A BILL FOR

LABOUR CODE, 2018

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TABLE OF CONTENTS

SECTION

PART 1
PRELIMINARY

1. Interpretation
2. Application
3. More favourable terms and conditions not precluded

PART 2
ADMINISTRATION

4. Establishment of Labour Department
5. Duties and responsibilities of Commissioner
6. Institution of proceedings
7. Commissioner to have powers of inspector
8. Designation of labour inspectors
9. Duties and responsibilities of inspectors
10. Powers of inspectors
11. Inspection of premises where domestic workers are employed
12. Notification of presence
13. Limitations and restrictions on inspectors
14. Records and returns
15. Obligations of employers
16. Annual reports
17. Obstruction of Commissioner or inspector in the exercise of their powers and duties
18. Liability of employer
19. Limitation of liability

PART 3
SETTLEMENT OF DISPUTES

20. Procedure for the settlement of disputes
21. Action by Minister
22. Limitation on industrial action
23. Establishment of the Labour Tribunal and appointment of members
24. Findings of Tribunal binding
25. Powers of Tribunal to summon witnesses and administer oaths
26. Summons of Tribunal to be obeyed
27. Failure to obey summons of Tribunal
28. Tribunal to regulate own proceedings
29. Arbitration Act not to apply
PART 4

ADVISORY COMMITTEES

30. Tripartite consultation
31. Advisory Committee
32. Reports of Committee

PART 5

FUNDAMENTAL PRINCIPLES AND POLICIES

33. Core labour standards and fundamental Conventions of the International labour Organization
34. Policies underlying the Code

PART 6

BASIC CONDITIONS OF EMPLOYMENT

35. Particulars of contract
36. Probationary period
37. Normal hours of work and weekly rest
38. Meal intervals
39. Overtime pay
40. Payment where employee stopped or prevented from working full day or shift
41. Pay for period of stand-by or being on call
42. Payment in respect of public holidays
43. Distribution of service charge

PART 7

PROTECTION OF WAGES

44. Agreement to pay wages otherwise than in money, illegal
45. Agreement as to place or manner of spending wages, illegal
46. Wages to be paid entirely in money and on working day
47. Wages to be paid directly to employee
48. Wages not to be paid on certain premises
49. Pay periods
50. Authorised deductions
51. Prohibited deductions and deductions for work permit fees
52. Payment of wages on termination of employment
53. Employment benefits
54. Employee’s right to recover
55. Wages to be priority debt
56. Register of payments to employees
57. Limitations on attachment or seizure of wages
58. Employers to issue details of wage payments
59. Offences under this Part
60. Repayment of wages
61. Actual offender to be proceeded against
62. Prosecution to be instituted within one year of offence

PART 8
MINIMUM WAGES

63. Fixing of minimum wage
64. Establishment of Minimum Wage Committee
65. Procedure
66. Publication of recommended rates and power of Minister to make minimum wage
67. Matters for consideration in proposing a minimum wage
68. Effect of Minimum Wage Order
69. Posting of Minimum Wage Order
70. Offences in relation to this Part

PART 9
LEAVE

71. Annual holiday terms and conditions
72. Payment in respect of annual holiday
73. Exclusions from annual holiday
74. Paid annual holiday upon termination
75. Sick leave
76. Maternity leave
77. Additional period of maternity leave
78. Amount of maternity leave pay
79. Paternity leave
80. Entitlement to adoption leave
81. Employee not to be given notice of dismissal while on leave
82. Special leave for jury service and other purposes
83. Penalties and employee’s right to recover

PART 10
DISCIPLINARY ACTION, TERMINATION OF EMPLOYMENT AND CONTINUITY OF EMPLOYMENT

84. Disciplinary action by employer
85. Valid reason for disciplinary action and termination
86. Unfair dismissal
87. Constructive dismissal
88. Summary dismissal for serious misconduct
89. Warnings and termination for misconduct
90. Unsatisfactory performance
91. Dismissal for reason of incapacity or abuse of sick leave
92. Termination during probation
93. Termination with notice
94. Time off to seek alternative employment
95. Remuneration due upon dismissal
96. Burden of proof
97. Remedies for unfair dismissal
98. Recovery of wages and notice pay
99. Winding up of employer’s business, etc.
100. Death of employer
101. Certificate of employment
102. Continuity of employment
103. Rights of employees on change of ownership
104. Effect of sale of business
105. Termination due to redundancy
106. Criteria to be used in selection of employees for termination on grounds of redundancy
107. Severance pay
108. Retirement benefits

