there is a written contract between that family member and the employer.

(2) Subsection (1) shall apply only where that family member has agreed to such exemption.

This clause revises the current law, which excludes all family members. Employees who agree to be in a formal employment relationship with a written contract are to be governed by the Code.

Assumption of a contract of indefinite period

39. A contract of employment of an employee, other than an employee employed for a specified period of time or a specific task, who has been continuously employed for twelve weeks or more shall have effect as if it was a contract of employment without limit of time, and accordingly, the provisions of the Code shall apply to that contract.

Particulars of contract

40. (1) An employer shall inform the employee, at the time of his or her engagement, of the nature of the job and the terms and conditions of employment.

(2) Where the contract of employment is oral, the provisions of the Code shall apply, insofar as they are relevant to the particular case.

(3) Where the probationary period is to exceed 4 weeks, the contract of employment must be in writing and the employer shall furnish

the employee with a written statement within ten days of engagement containing at least -

- (a) the name and address of the employer;
- (b) the name and address of the employee;
- (c) the date of commencement of the employment, and if for a fixed term, the date of termination;
- (d) the job title, the general responsibilities and related duties for which the employee is being hired;
- (e) the rate of pay and pay interval;
- (f) the regular hours of work and rest periods;
- (f) the period of probation, if any; and
- (g) the employee's leave and vacation entitlement.

[This is in keeping with the Fair Standards Act and international and regional standards.](#)

(2) Where a statement of the terms and conditions of employment specifies that the employee may be required to perform any other duties as may be assigned by the employer, such other duties must be directly related to the employee's core functions;

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

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

Probationary period

41. (1) The probationary period of any employee shall not exceed four weeks in terms of household employment and three months in the case of other employment.

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

(3) Notwithstanding subsection (1), the employer may, after consultation with the employee or his or her representative extend the probationary period for a further period not exceeding the duration of the original probationary period, where it is in the interest of the employee to do so.

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

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

Rest periods and standard working hours

42. (1) An employer shall permit each of his or her employees to enjoy in every period of seven consecutive days a period of rest comprising at least twenty-four consecutive hours.

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

[The standard workday is now harmonised. This is in keeping with regional standards.](#)

(3) The Governor in Council may vary the standards prescribed in this section by issuing an Order to that effect.

Meal intervals

- 43.** (1) An employer shall not require or permit an employee
- (a) to work for more than five hours continuously without a meal interval of not less than one hour or, where subsection (2) has been applied, of not less than the agreed time;
 - (b) to perform any work during his or her meal interval.
- (2) An employer may agree with his or her employee to reduce the employee's meal interval to not less than thirty minutes.
- (3) For the purposes of this section, a period shorter than that specified under subsections (1)(a) or (2) shall not be considered as a meal interval.

There is no provision for meal intervals in the Fair Labour Standards Act. This proposal is in keeping with standards in Montserrat and BVI.

Overtime pay

44. (1) Subject to subsections (2) (3) and (4), for any hours of work accrued by an employee in the hotel, tourism, entertainment, security, telemarketing and other service sectors for his or her employer at the employer's request in excess of forty hours in any week, the employer shall pay the employee at the rate of at least one and one half times his or her basic rate of pay and in the case of monthly paid employees entitled to compensatory time off at time and a half per hours worked in excess of forty hours per week.

(2) Where an employee in sectors other than those listed in subsection (1) above, who are daily rated paid shall be paid at the rate of one and a half times for work in excess of eight hours in a day.

Employers, particularly those in the services have argued that they should be able to organize the work week and work day in such a manner that no premium is paid unless the employee exceeds the forty hours in the week and not merely eight hours a day to facilitate the employers' need to have flexible working hours.

(3) The Governor in Council may vary the standards prescribed in this section by issuing an Order to that effect.

(4) In arranging for overtime work, the employer shall take into account the special circumstances of young persons under eighteen years of age, pregnant women, nursing mothers, disabled persons and family responsibilities of the employee.

This provision seeks to protect young persons, pregnant women, nursing mothers and the disabled, in keeping with international and regional standards.

(5) The provisions of subsection (1) and (2) shall not apply to salaried employees whose terms and conditions of employment shall be fixed at a level, which adequately compensates them, including employees holding positions of supervision or management, but such employees shall be entitled to compensatory time off at time and a half for each hour in excess of 40 hours per week.

(6) An employer shall not classify an employee as holding a position of supervision or management under subsection (4) if his or her duties and compensation are not commensurate with such status and a Tribunal appointed under the Code or a court may inquire into the matter and make a determination giving due regard to this section and to the right of an employer to manage his or her business.

This provision is necessary to prevent employers from seeking to evade certain responsibilities for employees (such as overtime) by spuriously designating them as supervisors and/or managers.

Limitation on overtime

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

This is in keeping with section 24 (4) of Fair Labour Standards Act and Anguilla's obligation under the applicable ILO Convention.

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

- (a) in the case of an actual or apparent accident, or urgent work to the plant or equipment, but only so far as may be necessary to avoid serious

interference with the ordinary working of the establishment,

(b) in the event of abnormal pressure of work due to special circumstances in so far as the employer could not be expected to resort to other measures, or

(c) in order to prevent the loss of perishable goods,

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

This provides flexibility required for businesses in emergency purposes and is provided for in the current law.

(3) Where the employer could not reasonably be expected to apply in advance for approval, that employer shall not be deemed to have contravened subsection (2).

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

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

(a) where the employee works for more than six hours, the employee shall be paid for the day; or

(b) where the employee works for less than six hours, he or she shall be paid for the time so worked at his or her basic rate of pay [subject to a guaranteed minimum of 4 hours pay].

This is a new provision, which is fair, reasonable and necessary for the protection of workers. One employer suggested that there should be a minimum of 4 hours guaranteed pay. The stakeholders may wish to consider such proposal.

Pay for period of stand-by or being on call

47. (1) Where an employee is required by his or her employer to remain on stand-by at the work place, he or she shall be regarded as being on duty for that period and be paid wages accordingly.

This provision seems fair, reasonable and necessary for the protection of workers.

(2) Where an employee is required by his or her employer to remain on call for any period, the employee shall be paid an allowance to be agreed upon by the employer and employee or his representative trade union.

Payment in respect of public holidays

48. (1) Where an employee who is paid by the day or by the hour, and where appropriate by piece or task, does not work for his or her employer on a public holiday, he or she shall not suffer loss of pay, that is to say, he or she shall be paid the basic wage he or she would have received for the work performed on that day, had it not been a public holiday, provided that

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

(2) No deduction shall be made from the wages of an employee paid by the month or the week or fortnight for time not worked on a public holiday, provided he or she was not scheduled to work on that day.

This provision seeks to discourage workers from taking days off the day before or after a public holiday. Employers have advocated that the issue of abuse of sick leave should be addressed. This is one measure to address this issue.

Payment for work on public holidays

49. (1) Where an employer requires an employee to work on a public holiday, the employer shall pay to the employee, in addition to the wage the employee is entitled to, a basic hourly rate of at least twice his or her wage for each hour worked on that day, provided that

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

Distribution of service charge

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

(2) Where the establishment has at least five employees, the employer shall establish a service charge committee (in this section called the "Committee") for the periodic distribution of the service charge.

It is the purpose of the Committee to formulate and recommend the guidelines mentioned by the employer. Once the guidelines are in place, the Committee's role is one of monitoring.

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

- (a) one person appointed by the employer to represent the employer;
- (b) two persons representing the employees to be elected by the employees within the first six weeks of each year to serve for a term of one year and the results of such election shall be filed with the Labour Department by the 31 January each year, provided that where any person so elected is unable for any reason to serve his or her full term, the employees may elect another person to represent them in his or her stead and for the remainder of his or her term and shall file the result of the election with the Labour Department within fourteen days of obtaining that result.

(4) The total amount of service charge accumulated over every period of four weeks, less 5% which shall be retained by the

employer to meet administrative expenses, shall be distributed among such employees and on such basis as may be decided by the Committee.

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

This is consistent with Section 27 of the Fair Labour Standards Act except that the employees are to have a majority on the Committee. This was proposed during the stakeholders' consultations to prevent abuse in the distribution. Also, the service charge replaces the term "gratuity" as proposed by stakeholders.

PART 7

PROTECTION OF WAGES

Agreement to pay wages otherwise than in money, illegal

51. (1) The wages of an employee shall be made payable in Eastern Caribbean currency, United States currency, or with the consent in writing of the Commissioner, in any other currency which is widely accepted in Anguilla.

(2) An agreement to pay wages in a manner in any currency or manner that is inconsistent with subsection (1) is illegal and void.

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

- and
- (a) one-tenth of the value of the employee's cheque;
 - (b) any charges the employee may have suffered upon presentation of the cheque, whether for the first time or a subsequent time.

Subsection (2) seeks to compensate employees for the hardship and loss suffered from dishonoured wage cheques. It also places a responsibility on employers to ensure that funds are available to honour their wages cheques. This provision is adapted from the BVI Labour Code.

Agreement as to place or manner of spending wages, illegal

52. (1) An employer shall not include in a contract of employment a condition, restriction or requirement which imposes any terms as to the place or manner in which the employee is to spend any wages or part thereof, and any such agreement or contract wherein such terms are expressed or implied is illegal.

(2) Where stores for the sale of commodities to employees are established or services operated in connection with an undertaking, the employees concerned shall not be compelled either directly or indirectly to make use of such stores or services.

(3) An employer or other person, who directly or indirectly, imposes as a condition of payment of wages or advance to an employee or to a member of his or her family, an order or agreement as to the place or manner in which or the person with whom any portion of such wages or advance is to be expended, is guilty of an offence under the Code.

Wages to be paid entirely in money and on working day

53. (1) Except where otherwise permitted by the Code, the entire amount of wages earned by or payable to an employee in respect of work done by him or her shall be actually paid to him or her in legal tender, and payment of or on account of wages made in any other form is illegal and void.

(2) Except where the Commissioner for good reasons objects, an employer may pay wages by bank cheque drawn on a bank in Anguilla, by direct deposit of wages to the bank account in Anguilla of the employee, postal order or money order where payment in this manner is desirable, or where the collective agreement or arbitration award so provides, or where the consent of the employee is obtained.

This is slightly different from section 31 of the Fair Labour Standards Act. The current law provides that the Commissioner may permit such arrangement. Given the commercial practice today, the Commissioner should not be required to permit that an employee's wages be paid by cheque. Also, the new provision provides for direct bank deposit of wages.

(3) Where payment is made other than in legal tender, any bank charges involved in converting such payment to legal tender shall be met by the employer.

(4) Except where expressly permitted by the Code, wages shall be paid on working days only and at or near the workplace.

(5) Where an employee is paid wages by cheque or bank deposit or money order, the employer shall provide reasonable time off with pay on the payday for such employee to conduct bank transactions relating to his pay.

Wages to be paid directly to employee

54. Except where the employee directs otherwise, wages shall be paid directly to the employee to whom they are due or to a person specified by him or her in writing.

Wages not to be paid on certain premises

55. An employer shall not pay wages within any place that sells liquor, except where the employer is the resident owner or occupier paying wages to an employee bona fide employed by him or her.

Pay periods

56. (1) An employer shall pay or cause to be paid wages to his or her employees at regular intervals, or on the agreed pay day, which may be daily, weekly, fortnightly or monthly.

(2) Pay periods may be fixed by contracts, collective agreements, arbitration awards, or the Commissioner.

Authorized deductions

57. (1) An employer may deduct from remuneration payable to an employee under any contract of employment the following:

- (a) any tax, rate or other deduction imposed by law;

- (b) any cash advance on account of unearned wages or loans;
- (c) any sum of money which an employee has authorised in writing to be deducted for other purposes, except for the purpose of obtaining or retaining employment or for or in respect of any fine, or for bad or negligent work or for damage to the materials or other property of the employer **not ordered by the court.** ~~[except when the damage is occasioned by the wilful misconduct of the employee].~~

The Law currently provides for deductions for bad or negligent work. The Law Association has submitted, correctly in my view, that any such fine should be imposed by the court and not the employer.

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

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

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

~~[Except where otherwise expressly permitted by the provisions of the Code or any other enactment an employer shall not make any deduction or make any agreement or contract with an employee for any deduction from the wages to be paid by the employer to the employee, or for any payment to the employer by the employee, 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 with the prior permission of the Labour Commissioner when such injury is occasioned by the wilful misconduct or neglect of the employee]. Section 18 of Protection of Wages Act~~

Subsection (4) seeks to protect the employee from indiscriminate deductions in the event of cash shortages. An employer is not denied the right to deduct such shortage but he or she must first establish that there was some dishonesty or fault on the part of the employee.]

Prohibited deductions

58. (1) Where an employer has made to an employee an advance on account of unearned wages, he or she shall not make any deductions by way of discount, interest or any similar charge on such advance.

(2) An employer shall not make deductions in the form of direct or indirect payment for the purpose of obtaining employment, including work permit fees and security bonds.

The application for a work permit is an employer's and not employee's responsibility. The argument used to have employees pay to the employer half the cost of the work permit fees is not sound. The work permit ought to restrict the employee to work only for the sponsoring employer during the period of the work permit, subject to the rights of the employee regarding constructive dismissal.

Payment of wages on termination of employment

59. (1) All wages due to an employee on termination of his or her contract of employment shall be paid to him or her immediately or no later than one week after his or her contract of employment terminates.

(2) In the case of casual employees employed for short periods, wages shall be paid immediately on completion of the work.

Remuneration other than wages

60. (1) An employer may, with the prior written agreement of the employee, give to an employee as partial payment of remuneration, other than wages, allowances in kind which shall-

- (a) be of personal benefit to the employee and his or her family and be appropriate for the use of the employee and his or her family;
- (b) be of fair and reasonable value appropriate to the monetary value placed on the allowance by the employer;

- (c) not be in the form of intoxicating liquor, tobacco, cigarettes, noxious drug or substance, or weapons and where such allowance in kind is customary or desirable in the particular industry or occupation concerned.

(2) The allowance in kind permitted under subsection (1) shall not exceed in its cash value one third of the employee's regular wages in respect of a completed pay period.

(3) The question of whether or not the partial payment of remuneration, other than wages, as allowances in kind falls within the meaning of subsection (1) shall be decided by the Commissioner and the Commissioner's decision shall be final.

[This clause is slightly different from section 36 in the Fair Labour Standards Act. It is taken from the Saint Lucian Labour Code and provides greater clarity and takes into consideration the practice in industry.](#)

Employee's right to recover

61. Where an employer has paid an employee wages in a manner contrary to this Part, the employee shall, even if he or she accepted payment in the manner made, be entitled to recover in a court of summary jurisdiction so much of his or her wages, exclusive of sums lawfully deducted under this Part, was not paid to him or her in legal tender.

Wages to be priority debt

62. Notwithstanding any provision in any other enactment, amounts owed to employees by reason of non-payment of wages and other remuneration shall constitute priority debt and shall have prior claim over all other debts in respect of the property of the employer.

Register of payments to employees

62. An employer shall keep a register of payment of wages, service charge distributions, and all other payments to his or her employees, and an employee is entitled on demand to a copy of his account in any pay period.

Limitation on attachments or seizure of wages

63. (1) Notwithstanding any provision in any other enactment, the wages of an employee shall be liable to attachment or seizure in execution only within the following limits-

- (a) up to one-half in respect of maintenance payments;
- (b) up to one-third in respect of all other debts of any kind and however contracted.

(2) The proportions prescribed in subsection (1) shall not be applicable cumulatively on the ground that there are several debts or several creditors, the maximum proportion in all cases remaining 50% of the wages. The sums attached or seized shall be divided among the claimants in proportion to their established claims.

Employers to issue details of wage payments

64. (1) An employer shall, at the time of paying wages to an employee, provide that employee with a wage slip containing the following written details in respect of the wage period to which the wages relate –

- (a) the name and occupation of the employee;
- (b) the wage rate of the employee;
- (c) the period to which the wage relates;
- (d) in the case of daily paid employees, the number of hours paid for at ordinary rate and at overtime rate;
- (e) the nature and amount of any bonuses or allowance paid;
- (f) the gross wages earned by the employee;
- (g) the amounts and nature of any deductions from gross wages;
- (h) the amount of the net wage paid to the employee.

[This is a new provision, which is reasonable, necessary and in keeping with regional and international labour standard.](#)

Co-operative work

65. Nothing in this Part shall be held to apply to members of a co-operative working on a co-operative basis or individuals engaged in an ad hoc co-operative effort.

Offences under this Part

66. An employer or his or her agent who-

- (a) fails to pay wages to an employee when those wages are due and payable;
- (b) pays wages in a form, manner or place contrary to the provisions of this Part;
- (c) makes any deduction from the wages of an employee or receives any payment from any employee contrary to the provisions of this Part;
- (d) fails to provide an employee with the details of his or her wages due to him or her as required under section 69;
- (e) pays an employee wages in whole or part in the form of intoxicating liquor, tobacco, cigarettes, noxious drugs or substance contrary to section....
- (f) fails to distribute a service charge, share of profits or commission as required by section.....
- (g) contravenes the provisions of this Part for which no offence has been prescribed,

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

Repayment of wages

67. (1) On conviction of an employer under this Part, the court shall have power to order the employer to pay the employee any part of his or her wages found by the court to have been unlawfully deducted from the employee's wages or to repay the employee any sum received by the employer from the employee contrary to any provisions of this Part.

(2) Payment of any sum ordered by a court to be paid under this section shall not be in derogation of any right of the employee to recover the sum by any other proceedings, save that an employee shall not be entitled in any other proceedings to recover any amount which a court had ordered to be paid under the provisions of this Part.

Actual offender to be proceeded against

68. (1) Where an employer is charged with an offence under this Part, he or she shall be entitled upon information duly laid by him or her, to have any other person whom he or she charges as the actual offender brought before the court at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court that he or she had used due diligence to enforce the provisions of this Part and that the other person has committed the offence in question without his or her knowledge, consent or connivance, the other person shall be summarily convicted of the offence and the employer shall be exempt from any penalty.

(2) When it appears to the satisfaction of the Commissioner at the time of discovering the offence that the employer has used due diligence to enforce the provisions of this Part and that the offence was committed by some other person and also that it has been committed without the knowledge, consent or connivance of the employer, then the Commissioner shall proceed against the person whom he or she believed to be the actual offender in the first instance without first proceeding against the employer.

Prosecution to be instituted within 1 year of offence

69. No prosecution for any offence under this Part shall be instituted after the expiration of 1 year from the date of the commission of the offence.

PART 8

MINIMUM WAGES

Fixing of minimum wage

70. (1) The Governor in Council may, by Order, published in the *Gazette* fix a minimum wage for –

- (a) employees generally; or

- (b) any class of employees in a particular industry or undertaking, and such minimum wage shall be not less than the minimum wage specified under paragraph (a).

(2) A Minimum Wage Order may contain such provisions as the Governor in Council thinks fit and may -

- (a) specify hours of work and other terms and conditions of service or employment in relation to any minimum wage;

(b) fix different minimum wages for employees of different categories of undertakings engaged in the same employment.

Establishment of Minimum Wage Committee

71. (1) Whenever the Governor in Council deems it expedient, he or she shall appoint a Minimum Wage Advisory Committee to investigate the conditions of employment in such trade or occupation and to make recommendations for the fixing of minimum rates of wages.

(2) The Committee shall comprise the following members appointed by the Governor in Council-

- (i) a Chairperson nominated by the Minister;
- (ii) an equal number of members representing employers and employees, of which one member from each group should be from the hotel and tourism industry;
- (iii) one member nominated by the Anguilla Social Security Department; and
- (iv) The Commissioner who shall be *ex officio* Secretary of the Minimum Wage Advisory Committee;

(3) The members representing employers and employees shall be appointed by the Governor in Council after consultation with representative organizations of the employers and employees concerned and in the absence of such organizations, with the employers and employees concerned.

(4) The same Committee may be appointed in respect of more than one occupation or trade or in respect of all occupations and trades.

(5) Members of the Committee shall be appointed for such period as specified in the instrument of appointment.

(6) The Committee may be assisted by such Officers from the Public Service as the Governor in Council deems fit.

Procedure

72. (1) The Committee shall meet at such times as may be necessary or expedient for the discharge of its functions.

(2) The Chairperson or, in the Chairperson's absence, the Deputy Chairperson and one member each from the employees and employers groups shall constitute a quorum.

(3) In the case of an equality of votes, the Chairperson shall, in addition to his or her original vote, have a casting vote.

(4) The Committee may make rules for the regulation of its own proceedings and procedures.

Publication of recommended rates and power of Governor in Council to make minimum wages

73. (1) On receipt of the recommendations from the Committee, the Governor in Council shall cause the rates recommended to be published in the Gazette and the public shall be given a period of at least 1 month in which to make any representation thereon in writing.

(2) After consideration of the recommendations of the Committee and the representations of the public, the Governor in Council may issue an Order prescribing the minimum rates of wages payable and any other related matters.

Matters for consideration in proposing a minimum wage

74. In considering a proposed minimum wage or other terms and conditions of employment, the Committee shall have regard to-

- (a) the general level of wages in Anguilla;
- (b) the cost of living;

(c) the general level of competitiveness of Anguilla's economy generally and in particular its main industries;

(d) the need to link wage rates with productivity levels of employees; and

(e) the protection of employees.

Many employers were opposed to the establishment of minimum wages. Those not opposed have argued that there is need to have criteria on which minimum wage would be fixed and that such criteria must include a link with productivity.

Effect of Minimum Wage Order

75. (1) An employer to whom a Minimum Wage Order applies shall, as from the date of effect of the Minimum Wage Order, pay to the employees wages and such other terms and conditions of employment which are not less than the minimum wage prescribed in the Minimum Wage Order.

(2) Where an employee enjoys wages and terms and conditions of employment that are already more favourable than those prescribed in the Minimum Wage Order, his or her employer shall not reduce his or her wages or terms and conditions of employment to those prescribed in the Minimum Wage Order.

Posting of Minimum Wage Order

76. An employer, whose operations are affected by a Minimum Wage Order, shall cause the Order to be displayed on a notice board in a conspicuous place in the establishment.

Offences in relation to this Part

77. An employer who contravenes this Part commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars.

The current fine is \$200, which is grossly inadequate. The fine of not exceeding ten thousand dollars is taken from the Saint Lucia Code.

PART 9

LEAVE

Annual holiday terms and conditions

78. (1) Subject to section (2), an employee shall at the end of each year of employment with an employer be entitled to annual paid holiday as follows:

- (i) 12 working days where he or she is employed with the employer for less than five years;
- (ii) 15 working days where he or she is employed with the employer for more than five but less than ten years; and
- (iii) 20 working days where he or she is employed for ten and more years,

but such periods of annual holiday are not cumulative for more than three months from date of entitlement unless otherwise agreed in writing in a document signed by both the employer and the employee.

A change is proposed here. Stakeholders have argued for (i) a tiered system of annual holiday which increases the number of days with the number of years worked and (ii) non-accumulation of holiday.

The provisions of the laws in British Overseas Territories are as follows:

Bermuda: 2 weeks holiday with pay after each year of service

British Virgin Islands: (i) 12 working days per year for less than 10 years' service
(ii) 15 working days per year for 10 but less than 20 years' service
(iii) 20 working days per year for 20 and more years' service.

Cayman Islands service (i) 2 weeks per year for less than 4 years' service
(ii) 3 weeks per year for 4 but less than 10 years' service
(iii) 4 weeks per year for 10 and more years' service

- Montserrat*
- (i) 2 weeks per year for less than 10 years' service
 - (ii) 3 weeks per year for 10 but less than 20 years' service
 - (iii) 4 weeks per year for 20 and more years' service

NB I could not access information for Turks and Caicos Islands. The Act grants power to the Governor to make Order re. holiday leave.

(2) Annual paid holiday accrues from the anniversary date of the employment of the employee with the employer.

(3) The annual paid holiday shall be given and taken in one period, or not more than two periods subject to a signed agreement by the employer and employee.

(4) Where the employer and employee so agree, the annual paid holiday or either of such separate periods may be taken wholly or partly in advance immediately before the commencement of the annual holiday.

(5) The annual paid holiday leave shall be taken by the employee before the end of three months of entitlement, provided that such annual paid holiday may, with the approval of the Commissioner, be further postponed for a specified period for good reason.

(6) The employer shall determine the date on which the annual paid holiday shall commence and shall give to the employee not less than 7 days notice of such date, but such notice may be waived by mutual consent in writing.

(7) Where the annual paid holiday or any part thereof has been taken before the right to such paid holiday has accrued, the right to a further annual paid holiday shall not begin to accrue until after the expiration of the period of the year of employment in respect of which the annual paid holiday or part thereof has been so taken.

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

Payment in respect of annual holiday

79. (1) An employee's annual holiday pay shall be calculated by multiplying his or her average earnings in respect of the period of employment to which such annual holiday relates by the number of days paid annual holiday to which the employee is entitled.

(2) An employee who works for less than 12 months but more than 153 days during a period of 12 months shall be entitled to paid annual holiday on a proportionate basis.