PART 11
EQUALITY OF TREATMENT IN EMPLOYMENT
109. Definition of “discrimination”
110. Prohibition of discrimination
111. Bona fide occupational qualifications
112. Reasonable accommodation for religious observances
113. National preference
114. Special positive action
115. Sexual harassment
116. Equal remuneration
117. Partnerships
118. Employer and employee organisations
119. Inducement to discriminate
120. Victimisation
121. Burden of proof
122. Offences and penalties under this Part

PART 12
PROTECTION OF CHILDREN AND YOUNG PERSONS
123. Prohibition of employment of children
124. Liability of parent or guardian
125. Restrictions on employment of young persons
126. Penalties
127. Inducement to commit an offence
128. Employment whether or not on contract, etc.
129. Registers to be kept
130. False representation as to age
131. Vacation or school work programme for students
PART 13
FORCED LABOUR

132. Interpretation
133. Prohibition of forced labour
134. Work done by prisoners

PART 14
HEALTH, SAFETY AND WELFARE

135. Interpretation
136. Duties of employers
137. Registration of workplaces
138. Risk assessment
139. Safety and health policy and emergency plan
140. Health
141. Safety
142. Welfare
143. Special protective measures
144. Protective clothing and devices
145. Hazardous materials
146. Special protection for pregnant employees
147. Employment of young persons on dangerous machines
148. Disposal of waste
149. Noise and vibration
150. Obligations of persons employed
151. Prohibition of deduction of wages
152. Safety and health representatives
153. Joint workplace safety and health committees
154. Special powers of inspector
155. Reports by employer
156. Duties of an owner
157. Extensions
158. Regulations and Orders
159. Non-exclusivity of this Part
160. Offences
161. Multiple offences
162. Penalties for specific offences
163. Power of court to order cause of contravention to be remedied
164. Penalty for person actually committing offence for which operator is liable
165. Proceedings where inspector or operator believes the offender to be other than operator
166. Records as evidence
167. Other remedies
PART 15

WORK PERMITS

168. Principles governing work permits
169. Work permit not a right
170. Categories of work permits
171. Role of Labour Commissioner
172. Engagement in employment
173. Exemptions
174. Application for a work permit
175. Matters to be considered on application for work permit by prospective employer
176. Matters to be considered for self-employed worker and prospective employee
177. Grant of a work permit and the employment contract
178. Obligation on applicant to inform of all relevant facts
179. Change of employer
180. Expiration or cancellation of work permit
181. Rights of work permit holder
182. Replacement
183. Fees
184. Offences

PART 16

TRADE UNIONS AND EMPLOYERS’ ORGANISATIONS

185. Interpretation
186. Exemption
187. Basic employee rights
188. Freedom of Association protection for employees
189. Protection of trade union from employer interference
190. No compulsion to join or not to join an organisation
191. Membership
192. Federations
193. Remedies
194. Register of trade unions
195. Registration
196. Constitution
197. Alterations in constitution or name
198. Annual return to Registrar
199. Legal status
200. Amalgamation
201. Defunct organisations
202. Restraint of trade not unlawful
203. Prohibitions of actions of tort against trade unions
204. Conspiracy in relation to trade disputes
205. Removal of liability for interfering with another person’s business
206. Peaceful picketing
207. Cancellation of certification of registration
208. Officers, accounts and audit
209. Withholding or misapplying trade union effects
210. Regulations
211. Registered office of union
212. Membership of minors
213. Improper election practices
214. Deposit and safeguard of funds
215. Application for recognition as bargaining agent
216. Application particulars
217. Appropriateness of bargaining unit
218. Employer recognition or notice
219. Certification following employer recognition
220. The majority trade union determined by poll
221. Employer’s duties in conduct of poll
222. Restrictions in conduct of poll
223. Employee’s duties in conduct of poll
224. Granting or refusing certification
225. Compulsory recognition and duty to negotiate in good faith
226. Duty of fair representation
227. Closing of undertaking
228. Effect of certification as the registered majority union
229. New collective agreement
230. Revocation of exclusive bargaining rights
231. Right of appeal
232. Right to choose representative
233. Access to employer’s premises
234. Collective agreements
235. Enforceability of collective agreements
236. Successor rights and obligations
237. Penalties

PART 17
MISCELLANEOUS

238. Limitation upon prosecution
239. Electronic documents
240. Electronic links
241. Disclosure of information
242. Leading evidence
243. Conflict between the Code and other law
244. Offence for which no penalty specified
245. Regulations
246. Repeals and savings
247. Consequential amendments
248. Citation
I Assent

Timothy J. Foy, OBE
Governor

Date

ANGUILLA

No. /2018

A BILL FOR

LABOUR CODE, 2018

An Act to provide for labour relations, the health and safety of workers and related matters.

[Gazette Dated: , 2018] [Commencement: under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla

PART 1
PRELIMINARY

Interpretation
1. In this Act—

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

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

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

“child” means a person of or below compulsory school age;

“collective agreement” means any contract between one or more employers or the organisation representing employers and 2 or more employees or the trade union representing employees concerning terms and conditions of employment or any other matter of mutual interest;
“collective bargaining” means negotiation between one or more trade unions and one or more employers or employers’ organisation for the purposes of concluding a collective agreement;

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

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

“compulsory school age” means the ages during which students are obliged to attend school in accordance with the Education Act;

“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 28 weeks of pregnancy, resulting in the birth of a child, whether alive or dead;

“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;

“continuous employment” means an uninterrupted period of employment with an employer, and any predecessor-employer, provided that any break in employment not exceeding 6 months shall not be deemed to break continuity of employment;

“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 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 an employment relationship than that of an independent contractor;

“dispute” means any difference between one or more employers or organisations representing employers and one or more employees or the trade union representing employees relating 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;
“domestic worker” means a person employed to carry out cleaning and other tasks in a private home which is not used for commercial or tourism purposes;

“employee” means any person who works under, or where a contract of employment has been terminated for any reason, a person who 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; “employer” includes a person or entity 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;

“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) in an employment relationship;

“employment relationship” means a relationship, where one or more of the following characteristics are present—

(a) the work—

(i) is carried out according to the instructions and under the control of another party,

(ii) involves the integration of the worker in the organisation of the enterprise,

(iii) is performed solely or mainly for the benefit of another person,

(iv) must be carried out personally by the worker,

(v) is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work,

(vi) is of a particular duration and has a certain continuity,

(vii) requires the worker’s availability, or
(viii) involves the provision of tools, materials and work equipment by the party requesting the work;

(b) periodic payment of remuneration to the worker—

(i) 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,

(ii) payment by the party requesting the work for travel undertaken by the worker in order to carry out the work, or

(iii) absence of financial risk for the worker;

“essential services” mean services whose interruption is deemed by the Minister to 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, police, prisons and ports;

“hazardous materials” mean a substance or material determined to be capable of posing an unreasonable risk to health, safety or property;

“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 employees from any premises in which work provided by the employer has been performed; or

(b) the total or partial discontinuance by the employer of his business or the provision of work;

with a view to inducing his 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;

“Minister” means the Minister responsible for Labour;

“night work” means work performed between the hours of 10:00 p.m. on one day and 6:00 a.m. on the following day;

“parent” in relation to any child or young person, includes—

(a) a guardian and every person who is liable to maintain or has the custody of the child or young person; and

(b) a person living as—

(i) husband with the mother of a child or young person, whether or not the person is the father, or
(ii) wife with the father of the child or young person, whether or not the person is the mother;

“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 services at intervals, so that the employee is not, in any 12 month period, continuously employed by that employer, and the term includes casual employment;