Section 79 (1) is new. It takes into account that the wages of employees in the hotel and tourism industry may vary from one pay period to another. It therefore requires that an average be taken into account in determining the rate to be used for annual holiday pay.

Exclusions from annual holiday

80. A period of annual holiday shall not include any period-

- (a) of sick leave to which the employee is entitled;
- (b) of maternity leave to which a female employee is entitled;
- (c) of disability caused by accident or disease for which compensation is payable under the provisions of the Code or any other enactment;
- (d) for which an employee is called to serve on jury duty or national service or public duty; or
- (e) of public holidays.

This is a new provision, which seeks to clarify the law and removes hardship caused by inconsistent practice. It is in keeping with international standards. It is adapted from St. Lucia Labour Code.

Paid annual holidays upon termination

81. (1) Where an employee's employment has been terminated, he or she shall be paid annual holiday pay for any holiday or proportionate part due and not taken and such holiday pay shall be calculated in accordance with section 79.

(2) Where the employee has taken his or her paid annual holiday in advance of his or her entitlement, the employer shall be entitled to deduct the sum paid in annual holiday in advance from any amounts payable to the employee upon termination.

Sick leave

82. (1) An employee, other than a casual employee, who due to illness is unfit for work, shall be eligible for sick leave with pay on the basis of 1 day for every 22 days worked, provided that he or she has worked for his or her employer for at least 110 days.

(2) An employee, other than a casual employee, who due to illness is unfit for work, shall be eligible for sick leave with pay for up to 2 normal working weeks per year, provided that he or she has worked for the employer for more than 12 months.

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

(4) Notwithstanding subsections (1) and (2), an employee shall not be eligible for sick leave pay from his or her employer for any period of illness-

(a) in respect of which he or she is entitled to be paid sick leave benefit under the Social Security Act, or compensation under the Workmen's Compensation Act where such benefit is equal to the wages which he or would have received for the period of illness; or

(b) in respect of which he or she fails to notify his or her employer within the first working day of his or her illness, and if the period exceeds 2 days, to furnish the employer with a certificate from a duly qualified medical practitioner, stating that he or she is unfit for work due to an illness and specifying the period of unfitness for work.

(4) Subject to subsection (3), the minimum remuneration payable by an employer during any period of sick leave shall be the normal rate of wages less any amount to which the employee is entitled by virtue of the Social Security Act or the Workmen Compensation Part of the Code.

Section 82 (2) is new in that it provides for a medical certificate after 2 days illness. This was requested by stakeholders.

Section 82 (4) provides for sick leave for part time employees.

The proposal clarifies the law that employees are eligible as against entitled to sick leave. An employee must be ill and not fit for work before he or she becomes eligible for sick leave. A bad practice has developed where an employee thinks that he or she is entitled to all sick leave, regardless of whether he or she is unable to work because of illness. This bad practice is not good for productivity or competitiveness and should be discouraged.

Maternity leave

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

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

Two changes are proposed. One deals with the qualification from two years' service to one year's service. This accords with the law in Bermuda, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos Islands.

The other deals with the duration of maternity leave from 13 weeks to 14 weeks. ILO Maternity Protection Convention, 2000 (No. 183) provides for a minimum period of 14 weeks as maternity leave.

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

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

Additional period of maternity leave

84. Where a duly qualified medical practitioner certifies that an illness necessitating absence from work arises out of pregnancy or confinement or both, the employer shall grant the employee an additional period of maternity leave not exceeding three months.

Amount of maternity leave pay

85. (1) The employer shall pay to an employee, during the full period of maternity leave not exceeding fourteen weeks, the basic wage and remuneration, less any amount payable as maternity benefits under the Benefits Regulations under the Social Security Act.

(2) Any additional maternity leave granted in accordance with section (84) may be without pay.

Calculation of maternity leave pay

86. Maternity leave pay shall be calculated as if it were holiday pay as provided for in section 84 (1).

Paternity leave

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

[This new proposal seeks to promote family responsibility and gender equity.](#)

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

88. An employer is prohibited from giving notice of dismissal to an a female employee while she is absent from work on maternity leave and any such notice shall be deemed to be unlawful.

Special leave for jury service and other purposes

89. (1) An employer shall grant leave with full pay to an employee for the duration of jury service that the employee is required to give, provided that the employee shall be required to report to work for duty on those days where he or she is not required to be in court.

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

(3) An employee may be granted leave with pay for such period where he is representing Anguilla at any sport or cultural event approved by the Governor in Council.

[This is a new provision adapted from labour codes of Montserrat and BVI.](#)

Penalties and employee's right to recover.

- 90.** (1) An employer who
- (a) enters into any agreement or gives any remuneration for employment contrary to this Part,
 - (b) makes any deduction from the wages of an employee, or receives any payment from an employee, contrary to the sections mentioned in paragraph (a), or
 - (c) otherwise contravenes any of the sections mentioned in paragraph (a),

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

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

PART 10

DISCIPLINARY ACTION, TERMINATION OF EMPLOYMENT,
AND CONTINUITY OF EMPLOYMENT

Disciplinary action by employer

91. (1) An employer shall be entitled to take disciplinary action including dismissal when it is reasonable to do so in all the circumstances.

(2) In deciding whether the employer has acted reasonably, regard shall be had to the nature of the violation, the employee's duties, the penalty imposed by the employer, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

(3) For the purposes of this section a "disciplinary action" includes -

(a) a verbal warning,

(b) a written warning,

(c) suspension,

(d) demotion,

(e) dismissal.

(4) No employer may impose a fine or other monetary penalty on an employee.

Valid reason for termination

92. (1) It is unlawful for an employer to dismiss an employee without a valid and fair reason for such termination connected with the capacity or conduct of the employee, or with the operational requirements of the undertaking, establishment or service, pursuant to this Part and unless the procedures set out in this Part are complied with.

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

Unfair dismissal

93. (1) It is unlawful for an employer to dismiss an employee or institute disciplinary action based on -

- (a) the employee's race, colour, sex, religion, ethnic origin, national extraction, indigenous origin, social origin, political opinion or affiliation, trade union affiliation or activity, disability, sexual orientation, serious family responsibility or marital status, or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;
- (b) the employee's age, subject to any other enactment in force, or collective bargaining provisions or contractual provisions regarding retirement;
- (c) a female employee's maternity leave or benefits, pregnancy or a reason connected with her pregnancy;
- (d) the employee's rights to join a trade union of his or her choice;
- (e) the employee's temporary absence from work due to illness or injury taken in accordance with the Code, unless it occurs frequently and is found to be an abuse of sick leave provisions of the Code;
- (f) the perception that the employee has or carrying the HIV/AIDS unless the employee is engaged in work established as putting other persons at risk of contracting the HIV/AIDS or unless the inherent requirements of the job permit the removal of that employee to other duties.
- (g) the employee's absence from work due to compulsory military service, national service,

- public duty or other civil obligation in accordance with law;
- (h) the exercise or proposed exercise of the right of the employee to remove himself from a work situation which he reasonably believes presents an imminent or serious danger to life, health or safety;
 - (i) the employee's participation, or proposed participation, in legitimate industrial action, including strikes;
 - (j) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of the Code.

[This provision is in keeping with regional and international standards.](#)

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

Constructive dismissal

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

(2) Where the employee terminates the employment contract pursuant to subsection (1), he or she shall be deemed to have been unfairly dismissed by the employer for purposes of the Code.

[This is a new provision. It is in keeping with regional and international labour standards.](#)

Summary dismissal for serious misconduct

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

(2) Serious misconduct includes but is not limited to -

- (a) theft or wilful damage of property of employer or another employee at the work place;
- (b) commission of a fraudulent offence, or an act of dishonesty which destroys the confidence of the employer in the employee;
- (c) possession or use of narcotic drugs or possession of arms and ammunition at the work place or outside the workplace while on duty;
- (c) refusal to follow health and safety measures instituted at work thereby endangering the health and safety of employees or members of the public;
- (d) gross insubordination or wilful disobedience of reasonable and lawful orders given by the employer;
- (e) breach of confidentiality except for reports made by the employee to law enforcement agency or a government regulatory agency;
- (f) conduct inconsistent with the terms of the employee's contract of employment.

(3) The serious misconduct in this section is restricted to conduct which is directly related to the employment relationship and has a detrimental effect on the business of the employer or the work relationship.

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

(5) An employer who fails to provide the statement referred to in subsection (4) shall be stopped from introducing testimony as to facts

which might have been included in the statement, in any proceeding testing the fairness of the dismissal.

Warnings and termination for misconduct

96. (1) Where an employee is found to be in breach of his or her terms and conditions of employment or is guilty of any misconduct such that the employer cannot reasonably be expected to continue to employ him or her if it is repeated, the employer may give the employee a written warning outlining the particulars of the offence.

(2) If an employee after being warned is again found to be in breach of his or her terms and conditions of employment or is guilty of any misconduct in the following twelve months, the employer may suspend the employee with half pay for a period of one week, or with the approval of the Commissioner for such longer period as may be appropriate in the circumstances.

(3) If an employee after being warned two more times or warned and suspended is again found to be in breach of his or her terms and conditions of employment or is guilty of any misconduct in the following twelve months, the employer may dismiss the employee.

(4) An employer shall be deemed to have waived his or her right to dismiss an employee for a particular offence if he or she has failed to do so within twelve months after knowledge of the particular offence provided that any investigation has been completed.

[This is a new provision that is generally applied in Caribbean jurisdictions.](#)

Unsatisfactory performance

97. (1) Where the employee is not performing his or her duties in a satisfactory manner, the employer may give him a written warning and appropriate instructions to correct the unsatisfactory performance.

(2) If the employee, after being warned a further two times, does not during the following month demonstrate that he or she is able to perform and has performed in a satisfactory manner, the employer may dismiss the employee.

Dismissal for reason of incapacity or abuse of sick leave

98. (1) Where an employee has been –
- (a) continuously ill for a period exceeding twenty six weeks his or her job; or
 - (b) injured in a manner that makes it difficult or impossible for him or her to continue to perform his or her job;

the employer, after a qualified medical practitioner has certified such incapacity and it is determined that the employee is incapable of performing his or her job, may dismiss the employee if such incapacity presents an undue hardship to the business or enterprise.

(2) Where an employee has taken sick leave frequently to the extent that the employer reasonably determines that such absences present an undue hardship to the business enterprise and amounts to an abuse of sick leave, the employer may seek to discipline the employer in accordance with the Code.

(3) The burden of proving that the employee's sick leave absences were abusive and that such absences present an undue hardship to the business enterprise shall rest on the employer.

Stakeholders particularly employers complain that there should be some expressed sanction for abuse of sick leave. This proposal here is adapted from Saint Lucia Labour Code. The issue that arises is whether the employer should have the right to dismiss the employee or whether the employer should lodge a complaint to the Tribunal for determination as to whether the employee has abused sick leave and whether the first sanction should be a warning or suspension with half pay or dismissal.

Termination during probation

99. (1) An employer may terminate the employment contract of an employee at any time during the probationary period for any valid and fair reason with twenty-four hours notice.

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

It must be emphasized here that an employer must have a valid and fair reason for terminating the employment of an employee during the probationary period. The employer is not allowed to terminate an

employee without any reason other than the employee is on probation. This is in keeping with the rules of natural justice, regional and international standards.

Termination with notice

100. (1) An employer shall give an employee notice of termination of the employment contract on the following basis -

- (a) where the employee is paid at intervals of less than one month who has -
 - (i) less than 1 year's service, 1 week,
 - (ii) 1 year and over and less than 5 years service, 2 weeks;
 - (iii) 5 years' service and over, 4 weeks;
- (b) where the employee is paid at monthly intervals who has -
 - (i) less than 1 year's service, 1 month,
 - (ii) 1 year and over and less than 5 years service, 2 months
 - (iii) 5 years' service and over, 3 months;

but where the employee is at the professional, higher technical or managerial level, the period of notice shall not be less than 3 months irrespective of length of service.

(2) An employer may give the employee pay in lieu of notice equal to the wages and other remuneration and other benefits that would have been due to the employee at the end of the period of notice.

The notice periods remains unchanged.

(3) Where an employee intends to resign, he or she must give the employer notice similar to what he or she was entitled to receive from his or her employer.

(4) Where an employee fails to give the notice required in subsection (3), the employer shall be entitled to deduct from benefits due

to the employee at the time of the termination of employment the sum equivalent to the wages due to the employee over the period of notice had he or she been employed during that period.

Stakeholders have argued that there must be some sanction for failure on the part of employee to give notice of resignation.

Time off to seek alternative employment

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

Remuneration due upon dismissal

102. Where an employee is dismissed for misconduct or unsatisfactory performance or breach of contract in accordance with this Part, he or she is entitled to remuneration and accrued paid holiday up to and including the date of the dismissal.