“permanent employee” means an employee who is engaged by an employer without any limitation on the period of engagement, or whose employment at the same business or successor business continues in excess of one year from the date of employment (excluding any probationary period);

“predecessor-employer”, in relation to the employment of a person, is one who, in consequence of a change occurring in the ownership or in that 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 is employed;

“recognised trade union” means a trade union recognised and certified as a bargaining agent for a bargaining unit;

“redundancy” has the meaning ascribed to in section 105 (2);

“remuneration” means the wage and any additional benefits, service charge, severance pay, retirement 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;

“retirement age” means the pensionable age as determined by the Social Security Act;

“serious misconduct” includes fraud, dishonesty, wilful damage to property, possession of illegal drugs or firearms or repeated abuse of alcohol, 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 of the employee during the notice period;

“service charge” means the fee or gratuity charged by a restaurant, 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.

“severance pay” means remuneration of an employee whose employment is terminated on grounds of redundancy;

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

“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;

“wages” mean sums payable by the employer to the worker in connection with the employment including any fee, bonus, commission, holiday pay or other emolument referable to the employment whether payable under his contract or otherwise;

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

“Young Person” means a person who has ceased to be a child and is under the age of 18 years.

Application

2. (1) Subject to subsection (2), the Code shall apply to all employers and employees except—

(a) the police;

(b) those employees of the Crown whose employment is governed by General Orders for the Anguilla Public Service;

(c) persons entitled to diplomatic immunities under the Diplomatic Immunities (Representatives of Overseas Countries) Act; and

(d) the master or member of the crew of a vessel if he is paid exclusively by a share in the profits.

(2) Parts 11, 12, 13, 14, 16 and 17 shall bind the Crown, public servants and the police.

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 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.

PART 2

ADMINISTRATION

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

5. The Commissioner is responsible for the day-to-day administration of the Labour Department and subject to the direction of the Minister shall—

(a) ensure the enforcement of the Code and such other laws that he may be required to enforce;

(b) assist through conciliation 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 opinion is or is likely to be prejudicial to the welfare of any class or group of employees or employers;

(d) receive and process applications for work permits in accordance with established regulations, policy and procedures;

(e) provide professional advice and make recommendations to the Minister on labour matters;

(f) provide technical advice to employers and employees and their respective organisations at their request on matters relating to the Code;

(g) promote social dialogue and effective co-operation between the Government, employers and employees on administration of the Code;

(h) collect data and statistics in a format agreed by the Director of 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 belongers 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 Organization that are extended to Anguilla;
(k) prepare and furnish the Minister with the annual report of the work of the Labour Department; and

(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.

Institution of proceedings

6. Subject to the Constitution of Anguilla, the Attorney General, upon information laid by the Commissioner, 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 behalf.

Commissioner to have powers of inspector

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

Designation of labour inspectors

8. (1) The Governor may, by Order published in the Gazette, designate a public officer as an inspector to assist the Commissioner in the execution of his duties.

(2) There shall be two categories of inspectors—

   (a) inspectors to monitor and enforce provisions of the Code relating to basic terms and conditions of employment, protection of wages, minimum wage, leave and work permit; and

   (b) inspectors to monitor and enforce safety, health and welfare provisions of the Code.

(3) 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 powers, shall produce the certificate.

Duties and responsibilities of inspectors

9. An inspector shall, under the general direction of the Commissioner—

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

   (b) give technical information and advice, whenever necessary, to employers and employees on 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 Code or other existing laws;

   (d) keep records, compile statistical data and make returns in the course of his duties as instructed by the Commissioner; and

   (e) assist, as required, in the resolution of disputes or complaints.
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 business or any workplace liable to inspection;

(b) interview 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 or cause to be carried out any examination, test or enquiry which he may consider necessary in order to ensure compliance with the Code;

(d) require the production of any books, registers or documents, required by the Code, relating to conditions of employment, and to investigate whether they comply with the Code, and copy such documents or make extracts from them;

(e) enforce the posting of notices as required by the Code;

(f) 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) secure a workplace in the event of an accident to ensure that the workplace or any part or thing therein shall be left undisturbed for so long as is reasonably necessary for the purposes of any examination or investigation.