Burden of proof

103. In a claim or complaint arising out of the dismissal of, or any other form of disciplinary action against, an employee, it shall be for the employer to prove the reason for the dismissal or discipline and, if the employer fails to do so, there shall be a conclusive presumption that the dismissal or disciplinary action was unfair.

(2) In a claim of constructive dismissal, it shall be for the employee to prove the reason, which made the continuation of the employment contract unreasonable.

(3) The test as to whether or not a dismissal or other form of disciplinary action was unfair is whether or not, under the circumstances the employer acted reasonably.

The proposal on burden of proof is in keeping with regional and international labour standards.

Remedies for unfair dismissal

104. (1) Where a Tribunal determines that upon a dispute referred to it that a termination was unfair or illegal, the Tribunal may order either that

- (a) the employee be reinstated;
- (b) the employee be re-engaged in a position that is substantially equivalent if the post held by the employee is not immediately available; or
- (c) compensation be paid in lieu of reinstatement or re-engagement

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

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

The remedies proposed here are in keeping with regional and international standards.

Recovery of wages and notice pay

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

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

Winding up of employer's business, etc.

106. (1) The winding up of or appointment of a receiver with respect to an employer's business shall cause the employment contract of any employee to terminate one month from the date of winding up or the appointment of a receiver.

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

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

- (a) wages, overtime pay, commissions and other forms of remuneration including gratuities relating to work performed during the twenty-six weeks preceding the date of winding up or appointment of a receiver;
- (b) holiday pay due;
- (c) amounts due in respect of other types of paid absence accrued during the twelve months preceding the date of winding up or appointment of a receiver; and
- (d) compensation for unfair dismissal and other payments due to employees upon termination of their employment.

[This is a new provision based on standard practice in the region](#)

Death of employer

107. When the employer's personal or legal position formed the basis of the contract of employment, the death of the employer shall cause the

contract of employment to terminate one month from the date of the employer's death.

Certificate of employment

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

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

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

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

Continuity of employment

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

- (a) an industrial dispute;
- (b) illness for two days or illness certified by a qualified medical practitioner where the absence from work exceeds two days;
- (c) occupational injury;
- (d) maternity leave certified by a medical practitioner;

- (e) the operation of any law;
- (f) an act of God or *force majeure*;
- (g) absence permitted or condoned by the employer;
- (h) temporary lay-off;
- (i) suspension;
- (j) leave without pay.

This provision is in keeping with section 13 of Fair Labour Standards Act.

Rights of employees on change of ownership

110. (1) Where there is a change of ownership of a business or undertaking and the successor-employer offers any or all involved employees continued employment with the business, the employees shall carry forward their service and accrued rights to the successor-employer, unless the predecessor-employer has paid the employee of all service benefits accrued at the time of the change of ownership.

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

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

(4) Where there is a change of ownership, the predecessor-employer shall pay to those employees who have not been offered continued employment with the successor-employer their outstanding wages, vacation pay, and any other entitlement due to them, including severance pay

(5) Where there is a change of ownership of a business or undertaking, the predecessor-employer shall, where practicable, give at least one month's notice of that change in ownership to the employees.

This provision is new and is required to protect employees in keeping with regional and international standards.

Effect of sale of business

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

This is new and is required to protect employees in keeping with regional and international standards.

Termination due to redundancy

112. (1) An employer may terminate the employment of the employee for reasons of redundancy.

(2) For purposes of subsection (1), an employee's position may be made redundant where termination is because

- (a) the employer has modernised, automated or mechanised all or part of his or her business;
- (b) the employer has discontinued to carry on all or part of his or her business;
- (c) the employer has sold or otherwise disposed of all or part of the business;
- (c) the employer has reorganised or relocated his or her business to improve efficiency;
- (d) the employer's need for employees in a particular category has ceased or diminished;
- (e) it has become impossible or impracticable for the employer to carry on his or her business at its usual rate or level or at all, due to a shortage of material,

a mechanical breakdown, a *force majeure* or an act of God; or

- (f) a reduced operation in the employer's business has been made necessary by economic conditions including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

(3) Prior to terminating the employment of any employee under this section, the employer shall -

- (a) inform the recognized trade union or, if none exists, the employee's representative and the employee as early as possible stating:
 - (i) the number and categories of employees to be terminated;
 - (ii) the reasons for the termination;
 - (iii) the period over which the termination is to take place,
- (b) consult as early as possible with the recognized trade union, or if none exists, the employees' representative, and the employee on -
 - (i) the possible measures that could be taken to avert or minimize the adverse effects of such situations on employment; and
 - (ii) the possible measures that could be taken to mitigate the adverse effects of any terminations on the employees concerned;
- (c) notify the Commissioner [[as early as possible](#)] [[three months prior to the redundancy](#)], giving relevant information, including a written statement of -
 - (i) the reasons for the termination;
 - (ii) the number and categories of employees to be terminated;

- (iii) the period over which the termination is to take place
- (iv) whether there has been any consultation with a trade union, any other representative of the employees or with the employees themselves to mitigate the effects of the redundancy and the results of that consultation.

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

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

[This provision expands on section 11 of the Fair Labour Standards Act.](#)

Criteria to be used in selection of employees for termination on grounds of redundancy

113. (1) The employer in selecting employees for termination on grounds of redundancy shall be guided by the following criteria -

- (a) need for the efficient operation of the undertaking, establishment or service;
- (b) ability, experience, skill and occupational qualifications of individual employees;
- (c) length of service of employees;
- (d) age of employees;
- (e) family situation; or
- (f) such other criteria as may be appropriate under the circumstances.

(2) Notwithstanding subsection (1), an employer, when conditions of redundancy exist, may invite employees to offer themselves for termination, provided that an enhanced severance benefits package

over and above the minimum provision of the Code is paid to the employees to be retrenched.

This clause is new. Paragraph (1) based on international labour standards and is useful for employers. (2) is based on commercial practice.

Severance pay

114. (1) On termination of employment due to redundancy, an employee who has completed one year of continuous service with his or her employer is entitled to be paid by the employer severance pay equivalent to-

- (a) one week's wage for each completed year of service up to the first five years;
- (b) two weeks' wage for each completed year of service in excess of five years and up to ten years;
- (c) three weeks' wage for each completed year of service in excess of ten years.

(2) For the purpose of subsection (1), the amount of a week's pay would be calculated on the basis of the highest wage earned by the employer over the last year preceding his or her termination.

(3) The payment of severance pay shall not affect the employee's entitlement, if any, to payment in lieu of notice, outstanding wages, wages in lieu of accrued annual holiday, and other remuneration for work performed by the employee or any other termination benefits.

This is a new provision. Many stakeholders including some (but not all) employers indicated that the Code should provide for severance pay. The method of calculation what starts at one week's pay is lower than what generally obtains in the region. It takes into consideration that this is a new provision and that the burden on employers should be gradual.

Retirement benefits

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

(2) An employer that does not have any retirement plan for its employees shall pay to an employee who retires after at least twenty years of service, retirement benefits in an amount equal to severance pay for the period of service of the employee.

(3) A pension plan, an annuity or provident fund or other form of retirement plan referred to in subsection (1) may be contributory with the employers' contribution being twice that of employees.

This provision is new. It is based on BVI Labour Code. Montserrat provides for benefits on resignation (not necessarily retirement) after 10 years service.

PART 11

EQUALITY OF TREATMENT IN EMPLOYMENT

This is a new proposal to ensure that the Anguilla comply with fundamental principles and rights at work. It is in keeping with the ILO Conventions 100 (Equal Remuneration for Work of Equal Value) and 111 (Non Discrimination and Equality of Opportunity in Employment and Occupation). These are fundamental ILO Conventions, which all countries are expected to respect, observe and promote.

Definition of “discrimination”

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

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

- (a) race, colour, sex, religion, ethnic origin, political opinion or affiliation, indigenous population, social origin, national extraction, disability, HIV or perceived HIV status or other medical status, sexual orientation or gender identity, family responsibility, pregnancy, marital status or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;

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

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

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

(5) An employer is obliged to treat as confidential and protect the confidential status of an employee's HIV status.

(6) An employer is obliged to adopt policies and practices to protect an employee with HIV from stigmatization in the workplace.

Prohibition of discrimination

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

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

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

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

Bona fide occupational qualifications

118. (1) Nothing in section 117 shall apply to any distinction, exclusion or preference based on the grounds listed in section 131(2) where a genuine occupational qualification exists.

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

- (a) the essential nature of the job calls for a particular race, sex, religion, national extraction, indigenous population, ethnic origin, social origin, disability, HIV status, pregnancy, family responsibility, marital status or age, in dramatic performances or other entertainment for reasons of authenticity;
- (b) in a religious institution, the essential nature of the job calls for a particular religious affiliation or

belief, and the essential nature of the job would be materially different or unable to be carried out if performed by a person of a different religious affiliation or belief;

- (c) the job needs to be held by a man or a woman to preserve privacy or to comply with recognised cultural practices;
- (d) the nature of the location of the establishment makes it impracticable for the holder of the job to live elsewhere than in premises provided by the employer and
 - (i) the only such premises which are available for persons holding that kind of job are occupied or normally occupied, by persons of the same sex and are not equipped with separate sleeping accommodation and sanitary facilities for persons of the opposite sex; and
 - (ii) it is not reasonable to expect the employer either to equip those premises with such accommodation and facilities or to provide other premises for persons of the opposite sex or to work out a practicable solution or usage of such facilities for members of both sexes;
- (e) the job requires a married couple; or
- (f) on the grounds of disability it is shown that
 - (i) the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned and the performance of the job would not be able to be carried out as a result of the disability; or
 - (ii) special facilities or modifications, whether physical, administrative or otherwise, are required to be made at the work place to accommodate the disabled person which

the employer cannot reasonably be expected to perform.

Reasonable accommodation for religious observances

119. (1) An employer shall provide reasonable accommodation to a request by an employee for time off for religious observances, practices and beliefs, unless the employer can show that accommodation would cause an undue hardship to his or her business.

(2) Where an employee is given time off to observe the Sabbath or any other religious observance, the employer shall not be obligated to pay wages to the employee for the period of absence from work.

(3) Where the employer cannot provide reasonable accommodation to an employee under subsection (1) without undue hardship to the employer's business or other employees, the employee will be required to report for duty, failing which disciplinary action may be taken and the employer shall not be considered to have contravened section 117.

(4) In considering a request by an employee or employees of a particular denomination for time off for religious observances, the employer shall take into consideration the interests of all other employees including those belonging to other religions.

[This was a contentious issue. International labour standards provide for reasonable accommodation. The comments of stakeholders will be appreciated.](#)

National preference

120. An employer shall

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

Special positive action

121. Special measures taken by, or required of, employers of a temporary nature to promote equality of opportunity in employment shall not be deemed to be unlawful discrimination.

Sexual harassment

122. Any act of sexual harassment against an employee committed by his or her employer, or an employee of that employer, shall constitute unlawful discrimination based on sex.

Equal remuneration

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

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

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

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

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

Partnerships

124. (1) Where employment in a particular occupation is largely provided through partnership firms, it shall be an offence for such firms, or for persons proposing to form themselves into such a partnership firm, to discriminate against any person on the grounds set out in section 120

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

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

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

Employer and employee organisations

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

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

Inducement to discriminate

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

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

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

Burden of proof

127. Except where otherwise provided in this Part, the person alleging a violation of this Part shall bear the burden of proving a prima facie case discrimination, inducement or attempted inducement, as the case may be, upon which the burden of proof shall shift to the respondent to prove otherwise.

Proof of exceptions

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

Offences and penalties under this Part

- 129.** (1) Any person who
- (a) commits an offence under this Part, or
 - (b) otherwise contravenes the provisions of this Part commits an offence and,

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

(2) Where any partnership, or group of persons proposing to form themselves into a partnership, contravenes the provisions of section 117 (1), the individual partners shall, upon the contravention being proved, be each liable to a fine not exceeding ten thousand dollars, and for a second or subsequent offence, to a fine not exceeding one thousand dollars.

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

Remedies

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

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

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

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

PART VIII

PROTECTION OF CHILDREN AND YOUNG PERSONS

This Part strengthens the provisions of the current law for the protection of children and young persons. It seeks to ensure that the laws of the Anguilla are consistent with international and regional labour standards, and in particular with ILO Convention No. 138 (Minimum Age for Admission to Employment) and No. 182 (Worst Forms of Child Labour)

Prohibition of employment of children

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

The minimum age for admission to employment is set at age 16, that is the compulsory maximum age for schooling.