(2) An inspector may be accompanied by a police officer or any other employee of the Crown who has power under any other law to inspect workplaces at any place where the inspector has reasonable cause to apprehend serious obstruction in the execution of his duty.

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

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

Inspection of premises where domestic workers are employed

11. Notwithstanding section 10(1)(a) and (b) an inspector shall not visit or inspect any private premises where domestic workers 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 representative.

Notification of presence

12. An inspector shall inform the employer or his representative of his presence as soon as practicable unless he considers that such notification may be prejudicial to the performance of his duties.
Limitations and restrictions on inspectors

13. (1) An inspector shall—

(a) not have a direct or indirect interest in any enterprise under his inspection or supervision;

(b) not reveal at any time manufacturing or commercial secrets which may come to his knowledge in the course of his 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 a complaint.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

Records and returns

14. (1) An employer shall, at an address in 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, 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 personal protective equipment issued to the employee, and

(b) a register of all employees under the age of 18 years and where applicable, shall keep at that address a copy of each written statement of working conditions furnished to an employee.

(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 6 years after the date of termination.

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

(4) An employer who contravenes subsections (1), (2) or (3) commits an offence and is liable on summary conviction to a fine not exceeding $10,000.
Obligations of employers

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

(a) permit the inspector access to the workplace;

(b) furnish the inspector with any information as will enable him to carry out his duties; 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,

(c) a status report on occupational safety and health; and

(d) other information as the Minister may specify in writing;

and the report shall be laid before the House of Assembly by the Minister not later than 3 months after receiving the report.

Obstruction of Commissioner or inspector in the exercise of their powers and duties

17. A person who without good reason—

(a) hinders or obstructs the Commissioner or an inspector in the exercise of the powers and duties conferred on him by the Code;
bill fails or refuses to permit his 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 exceeding $10,000.

Liability of employer

18. Where an agent of an employer commits an act or default, which constitutes an offence, the employer is liable, unless the employer proves that the offence was committed without his 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 administering the Code in respect of any act done in good faith under the Code.

PART 3
SETTLEMENT OF DISPUTES

Procedure for the settlement of disputes

20. (1) A party to a dispute arising out of any matter contained in the Code or the employment relationship must make a bona fide effort to resolve the dispute through negotiation with the other party.

(2) Where the parties have exhausted their efforts to resolve the dispute through negotiations, either party may report in writing the dispute to the Commissioner for conciliation, indicating the parties to the dispute, the nature of the dispute, the relief sought and the efforts made to resolve the dispute through negotiations.

(3) Upon receipt of the notice of dispute, the Commissioner shall within 21 calendar days investigate the matter and facilitate a voluntary settlement by conciliation.

(4) Where the Commissioner fails to achieve a settlement, he shall, within 14 days, transmit the matter as an unresolved dispute, with a full written report on the matter, to the Minister.

Action by Minister

21. On receipt of a report of an unresolved dispute transmitted by the Commissioner under section 21 (4) the Minister may—

(a) himself or herself attempt to achieve a voluntary settlement of the issue, taking whatever steps he deems appropriate, including consultation with the Commissioner;
(b) refer the matter to the Tribunal within 21 days; or

(c) prior to referring the matter to the Tribunal permit the parties to submit their dispute to mediation with their consent but if mediation fails the matter shall be referred to the Minister for further action.

**Limitation on industrial action**

**22.** (1) A strike shall not take place in an essential service.

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

(a) the parties have failed to resolve the dispute through negotiation and conciliation and the Minister has certified that the dispute is unresolved after conciliation;

(b) 50% plus one of the votes cast by affected employees voted in favour of a resolution for that action; and

(c) the recognised trade union has given at least 3 written notices to the Minister and the respective employer.

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

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

(a) the parties have failed to resolve the dispute through negotiation and conciliation and the Minister has certified that the dispute is unresolved; and

(b) the employer has given at least 3 working days written notice to the Minister, the employees and any recognised trade union, of an intention to embark on that action.