- (2) This section shall not apply to
 - (a) light work approved by the Minister for children not below the age of fourteen years and subject to the number of hours and other conditions determined by the Minister after consultation with employers' and employees' representative organisations;
 - (b) artistic performances approved by the Minister and subject to conditions determined by the Minister

after consultation with employers' and employees' representative organisations; or

- (c) the exercise of manual labour by a child under order of detention in a reformatory or industrial school, or by a child receiving instruction in manual labour in a school, provided that such work is approved and supervised by a public authority.

[Subsection \(2\) refers to exceptions provided in ILO Convention No. 138.](#)

Liability of parent or guardian

132. Where a child is found to be employed in contravention of this Part, the parent or guardian of that child is deemed to have committed an offence unless he or she proves that the employment occurred without his or her knowledge, consent, acquiescence or connivance and is liable on summary conviction to a fine not exceeding eight thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

Restrictions on employment of young persons

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

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

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

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

[The Minister of Labour will, after consultations with the social partners, declare by Order which jobs/activities will be deemed to be hazardous for](#)

young persons. Generally, these may include working in dangerous conditions in agriculture (with chemicals), mining, construction, hotels, bars, and services. The dangerous conditions may include work underground, diving, on heights, lifting heavy loads, dangerous machinery etc.

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

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

Penalties

134. A person who contravenes section 133 commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

Inducement to commit an offence

135. A person who employs or induces another to employ or procures the employment of a child or young person in the worst form of child labour, commits an offence and is liable on summary conviction to a fine of ten dollars.

Unpaid work

136. A child or young person is considered employed whether or not he or she is in an employment contract or is paid or not paid for his or her services.

Registers to be kept

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

(2) The register referred to in subsection (1) shall contain particulars of the names, addresses and dates of birth of young persons, and of the dates on which they enter and leave the employment, and the

employer shall on request at any reasonable time, produce that register for inspection by any authorised public officer.

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

Government's vacation work programme for students

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

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

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

False representation as to age

139. A person who misrepresents the age of a child or young person for the purposes of contravening a provision of this Part commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, and in the case of a second or subsequent offence to a fine not exceeding ten thousand dollars.

PART 13

FORCE LABOUR

Interpretation.

140. In this Part-

"forced labour" means all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily, provided that the term "forced labour" shall not include-

- (a) any work of a purely military character or service exacted by virtue of compulsory military service laws; □ □
- (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; □ □
- (c) any work or service exacted from any person as a consequence □ of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or association □; □
- (d) any work or service exacted in cases of emergency, that is to □ say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, hurricane, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population; □ □
- (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic

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

Prohibition of forced labour □

141. (1) No person shall impose or permit the imposition of forced labour. □□

(2) Notwithstanding anything contained in paragraphs (b) and (c) of the proviso to section 140 no person shall impose or permit the imposition of forced or compulsory labour-

(a) as a means of political coercion or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;

□(b) as a method of mobilizing and using labour for purposes of economic developments; □□

(c) as a means of labour discipline; □□

(d) as a punishment for having participated in strikes; □□

(e) as a means of racial, social, national or religious discrimination.

(3) Any person who imposes or permits the imposition of forced labour is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars. □

□**Application to Government.** □

142. (1) This Part, with the exception of section 144 (3), shall apply to the Government of Anguilla.

(2) Notwithstanding any enactment to the contrary, any work done by prisoners in a Work Release Programme for the benefit of private individuals may only be done where the working relationship is consensual, the prisoner enjoys wages and other conditions of work at the same level as other employees, and is at liberty to terminate such employment at any time.

PART 14

HEALTH, SAFETY AND WELFARE

This Part seeks to strengthen the measures for the protection of employees from risks of injury at the workplace, in keeping with regional standards. The specific provisions were guided by the CARICOM Model Law on Occupational Safety and Health that was approved in 1997. They are also consistent with international standards.

Interpretation

143. In this Part, unless the context otherwise requires,

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

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

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

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

“fumes” includes gases or vapours;

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

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

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

“operator of a workplace” includes the owner of a building containing a workplace, the owner or hirer of a machine or implement used in a workplace other than the principal operator thereof to the extent that any obligation under this Part relates to persons who are employed in or about or in connection with such machine and who are in the employment or pay of such owner or hirer;

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

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

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

Duties of employers

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

- (a) a safe, sound, healthy and secure working environment is provided as far as is reasonably practicable;
- (b) the measures and procedures prescribed by this Act and the Regulations are carried out;
- (c) every supervisor and every employee performing work

complies with this Act and the Regulations;

- (d) every reasonable precaution is taken in the circumstances for the protection of a worker;
- (e) reasonable precaution is taken in the circumstances to protect the general public who comes into contact with the work site;
- (f) a written occupational safety and health policy is prepared and reviewed at least annually in consultation with the committee or safety and health representative, if any, or a worker selected by the workers to represent them, and develop and maintain a program to implement that policy;
- (g) a copy of the occupational safety and health policy is posted at a conspicuous location in the workplace;
- (h) the equipment, materials and protective devices and clothing as prescribed are provided;
- (i) the equipment, materials and protective devices and clothing provided by the employer are suitable and adequate and maintained in good condition;
- (j) the equipment, materials and protective devices and clothing provided by the employer are used as prescribed;
- (k) the workplace, machinery, equipment and processes under his or her or control are safe and without risk to safety and health as far as is reasonably practicable;
- (l) that the machine, device, tool or equipment is in good condition; and
- (m) that the machine, device, tool or equipment complies with the Code and the Regulations.

Registration of workplaces

145. (1) The employer and operator of a workplace shall, within six months of the Code coming into force, file with the Commissioner a notice stating

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

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

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

[This provision will assist the Labour Department in prioritizing its inspection services.](#)

Risk assessment

146. (1) Every employer shall make a suitable and sufficient assessment of -

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

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

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

- (a) there is reason to suspect that it is no longer valid; or

- (b) there has been a significant change in the matters to which it relates,

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

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

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

This provision will promote a health and safety culture within workplaces.

Safety and health policy and emergency plan

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

- (a) a written statement of his or her general policy with respect to the safety and health of the employees, specifying the organisation and arrangements for the time being in force for carrying out that policy and the provisions of this Act; and
- (b) an emergency plan in writing based on a risk assessment which shall include
 - (i) suitable and rapid means of obtaining first aid help and transportation from the industrial establishment to a hospital for injured workers; and
 - (ii) measures and procedures to be used to control a major fire, to react to serious damage to the industrial establishment, to

evacuate the industrial establishment and to notify rescue personnel,

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

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

This provision will promote the concept that health and safety is a shared responsibility in the workplace, which should also involve employees in policy development.

Health

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

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

Safety

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

- (a) take adequate measures for the prevention of fire and for adequate means of escape for employees;
- (b) ensure that all machinery used is operated and maintained in a manner as to be safe for employees;

- (c) ensure that the workplace is properly maintained;

(2) The employer is entitled under the Code to take such action as is necessary to remove an employee whom the employer has reasonable cause to believe is under the influence of alcohol, addictive drugs or any other substance which may adversely affect the health and safety of the employee or other persons in or about the workplace and may request the employee to take a drug test.

Welfare

150. The employer of a workplace shall, as the particular circumstances require -

- (a) make available adequate supply of wholesome drinking water;
- (b) provide and maintain suitable washing facilities;
- (c) provide accommodation for clothing not worn during working hours and for the drying of work clothing;
- (d) provide and maintain suitable facilities for employees to sit during the course of their employment;
- (e) provide and maintain readily accessible first aid equipment; and
- (f) provide and maintain other facilities such as canteen, mess rooms and rest rooms, as are reasonable under the circumstances.

Special protective measures

151. It is the responsibility of the employer of any workplace, as the particular circumstances require, to ensure that

- (a) a person is not permitted to take any food or drink into any room where any lead, arsenic or other poisonous substance is used;
- (b) suitable goggles or protective screens are provided to protect the eyes of any persons employed in a process involving a special risk of injury to the eyes;

- (c) where a work process involves a reasonable possibility of injury to other parts of an employee's body, suitable protective equipment is furnished;
- (d) an employee is not required manually to lift, carry or move anything in excess of the maximum weight specified by any Regulations made under this Part;
- (e) where a person is employed in any process involving exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances are provided and maintained;
- (f) where a process involves heat or steam, facilities adequate to protect employees from the heat or steam are provided and maintained;
- (g) no person is required to use white phosphorous (sometimes called "yellow phosphorous") in any process; and
- (h) with respect to any process involving the use of, or exposure to, products containing benzene (which term, as used in this Act, means the aromatic hydrocarbon C_6H_6 itself or any product the benzene content of which exceeds one per cent by volume), harmless or less harmful substitutes are used if they are available but, if substitutes are not available then
 - (i) the process shall be, as far as is practicable, carried out in an enclosed system or where an enclosed system is not practicable, the place of work in which the process is carried out shall be equipped with effective means to ensure the removal of benzene fumes to the extent necessary for the protection of the health of the employees;
 - (ii) the word "benzene" and appropriate danger signals shall be clearly visible on any container holding benzene; and
 - (iii) an employee who may be exposed to benzene shall receive appropriate instructions about safeguarding health and preventing accidents, as well as about

action to be taken if there is any evidence of poison.

Protective clothing and devices

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

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

Hazardous chemicals

153. (1) An employer shall

- (a) ensure that all hazardous chemicals present in the industrial establishment are labeled in a way easily understandable to the employees, or are identified in the prescribed manner;
- (b) obtain or prepare, as may be prescribed, an unexpired chemical safety data sheet for all hazardous chemicals present in the workplace;
- (c) ensure that the identification required by paragraph (a) and chemical safety data sheets required by paragraph (b) are available in English and other languages as may be prescribed;
- (d) ensure that when hazardous chemicals are transferred into other containers or equipment, the contents are indicated in a manner which will make known to employees, their identity, any hazards associated with their use, and any safety precautions to be observed; and
- (e) ensure that information is provided on the handling and disposal of hazardous chemicals which are no

longer required and containers which have been emptied but which may contain residues of hazardous chemicals, so that the risk to safety and health and to the environment is eliminated or minimized.

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

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

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

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

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

Special protection for pregnant employees

154. (1) An employer shall, after being notified by a female employee that she is pregnant and upon production of a medical certificate to that effect, adapt the working conditions of the female employee to ensure that she is not

- (a) involved in the use of, or exposed to, chemicals, substances or anything dangerous to the health of the unborn child; or

- (b) subjected to working conditions dangerous to the health of the unborn child, and where appropriate, the employer may assign alternative work, where available, to her without prejudice to her right to return to her previous job.

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

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

The special measures for the protection of pregnant employees are in keeping with regional and international standards.

Employment of young persons on dangerous machines

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

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

(2) This section applies to machines as may be prescribed, being machines which are of a dangerous character that a young person ought not to work at them unless the requirements of subsection (1) are observed.

The special measures for the protection of young persons are in keeping with regional and international standards.

Disposal of waste

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

Noise and vibration

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

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

(2) An employer shall

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

Obligations of persons employed

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

(2) An employee shall not

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

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

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

[In order for health and safety measures to be effective, there must be legal responsibilities and duties of employees.](#)

Prohibition of deduction of wages

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

Safety and health representatives

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

(2) The safety and health representative shall accompany the inspector during an inspection and may make such representations as may be desirable to protect the safety and health of employees.

These measures are to promote employees' role in the promotion of health and safety in the workplace.

Joint workplace safety and health committees

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

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

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

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

(4) A committee shall consist of

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

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

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

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

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

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

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

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

- (a) identify situations that may be a source of danger or hazard to employees;
- (b) recommend to the employer and the employees the establishment, maintenance and monitoring of programmes, measures and procedures respecting the safety of employees;
- (c) obtain information from the employer respecting
 - (i) the identification of potential or existing hazards of materials, processes or equipment; and
 - (ii) safety and health experience and work practices and standards in similar or other

industries of which the employer has knowledge;

- (d) obtain information from the employer concerning the conducting or taking of tests of any equipment, machine device, article, material, chemical, physical agent or biological agent in or about a workplace for the purpose of occupational safety and health; and
- (e) be consulted about, and have a designated member representing employees be present at the beginning of testing referred to in paragraph (e) conducted in or about the workplace if the designated member believes his or her presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

Accident and safety programme

162. The Commissioner may, with the approval of the Minister, undertake

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

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

Special powers of inspector

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

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

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

Reports by employer

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

- (a) the Commissioner, the joint workplace safety and health committee, the employees' safety representative and the recognised trade union accidents involving an employee, or any other person present in the workplace, which result in disability for more than three days or death;
- (b) the Commissioner
 - (i) other accidents, fires and explosions;
 - (ii) the collapse or failure of any building or structure; and
 - (iii) any accident to machinery or plant which results in the cessation of work beyond the shift or day on which the accident took place.

Duties of an owner

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

- (a) the facilities prescribed are provided;
- (b) the facilities prescribed to be provided are maintained as prescribed;
- (c) the workplace complies with the Regulations, and that the workplace is not constructed, developed, reconstructed, altered or added to, except in compliance with this Act and the Regulations.

Exemptions and extensions

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

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

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

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

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

Regulations and Orders

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

(2) The Governor in Council may, by Order,

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

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

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

Non exclusivity of this Part

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

Offences

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

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

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

Multiple offences

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

Penalties for specific offences

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

(2) A person who

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

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

(3) The operator of a workplace who

- (a) obstructs or delays an inspector in the due exercise of any power conferred on him or her by or under this Part,
- (b) refuses to answer or falsely answers, any inquiry authorised by or under this Part,
- (c) fails to produce any register, book, document or other record he or she is required by or under this Part to produce, or
- (d) conceals or prevents, or attempts to conceal or prevent, any person from appearing before or being examined by an inspector,

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

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

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

Penalties for offences for which no express penalty is provided

172. A person who commits an offence, for which express penalty is not provided, shall be liable on summary conviction to a fine not exceeding five thousand dollars.

[The proposed penalty should be an effective deterrent.](#)

Power of court to order cause of contravention to be remedied

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

Penalty for person actually committing offence for which operator is liable

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

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

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

- (a) that an employer or operator of the workplace has used due diligence to enforce the execution of this Part,
- (b) that the offence has been committed by a person other than the operator, and
- (c) that the offence has been committed without the consent, connivance or willful fault of the operator,

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

(2) Where the Commissioner is satisfied that a contravention of this Part has occurred, he or she shall refer the matter to the Director of Public Prosecution.

Records as evidence

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

- (a) an entry made in the register or record by or on behalf of the operator of a workplace shall be admissible against him or her as evidence of the facts stated in the register or record; and

- (b) the absence of the entry shall be admissible as evidence that the requirement has not been observed.

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

Other Remedies

177. Compliance or non-compliance by an employer or employee with this Part shall not prevent any person from seeking compensation under any other law.

PART 15

WORK PERMITS

Interpretation

178. In this Part, unless the context otherwise requires,

“engage in employment” means

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

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

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

“temporary work permit” means a work permit issues to a non-resident of Anguilla to enter and work in Anguilla for a single period not exceeding one year.

Control of employment

179. A non-national of Anguilla shall not engage in employment or self-employment in Anguilla unless he or she has obtained a work permit or a work permit exemption issued by the Minister.

Application for work permit

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

(2) The Minister shall, in approving any work permit, have the discretion to impose any conditions it may consider appropriate to promote the work permit policy of Anguilla.

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

(4) The Minister shall, in considering an application under subsection (3) take into account the extent to which the employer has complied with conditions imposed under subsection (2) and under the Social Security Act and Income Tax Act.

(5) An application for a temporary work permit or its renewal shall be made by the employer on behalf of the person for whom the permit is sought, by filing directly with the Commissioner, an application in the prescribed form.

(6) A work permit holder shall not seek alternative employment in Anguilla during the validity of the work permit unless he or she has prior approval of the Minister.

(7) The Minister may vary the conditions of a work permit granted under this section at any time.

Exemption

181. The following persons are exempt from the requirements of a work permit:

- (a) the holder of a certificate of residence;
- (b) all employees of the Government of Anguilla;
- (c) a person who is married to a national of Anguilla;
and
- (d) a person who belongs to a class of persons exempted by an Order made by the Cabinet.

Application Requirements for work permit

182. (1) The employer applying for a work permit on behalf of a person shall provide the Commissioner with the name, nationality, country of origin, passport number and date and place of issue, proposed date of arrival in Anguilla of the person as well as proof of advertisement of the post in Anguilla and the reason for employing a non-national.

(2) Upon receipt of approval for the processing of the work permit, the employer must submit the following to the Commissioner –

- (a) the completed application form;
- (b) medical certificate of fitness of the prospective employee;
- (c) certificate of character in respect of the prospective employee;
- (d) a statement of the terms of employment of the proposed employee, including basic rate of pay, arrangements for accommodation, medical care and return travel of the prospective employee.

(3) Where a work permit is granted, renewed or extended, it shall be in the prescribed form and its validity shall be dependent upon such terms and conditions as may be agreed by the Minister.

Rights of migrant worker

183. (1) A work permit holder, where recruited from abroad, shall be informed of his terms and conditions of employment, arrangements for accommodation and return travel to his or her home country or country of recruitment prior to his or her arrival in Anguilla.

(2) A work permit holder shall not be compelled to live with his or her employer.

(3) A work permit holder, who is employed as a domestic worker, is not obliged to remain in the household of his or her employer during periods of weekly rest and holidays.

(4) A work permit holder shall have the right to keep in his or her possession his or her travel and identity documents.

(5) A work permit holder is entitled to all the rights and benefits conferred by the Code and any condition of employment that is inconsistent with the Code is void.

[This clause is in keeping with the requirements of ILO Convention No. 97 which is extended to Anguilla](#)

False statements in application

184. A person who makes a false statement in an application for a work permit or work permit renewal, whether in the prescribed forms or in response to any queries put to him or her in the course of an investigation during the work permit application process, commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

Fees

185. The Governor in Council shall, by Order specify the fee to be paid solely by the employer for every application for, grant, renewal or extension of a work permit under this Part.

Penalty

186. An employer or any other person who contravenes this Part

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

PART 16

TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS

This Part is intended to ensure that Anguilla comply with the international and regional labour standards in relation to the right to organize and collective bargaining, and in particular, ILO Convention No. 98 (Right to Organize and Collective Bargaining) and Freedom of Association and Right to Organize Convention No. 87 and follows the CARICOM model law adopted by all CARICOM Members including Anguilla.

187. Interpretation

In this Part—

"employers' organisation or association" means any combination established by employers, the principal purposes of which are the representation and promotion of employers' interests and the regulation of relations between employers and employees;

"managerial employee" means an individual who has managerial responsibilities and who works under a contract of employment;

"Registrar" means the Registrar of the High Court and includes the person for the time being acting for him or her;

"regulations" means the regulations made under this Code by the Executive Council;

"rules" means rules made by a trade union as authorized by this Code;

"statutory objects" means the regulation of the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or the imposing of restrictive conditions on the conduct of any trade or business, and also the provisions of benefits to members;

"trade dispute" means any dispute or difference between employers and

workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person;

“**trade union**” means any combination of persons registered under the Code, the principal purposes of which are the representation and promotion of employees interests and the regulation of relations between employees and employers, and includes a federation of trade unions, but not an organization or association that is dominated by an employer or employers’ organization;

Exemption

188. This Part shall not apply to members of the police, except those employed in their civilian capacity, but as far as possible their conditions of service should not be less favourable.

Basic employee rights

189. Every employee has the right to:

- (a) take part in the formation of any trade union or federation of trade unions;
- (b) be or not to be a member of any trade union or federation of trade unions;
- (c) take part in lawful trade union activities;
- (d) hold office in any trade union or federation;
- (e) take part in the election of shop stewards or safety representatives;
- (f) be elected a shop steward or safety representative or be a candidate for such election;
- (g) act in the capacity of a shop steward or safety representative;
- (h) exercise any right conferred or recognised by the Code or any national law and assist any employee, shop steward, safety representative or trade union in the exercise of such rights.

Freedom of association protection for employees

199. (1) No employer or employers' organisation, and no person acting on behalf of an employer or an employers' organisation, shall, with respect to any employee or any person seeking employment -

- (a) require that he or she not join a trade union or relinquish trade union membership;
- (b) discriminate or take any prejudicial action, including discipline or dismissal against such employee or person by reason of trade union membership or because of participation in lawful trade union activities;
- (c) discriminate or take any prejudicial action, including discipline or dismissal, against such employee or person because of his or her exercise or anticipated exercise of any right conferred or recognised under the Code or under any national law on employment or labour relations;
- (d) threaten such employee or person that he or she will suffer any disadvantage from exercising any right conferred or recognised under the Code or under any national law or under any collective agreement;
- (e) promise such employee or person any benefit or advantage for not exercising any right conferred or recognised under the Code or under any national law on employment or labour relations;
- (f) restrain or seek to restrain such an employee or person, by a contract of employment or otherwise, from exercising any right conferred or recognised under the Code or under any national law on employment or labour relations, and any such contractual term which purports to exert any such restraint shall be void, whether agreed to before or after the coming into force of the Code;

(2) Nothing in this section shall be interpreted as preventing an employer from dismissing or otherwise disciplining an employee for a valid reason, in accordance with the Code.

Protection of trade union from employer interference

191. No person shall commit an act, which is designed to promote the establishment of an employees' organisation under the domination of an employer or employers' organisation, or to support employees' organisations by financial or other means with the object of placing such organisations under the control of employers or employers' organisations.

No compulsion to join or not to join an organisation

192. No person shall seek, by the use of any threat or intimidation, to compel or coerce any other person to join or not to join, or to support or not to support, any employees' or employers' organisation or union.

Membership

193. (1) Any person eligible for membership in a trade union or employers' organisation or federation under its constitution has the right to membership in that organisation if he or she pays any fees that are properly payable to it, and such person has the right to remain a member as long as he or she complies with the rules of the organisation.

(2) No trade union or employers' organisation shall discriminate in its constitution or through its actions against any person on the grounds of race, sex, sexual orientation, religion, ethnic origin, national extraction, colour, indigenous population, social origin, political opinion, disability, HIV status, age, pregnancy, marital status or family responsibilities.

Federations

194. Trade unions and employers' organisations may for, participate in, be affiliated to, contribute to or join any national or international federations of trade unions or employers' organisations.

Remedies

195. (1) Any complaint with respect to infringement of the rights and protection contained in the provisions of this Part may be presented to the Tribunal.

(2) Where it is alleged in such complaint that an employee or person seeking employment was dismissed or denied employment was dismissed or denied employment contrary to this Part, the burden is on the employer to prove that the dismissal or denial had no connection to

the employee's or applicant's trade union membership or activities.

(3) Subject to subsection (4), where the Tribunal finds that the complaint is well founded, it shall make such order as it deems necessary to secure compliance with the provisions of this Part, including an order for the reinstatement of an employee, if requested and deemed appropriate, the restoration to him or her of any benefit, entitlement or advantage, and an order for the payment of compensation.

Register of trade unions

196. The Registrar shall keep a register of all trade unions registered under this Act in the form required by the regulations, and shall discharge all duties required by this Act and by the regulations.

Registration

197. (1) Every trade union and employers' organisation to which this Act applies shall be registered in accordance with the Code.

(2) The rights and benefits conferred by this Act upon trade unions and employers' organisations and their members may be exercised only if those organisations are registered in accordance with the provisions of this Part.

(3) Any 7 members or more of a trade union or 3 members or more of an employers' organisation may by subscribing their names to the rules of the union or organisation and otherwise complying with the provisions of this Act, apply to the registrar for registration as a trade union or employers' organisation.

(4) The applicants shall transmit 3 copies of the constitution of the trade union or employers' organisation, duly authenticated by signature of the president or chairperson and secretary, to the registrar along with the application for registration.

(5) If the Registrar is satisfied in respect of any application that

(a) the requirements of this section have been met;

(b) the constitution is consistent with this Act and the Constitution of the country and does not contain provisions which are contrary to the provisions of any national law;

(c) the name of the trade union or organisation is not identical to that of any existing trade union organisation or so closely resembling such name as to be likely to deceive its own members or the members of the public

he or she shall forthwith register the trade union or employers' organisation and furnish it with a certificate of registration.

(6) Any trade union or employers' organisation which was registered prior to the commencement of the Code shall automatically be deemed registered under the Act.

(7) The Registrar shall determine the application for registration of a trade union within 28 working days from the receipt of the application.

(8) Any person aggrieved by any refusal or failure to register the trade union or employers' organisation shall be entitled to apply to the Appeal Court within the time and in the manner and on the conditions directed by the rules of Court.