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

(6) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

**Establishment of the Labour Tribunal and appointment of members**

**23.** (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 Minister shall appoint a chairperson who is an attorney-at-law of at least 10 years’ standing.

(4) The 2 other members shall be appointed by the Minister upon recommendation of the parties to the dispute.

(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 term, except for misbehaviour or incapacity.
to perform his duties (whether arising from infirmity of body or mind), or where there is a conflict of interest or any other disqualifying factor.

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

(7) The Minister shall provide administrative support for the Tribunal.

Findings of Tribunal binding

24. (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 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 be bound by the rules of evidence in civil or criminal proceedings in determining any matter.

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

(6) For the purposes of enforcement, an order of the Tribunal shall be treated as if it were an order, by whatever name called, of the High Court.

Powers of Tribunal to summon witnesses and administer oaths

25. (1) A Tribunal may summon any person to attend before it 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 may administer oaths or take the affirmation of any witness appearing before them.

(4) A person who makes a false statement under oath or affirmation commits an offence and is liable on summary conviction to a fine not exceeding $5,000.

Summons of Tribunal to be obeyed

26. Any party appearing or any person summoned pursuant to section 25(1) to attend and give evidence or to produce any document or other record before a Tribunal shall be—
(a) bound to obey the summons served upon him; and

(b) entitled to the same rights or privileges as he would have before a court.

**Failure to obey summons of Tribunal**

**27.** A person who fails to obey a summons served upon him pursuant to section 25(1) commits an offence and is liable on summary conviction to a fine not exceeding $5,000.

**Tribunal to regulate own proceedings**

**28.** A Tribunal shall regulate its own proceedings and publish general guidelines concerning the procedures to be observed.

**Arbitration Act not to apply**

**29.** The Arbitration Act 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**

**30.** The Minister shall consult with employers and employees or their respective representatives from time to time on any matter affecting the administration of the Code and the relationship between employers and employees and conditions of employment in general.

**Advisory Committee**

**31.** (1) The Minister may appoint an Advisory Committee for a term not exceeding 5 years 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 and competitiveness;

(d) measures for the effective application of Conventions of the International Labour Organization extended to Anguilla; and

(e) 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 as well as any other representatives of 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 by the employers and employees organisations.

(5) A Committee may hold public meetings to seek views and recommendations of employers, employees and the general public.

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

Reports of Committee

32. (1) The Committee shall—

(a) issue reports with recommendations upon any matter referred by the Minister; and

(b) issue an annual report with recommendations 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 any minority reports.

PART 5
FUNDAMENTAL PRINCIPLES AND POLICY

Core labour standards and fundamental Conventions of the International Labour Organization

33. (1) The Code shall be interpreted, as far as practicable, in a manner that is consistent with the fundamental Conventions of the International Labour Organization, namely—

(a) Forced Labour Convention, 1930 (No. 29);

(b) Abolition of Forced Labour Convention, 1957 (No. 105);

(c) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);

(d) Right to Organize and Collective Bargaining Convention, 1949 (No. 98);

(e) Equal Remuneration Convention, 1951 (No. 100);

(f) Equality of Opportunity and Treatment in Employment and Occupation, 1958 (No.111);

(g) Minimum Age for Admission to Employment Convention, 1973 (No. 138); and

(h) Elimination of the Worst Forms of Child Labour, 1998 (No. 182).

(2) The Code shall be interpreted in a manner that is consistent with Conventions of the International Labour Organization that are extended to Anguilla as certified by the Governor in Council.
Policies underlying the Code

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

(a) the legitimate employment interests of belongers of Anguilla shall be paramount and override all competing concerns;

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

(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;

(d) the system of labour administration shall be implemented in a manner which is neutral, objective and independent of improper external influences;

(e) the Code shall be administered in a manner that provides employees and employers with access to a fair, inexpensive and efficient system of dispute settlement;

(f) 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;

(g) 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.

PART 6
BASIC CONDITIONS OF EMPLOYMENT

Particulars of contract

35. (1) An employer shall inform the employee, at the time of his employment, of the nature of the job, the terms and conditions of employment and the nature of any grievance procedure.