Constitution

198. The constitution of every trade union and employers' organisation shall include the information:

- (a) the name of the trade union or organization;
- (b) the objects of the trade union or organization;
- (c) the qualifications for membership;
- (d) provision for the office-holders in the trade union or organisation among whom shall be the president or chairperson, a secretary or general secretary and treasurer;
- (e) provision for periodic elections to all offices and for the appointment of a temporary replacement if an office-holder becomes disqualified or incapacitated from holding office;
- (f) provision for a general meeting open to all members, at least once every [two] years;

- (g) a provision that any member or delegate may propose a resolution at a general meeting;
- (h) the fees and other subscriptions payable, and the maximum period of arrears permitted before a member loses his or her good standing;
- (i) the grounds on which an officer or member may be suspended or expelled from office or from membership, each ground being specified;
- (j) the procedure for suspension or expulsion from office or from membership, including provision that the affected officer or member be fully informed in writing of the allegations against him or her, that he or she shall have a reasonable opportunity to meet those allegations and shall have the right of appeal;
- (k) provision for the keeping of full and accurate records by the treasurer or other appropriate officer, for the annual audit of those accounts by an auditor appointed by the trade union or organization who shall not be a member of that trade union or organization, and for the availability to all members on request of full, audited annual statements of account;
- (l) provision for the banking and investment of the trade union's or organization's funds;
- (m) provision for the paying out of the trade union's or organization's funds, including the authority to sign cheques;
- (n) the conditions under which a member may become entitled to any financial benefit provided by the organization;
- (o) provision for the amending of the constitution;
- (p) the duration of its financial year;
- (q) the inspection of the register of members and other books of the trade union or organization by its members;
- (r) the manner of amalgamating with other trade unions or organizations; and

- (s) the manner of dissolving the trade union or organization.

Alterations in constitution or name

199. (1) A trade union or employers' organisation may alter its constitution, in accordance with the procedures set out in its own constitution.

(2) The trade union or employers' organisation shall transmit the proposed alterations to the constitution or the new constitution to the registrar, and if the registrar is satisfied that said alterations are consistent with the Code, the registrar shall certify the alterations to the constitution and shall issue a written certificate stating the approval and the date on which it was given; and as from that date the new or altered constitution shall have effect.

(3) Any trade union or employers' organisation may change the name under which it is registered in the same manner as an alteration of the constitution, and if the provisions of this section have been complied with, the registrar shall issue a new certificate and make the necessary alterations in the register.

Annual return to registrar

200. (1) Within 6 calendar months after the end of each financial year, every trade union and employers' organisation shall submit to the registrar a return which shall include -

- (a) the trade union's or employers' organisation' address;
- (b) the names and addresses of its current office holders;
- (c) the number of fully paid up members of the trade union or employers' organisation;
- (d) an audited annual financial statement.

(2) The registrar shall suspend or withdraw registration of any trade union or employers' organisation, which fails to submit a return in accordance with subsection (1).

(3) Any trade union or employers' organisation subject to such a suspension or withdrawal under subsection (2) has the right to make representations to the court for an order to re-establish any

suspension or withdrawal of registration.

Legal status

201. (1) A registered trade union and employers' organisation shall be deemed to be a body corporate with the capacity to contract and to hold property, and to sue and to be sued.

(2) Notwithstanding subsection (1), no civil proceedings except those expressly allowed by the Code or any other law may be brought against a trade union or employers' organisation issued with a certificate of registration or against any officer, representative or member thereof, in respect of any act done in good faith, done by or on behalf of such an organisation in the furtherance or purported furtherance of the objects of the constitution.

(3) Subsection (2) shall not be construed as exempting a trade union or employers' organisation or any of its officers, representative or members from contractual liability for goods or services, from obligations incurred in respect of property, or from liability for any criminal malicious or negligent act.

Amalgamation

202. (1) A trade union or employers' organisation may, in accordance with its constitution and subject to the provisions of this Act, amalgamate with any other trade union or organisation.

(2) In the event of amalgamation, the newly constituted trade union or organisation shall assume all the rights and duties of its predecessor organisations unless the court on good cause shown upon the application of some interested party directs otherwise.

Defunct organisations

203. (1) Upon application by a member of the trade union or employers' organisation in question, the registrar may, after making such inquiries as it may consider necessary, make an application to the court to have a trade union or an employers' organisation declared to be defunct if the registrar is satisfied that it is no longer carrying on any of its activities for a period of over two years.

(2) Any declaration made under this section shall

include the winding up to the trade union or employers' organisation and such direction for the disposal of the trade unions' or employers' organisations' assets, as the registrar may deem just, having regard to the objects and the constitution of the trade union or the organisation or a resolution of the majority of the trade union members in good standing.

(3) A trade union or employers' organisation subject to a declaration made under this section may appeal to Court of Appeal.

When objects of union not unlawful

204. (1) The purposes of any trade union duly registered under this Code shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

(2) The purposes of any trade union duly registered under this Code shall not by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

Prohibition of actions of tort against trade union

205. (1) An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of the officers of a trade union to be sued, except in respect of any tortious act committed by or on behalf of the union in contemplation of or in furtherance of a trade dispute.

Conspiracy in relation to trade disputes

206. (1) An agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

(2) An act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without any such agreement or combination, would be actionable.

(3) A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction and for the commission of which the offender is liable under the Code making the offence punishable to be imprisoned either absolutely or at the discretion of the Court as an alternative for some other punishment.

(4) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is awarded by any law in force in Anguilla.

(5) Nothing in this section shall affect the law relating to riot, unlawful assembly, breach of the peace or sedition or any offence against the State or the Sovereign.

Removal of liability for interfering with another person's business

207. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person, or with the right of some other person to dispose of his or her capital or his or her labour as he or she wills.

Peaceful picketing

208. It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

Withdrawal or cancellation of certificate of registration

209. (1) No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the Registrar, and in the following cases—

- (a) at the request of the trade union to be evidenced in the manner from time to time directed by him; or

- (b) on proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that such trade union has wilfully and after notice from the Registrar violated any of the provisions of this Code, or has ceased to exist;

(2) Not less than two months' previous notice in writing specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shown to have become void as aforesaid, in which case it shall be the duty of the Registrar to cancel the same forthwith) shall be given by the Registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

(3) A trade union whose certificate of registration has been withdrawn or cancelled shall, from the time of such withdrawal or cancellation, absolutely cease to enjoy as such the privileges of a registered trade union, and shall be dissolved and proceed to wind up its affairs, but without prejudice to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancellation had not taken place.

(4) If after the withdrawal or cancellation of the certificate a trade union continues in active operation, except for the purpose of winding up its affairs, every secretary, trustee, member of the committee, or other officer of such trade union remaining in office or taking any active part in its operations, shall be guilty of an offence and shall be liable on summary conviction before a Magistrate to a penalty not exceeding one thousand for every day during which such trade union continues in active operation.

Officers, accounts and audit

210. (1) Every treasurer or other officer of a trade union registered under this Code, at such times as by the rules of such trade union he should render such account as hereinafter mentioned, or upon being required so to do, and in any event not later than the 15th day of April in each year shall render to the trustees of the trade union, or to the members thereof, at a meeting of the trade union, a just and true account of all the moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds and securities of such trade union, which account the said trustees shall submit for audit to the officers of the Audit Department, who shall audit the same.

(2) The treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him and shall also, if required, hand over to such trustees all securities and effects, books, papers and property of the said trade union in his hands or custody.

(3) If the treasurer fails to do so, the trustees of the said trade union may sue him in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers and property in his hands or custody, leaving him to set off in such action the sums (if any) which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between solicitor and client.

Withholding or misapplying trade union effects

211. If any officer, member or other person, being or representing himself to be a member of a trade union registered under this Code, or the nominee, executor, administrator or assignee of a member thereof, or any person whatsoever, by false representation or imposition, obtains possession of any moneys, securities, books, papers or other effects of such trade union, or, having the same in his possession, wilfully withholds or fraudulently misapplies the same, or wilfully applies any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the Magistrate for the district in which the registered office of the trade union is situate, upon a complaint made by any person on behalf of such trade union or by the Registrar, may by summary order, order such officer, member or other person to deliver up all such moneys, securities, books, papers or other effects to the trade union or to repay the amount of money applied improperly, and to pay, if such Magistrate thinks fit, a further sum of money not exceeding one thousand dollars together with costs not exceeding one thousand dollars and in default of such delivery of effects or repayment of such amount of money or payment of such penalty and costs, the Magistrate may order the person so convicted to be imprisoned for any time not exceeding three months: Provided that—

- (a) nothing herein contained shall prevent the said trade union from proceeding by indictment against the party aforesaid; and

- (b) no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Code.

Regulations

212. (1) The Governor in Council, may make regulations respecting the following matters—

- (a) the registration of a trade union under this Code;
- (b) the forms to be used for such registration and any other forms which may be prescribed under this Code;
- (c) the seal (if any) to be used for such registration;
- (d) the inspection of documents kept by the Registrar under the Code;
- (e) the fees (if any) to be paid on registration, and until such fees are fixed those specified in the First Schedule hereto shall be charged;
- (f) the fee to be paid for an audit of the accounts of a trade union and, until such fee is fixed, the fee specified in the Fourth Schedule shall be charged; and
- (g) generally, for carrying this Part of the Code into effect.

Registered office of union

213. (1) Every trade union registered under this Code shall have a registered office to which all communications and notices may be addressed. If any trade union under this Code is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding one thousand for every day during which it is so in operation.

(2) Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar and be recorded by him, and until that notice is given the trade union shall not be deemed to have complied with the provisions of this Code.

Membership of minors

214. A person under the age of 18, but above the age of sixteen may be a member of a trade union, unless provision is made in the rules thereof to the contrary, and may, subject to those rules, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee or treasurer of the trade union.

Improper election practices

215. (1) No person shall attempt to influence the outcome of an election for any office in an organisation by fraud, threat, bribery or other improper means.

(2) Upon application by any member of the trade union or employers' organisation, or by the registrar, claiming upon reasonable grounds a violation of subsection (1), the national court may declare such election void, determine a date for the holding of fresh election and make provision for the filling of the offices concerned, pending the outcome of such fresh election, or make such other order relating to such election or fresh election as it may deem fit.

Deposit and safeguard of funds

216. (1) All funds received by or on behalf of a trade union or an employers' organisation shall be deposited to the organisation's bank account.

(2) Every expenditure of funds by or on behalf of a trade union or employers' organisation shall be evidenced by a written receipt or voucher, which shall be kept with the organisation's accounts.

(3) The treasurer or other officer responsible for the custody of the trade union or employers' organisation's funds and property, including the records, shall hand over such funds and property to the organisation when he or she leaves office, or earlier if so directed by the governing body of the organisation.

(4) Upon the application of a member or officer of the trade union or employers' organisation, the national court may make such order as it deems necessary to secure compliance with this section of the Code.

Application for certification

217. A trade union claiming to have as its members in good standing a majority of the employees of an employer in a bargaining unit may, subject to the provisions of this Part, make application to the Minister to be certified as the exclusive bargaining agent of the employees in the unit.

Application procedure

218. (1) A trade union claiming to have as members in good standing a majority of the employees of an employer in a bargaining unit may, subject to the provisions of this Part, make application to the tripartite body designated by the competent authority to be certified as the exclusive bargaining agent of the employees in the unit.

(2) All existing trade unions which were certified as bargaining agents immediately before the coming into force of the Code shall be deemed to be certified.

(3) Where no collective agreement is in force and no trade union has been certified under this Part for the bargaining unit, the application may be made at any time.

(4) Where no collective agreement is in force but a bargaining agent has been certified under this Part for the bargaining unit, the application may be made after the expiry of 12 months from the date of certification of the bargaining agent.

(5) Where a collective agreement is in force the application may be made during the last three months of the term of the collective agreement or any renewal of it.

Certification particulars

219. (1) The application shall be in writing and shall include the following:

- (a) a description of the proposed bargaining unit; and
- (b) facts upon which the trade union relies to demonstrate that the majority of employees in the

bargaining unit wish to have the trade union certified as their exclusive bargaining agent.

(2) A copy of the application shall be served on the employer.

(3) The application shall be determined as soon as possible, but not later than 6 months from the date of receipt by the tripartite body vested with recognition and certification authority in accordance with the provisions of this Part.

Appropriateness of bargaining unit

220. (1) The Labour Commissioner shall on any application for certification first determine the bargaining unit it considers appropriate in the circumstances and in so doing shall have regard to -

- (a) the community of interest among the employees in the proposed bargaining unit;
- (b) the nature and scope of the duties of the employees in the proposed unit;
- (c) the views of the employer and the trade unions concerned as to the appropriateness of the bargaining unit; and
- (d) the historical development, if any, of collective bargaining in the employer's undertaking.

(2) After making a determination under subsection (1), the Labour Commissioner may before certification include additional employees in or exclude employees from the bargaining unit.

Employer recognition or notice

221. (1) Once receiving notice of the application for certification by a trade union, an employer may within fourteen days of receiving such notice -

- (a) indicate its agreement to recognise the trade union as the bargaining agent for that bargaining unit; or
- (b) indicate that he or she doubts that the trade union is entitled to be recognised as the bargaining agent for that bargaining unit.

(2) A notice from an employer under subsection (1) shall be made in writing to the tripartite body with the recognition and certification authority and shall specify the employer's reasons for doubting that the trade union is entitled to be so recognised.

Certification following employer recognition

222. (1) Where only one trade union has applied for certification, and the employer has indicated in writing his or her agreement to recognise the trade union as the bargaining agent and it appears to the satisfaction of the tripartite body vested with recognition and certification authority that the other conditions of this Code have been fulfilled, said body may carry out a membership survey to determine the extent of support which the union enjoys among the employees in the appropriate bargaining unit on the date such application was made.

(2) Where it appears to the Labour Commissioner from the results of the survey that the union is supported on the date of the application by more than 50% of the bargaining unit, said body shall certify the union as the recognised bargaining agent for that unit.

(3) The Minister, in consultation with the tripartite body vested with recognition and certification authority, shall make regulations governing the organisation and conduct of the survey.

The majority trade union determined by poll

223. (1) Where two or more trade unions have applied in relation to the same bargaining unit, or where the one trade union has applied and the employer has contested certification, the Commissioner shall carry out a secret poll among employees in the bargaining unit and shall certify as the recognised bargaining agent for the unit the trade union which is shown by the poll to have the greatest support among the employees, provided however that no union will be certified which has received less than 50% of the votes of those employees in the bargaining unit.

(2) Where the results of the poll show a tie, a second poll shall be carried out within 7 days (unless extended for good cause in accordance with national regulations).

(3) Where the poll shows that no trade union represents the absolute majority of the workers, the trade unions who had applied for recognition may jointly negotiate a collective agreement applicable to the enterprise or the bargaining unit, or at least conclude a collective agreement on behalf of their members.

Employer duties in conduct of poll

224. In relation to the conducting of the poll, every employer shall -

- (a) take all necessary steps to ensure that his or her employees who are eligible to vote in a poll are given the opportunity to do so; and
- (b) permit each such employee to be absent from work, for a reasonable period of time not to exceed 2 hours, without pay deduction for the purpose of voting.

Restrictions in conduct of poll

225. In relation to the conducting of the poll, no person or organisation shall -

- (a) seek, in any premises on the day on which the poll is being held or within one hundred yards of such premises, to influence an employee to vote or refrain from voting for a trade union;
- (b) wilfully obstruct any person from voting or carrying out any functions imposed on that person under this Code.

Employee duties in conduct of poll

226. In relation to the conducting of the poll, no employee shall –

- (a) receive, or agree to receive any money, loan, reward, office or place of employment for voting or agreeing to vote or for refraining or agreeing to refrain from voting for a trade union; or
- (b) accept or take any food or drink or provision from any person where the intent is to induce the employee to vote

or refrain from voting or to reward the employee for having voted or refrained from voting.

Granting or refusing certification

227. (1) The Commissioner shall in writing within a reasonable period of time not to exceed 6 months of the receipt of the application for certification of bargaining agent -

- (a) certify the trade union as the recognised bargaining agent for the bargaining unit;
- (b) refuse to certify the trade union on the grounds that it has not satisfied the requirement that a majority of employees in the proposed unit wish to have the trade union certified as their exclusive bargaining agent; or
- (c) refuse to certify the trade union on the grounds that the bargaining unit identified by the trade union is not appropriate.

Compulsory recognition and duty to negotiate in good faith

228. (1) Where a trade union has been certified as a recognised bargaining agent for the bargaining unit in accordance with this Part, the employer shall recognise the union, and the union and the employer shall meet and engage in bargaining.

(2) Where certification is granted pursuant to this Part, a trade union, employer or employers' organisations shall not fail or refuse to bargain collectively in good faith and shall make every reasonable effort to conclude a collective agreement.

(3) Any person affected by a violation of subsections (1) and (2) may apply to the appropriate national judicial authority and that judicial authority may make any order it deems necessary to ensure compliance with this section.

(4) A recognised union which fails to comply with the provisions of subsections (1) and (2) shall be guilty of an offense and liable to summary conviction to a fine of five thousand dollars

(5) An employer who fails to comply with the provisions of subsections (1) and (2) shall be guilty of an offense and be liable to

summary conviction to a fine of five thousand dollars for every day the breach continues until the employer has complied with such provisions.

Duty of fair representation

229. Where a trade union has been certified as the exclusive bargaining agent for a bargaining unit, it shall be the duty of that trade union to provide full and proper representation of the interest of all its members in the bargaining unit with respect to their rights under the collective agreement whether or not they are fully paid-up members of the organisation.

Closing of undertaking

230. (1) Where a trade union has been certified, or has made application of certification, an employer who decides to close an undertaking must give the tripartite body vested with recognition and certification authority and the union concerned -

- (a) reasonable notice of intention;
- (b) reason for closure decision; and,
- (c) the number and categories of workers to be affected.

(2) An employer who closes an undertaking without complying with subsection (1) shall be guilty of an offence and shall be liable on summary conviction to fine of [\$].

(3) In any prosecution under subsection (2) the onus shall be on the employer to prove that he or she gave the tripartite body and the union concerned the reasonable notice and good reasons.

Effect of certification as the recognised majority union

231. (1) Where a trade union is certified under this Code as the exclusive bargaining agent for the employees in the bargaining unit -

- (a) the trade union shall replace any other trade union that before such certification was the bargaining agent for the employees in the bargaining unit and, shall have exclusive authority to bargain collectively on behalf of the employees in the bargaining unit and to bind them by a

collective agreement so long as such certification remains in force;

(b) if another trade union had previously been certified or was deemed to have been certified in respect of employees in the bargaining unit, the certification of the last mentioned trade union shall be deemed to be revoked in respect of such employees; and

(c) the certified trade union is substituted as a party to any collective agreement applicable to any employees in the bargaining unit in the place of the bargaining agent named in the collective agreement.

New collective agreement

232. Where a certified trade union is substituted as a party to a collective agreement, the union so substituted as a party to the collective agreement may submit to the employer proposals for the revision of the collective agreement or for a new collective agreement and the parties shall bring into effect the revised or new collective agreement within [90] days/months of the date on which substitution of the recognised majority union took place. The original collective agreement shall remain in force until a new agreement is signed.

Revocation of exclusive bargaining rights

233. (1) Any time after one year from the certification of a trade union as the majority union, any employee in that bargaining unit may apply to the Commissioner for the withdrawal of the certification on the basis that the majority of employees in the bargaining unit no longer wish to have the trade union as their exclusive bargaining agent.

(2) An application under subsection (1) shall be accompanied by evidence that a substantial number of employees in the bargaining unit do not wish to have the trade union as their exclusive bargaining agent.

(3) Within 90 days of receiving an application under subsection (1) accompanied by sufficient evidence as required by subsection (2) the Labour Commissioner shall conduct a representation vote of the employees in the bargaining unit by secret ballot.

(4) After a representation vote under subsection (3), the said body shall grant the application if more than 50% of those employees in the bargaining unit cast ballots against having the trade union represent

the bargaining unit as the exclusive bargaining agent, in which case the Commissioner shall cancel the certification of the trade union.

(5) If the certification of a trade union is cancelled under subsection (4), the Commissioner may make any appropriate order, including the terms of cancellation, and may decide on the validity and duration of any existing collective agreement covering the bargaining unit.

(6) If the certification of a trade union is cancelled under subsection (4), no trade union shall apply for certification as bargaining agent for the employees in the bargaining unit until a period of 6 months has elapsed.

(7) If the application for cancellation of the certification is refused, no one may bring a further application for decertification until a period of 12 months has elapsed.

Right of appeal

234. (1) If certification of a trade union as bargaining agent is refused, withdrawn, terminated or modified by the body with recognition and certification authority, either the trade union or the employer may refer this matter to the appropriate national judicial authority for determination.

(2) In making a determination under subsection (1), the national judicial body shall endeavour in its decision to promote over time a system of orderly and effective collective bargaining.

Right to choose representative

235. Nothing in this Part of the Code prevents an employee from being assisted by a representative of his or her choice, including an officer of a trade union which has not been registered or certified under this Code, in an individual grievance or disciplinary matter.

Access to employer's premises

236. (1) No employer shall deny to an officer or authorised representative of any trade union certified under this Code such access to the employer's premises as is reasonable and necessary for the lawful activities of the trade union.

(2) In granting the access required by subsection (1), an employer may impose such restrictions as to time and place which are reasonable and necessary to avoid undue disruption of operations and in the interest of safety.

Collective agreements

- 237.** (1) A collective agreement shall -
- (a) be committed to writing and signed by the parties to the agreement;
 - (b) contain the date on which it is to become effective;
 - (c) contain effective procedures for the avoidance and settlement of rights and interests disputes which procedures may include a reference of any dispute to conciliation, mediation or arbitration;
 - (d) contain provisions for the settlement of all differences arising out of the interpretation, application and administration of the agreement;
 - (e) provide for such other matters as may be agreed between the parties to the agreement;
 - (f) be lodged with the Minister or his or her designate.
- (2) Nothing in this section shall affect the validity of a collective agreement which is valid and existing immediately before the coming into force of this Code and such agreement shall remain in force until it expires or is replaced by another collective agreement.

Enforceability of collective agreements

- 238.** (1) A collective agreement is binding, unless stated otherwise, on a trade union and an employer that have entered into it and every employee who is a member of the signatory trade union or a member of the bargaining unit for whom that trade union has been certified.
- (2) The terms of the collective agreement are deemed to be incorporated into the employment contract of each employee who is a

member of the signatory trade union or a member of the bargaining unit for whom that trade union has been certified.

(3) Any party to a binding collective agreement may apply to the appropriate national judicial authority to enforce the provisions of the agreement.

Successor rights and obligations

239. (1) If a business or a part of it is sold, leased, transferred, or otherwise disposed or -

- (a) the purchaser, lessee or transferee is bound by all the proceedings under this Code that were commenced before the date of the disposition and the proceedings shall continue as if no change had occurred; and
- (b) if a collective agreement is in force, it continues to bind the purchaser, lessee, or transferee to the same extent as if it had been signed by the purchaser, lessee or transferee.

(2) Where a dispute arises regarding the applicability of this section, an affected party may apply to the national court for a determination of the matter in accordance with this Code.

Penalties

240. A contravention of any provision of this Part is an offence and where no specific penalty is fixed herein, the penalty shall be a fine on summary prosecution not exceeding five thousand dollars.

PART 17

MISCELLANEOUS

Limitation upon referring dispute or complaint

241. (1) A person shall refer a dispute or complaint to the Commissioner within six months of the ground for the dispute or complaint coming to the knowledge of that person.

(2) The Commissioner shall not investigate or resolve a dispute or complaint referred to him or her after the six-month period mentioned in subsection (1).

Limitation upon prosecution

242. Prosecution for an offence under this Code shall not be commenced after the expiration of one year from the date on which the Commissioner becomes aware of the offence.

Conflict between the Code and other law

243. To the extent that there may be conflict or inconsistency between any provisions of this Code and any other law relative to labour matters, the provision of this Code shall prevail.

Offence for which no penalty specified

244. Where a person contravenes a provision of this Act for which a penalty has not been specified, the person is liable on summary conviction to a fine not five thousand dollars.

Regulations

245. (1) The Governor in Council may make Regulations

- (a) prohibiting smoking in the workplace; and
- (b) giving effect to the principles and provisions of this Code.

(2) Regulations made under this section may provide that any breach of any regulation shall be punished by the imposition of a fine not exceeding five thousand dollars.

(3) Regulations made by the Governor in Council shall be published in the *Gazette*.

(4) Regulations made by the Governor in Council shall, as soon as convenient after its publication in the *Gazette*, be laid before the Parliament

Repeals and savings

246. (1) The undermentioned Acts are repealed-

- (a) Fair Labour Standards Act
- (b) Labour Department Act
- (c) Employment of Children (Restrictions) Act
- (c) Employment of Women, Young Persons and Children Act
- (e) Trade Unions Act

(2) Notwithstanding the repeal of the enactments mentioned in subsection (1),

- (a) any Rule, Order or Regulations made under the repealed enactments shall, until revoked, continue to be in force to the extent that the Rule, Order or Regulations is not inconsistent with the Code;
- (b) any requirement performed, table of fees, licenses or certificates issued, notice, decision, determination, direction or approval given, application made, or thing done, under any of the repealed enactments, shall, if in force on the date immediately prior to the coming into force of the Code, continue in force, or in the case of a license or certificate, continue in force until the date of expiry of the license or certificate as set out in the license or certificate, and shall, so far as it could have been made, issued, given or done under the Code have effect as if made, issued, given or done under the corresponding provisions of the Code.