(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) The employer shall furnish the employee with a letter of employment within 10 working 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 and duration of the employment;

(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 (not being greater than one month);

(f) the regular hours of work, rest periods and overtime rates, if any;

(f) the length of any period of probation and the period of termination notice; and

(g) the employee’s leave (including sick leave and maternity leave) and vacation entitlement and the applicable rates of pay in each case.

(4) Where an employee may be required to perform any other duties not specified in his letter of appointment such other duties must be directly related to the employee’s job functions.

(5) Where any change in the existing terms and conditions of employment of an employee is contemplated, such change must be discussed with the employee or his trade union and must subsequently be communicated in writing to the employee no less than 30 days before such change.

(6) Any change envisaged in subsection (5) shall not be less favourable than the terms and conditions of employment, which the employee previously enjoyed, save for exceptional circumstances.

(7) Notwithstanding subsection (3), where there is no recognised trade union, the terms and conditions of an employee shall be reviewed periodically by the employer not less than once every 3 years.

**Probationary period**

36. (1) An employer may utilise probationary periods and where this is done the employer shall be guided by the following minimum standards from the date of commencement of employment—

(a) for manual and unskilled employees, a period not exceeding 4 weeks;

(b) for manual qualified, non-manual and clerical employees, a period not exceeding 3 months; and

(c) for supervisors and other similar employees, a period not exceeding 6 months.

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

(3) notwithstanding subsection (2), the employer may, where there is a valid reason for so doing and after consultation with the employee or his representative, extend the probationary period for a further period not exceeding the duration of the original probationary period and written notice of that extension shall be sent to the Commissioner.
(4) An employer shall, on or before the last day 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 he has satisfactorily completed the probationary period shall not place the employee on any further period of probation for the same job.

Normal hours of work and weekly rest

37. (1) The standard workday, exclusive of meal and other agreed intervals, shall be 8 hours and the standard workweek shall be 40 hours.

(2) An employer shall permit his employees to enjoy in every period of 7 consecutive days a period of rest comprising at least 24 consecutive hours.

(3) Except as provided in subsection (4), an employer shall not employ a person in excess of 12 hours in any period of 24 hours or in excess of 60 hours in a period of 168 hours.

(4) The Commissioner may approve in writing a temporary increase in the hours of work authorised by the Code in an establishment in the following circumstances—

(a) in the case of an actual or apparent accident, or urgent work to the plant or equipment;
(b) in the event of abnormal pressure of work due to special circumstances insofar 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 8 hours.

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

Meal intervals

38. (1) An employer shall not require or permit an employee—

(a) to work for more than 5 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; and

(b) to perform any work during his meal interval.

(2) An employer may agree with his employee to reduce the employee’s meal interval to not less than 30 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.
Overtime pay

39. (1) Subject to subsections (2), (3) and (4), for any hours of work accrued by an employee for his or her employer at the employer’s request on a rest day, or in excess of 8 hours on any work day or in excess of 40 hours in any week, the employer shall pay the employee at the rate of at least one and one half times his or her basic rate of pay.

(2) An employee who works on a public holiday shall be paid at the rate of twice his basic rate of pay.

(3) In arranging for overtime work, the employer shall take into account the special circumstances of young persons under 18 years of age, pregnant women, nursing mothers and persons with disabilities.

(4) The provisions of subsection (1) may not apply to an employee who holds a position of supervision or management and other salaried employees whose terms and conditions of employment are fixed at a level which adequately compensates them.

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

40. Where an employee, who is paid by the hour, 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 employer or anyone lawfully acting for him, payment to that employee shall be made on the following basis—

(a) where the employee works for more than 5 hours, the employee shall be paid for the day; or

(b) where the employee works for less than 5 hours, he shall be paid for the time so worked at his basic rate of pay.

Pay for period of stand-by or being on call

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

(2) Where an employee is required by his 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

42. (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 employer on a public holiday, he shall not suffer loss of pay, that is to say, he shall be paid the basic wage he would have received for the work performed on that day, had it not been a public holiday, provided that he worked on his scheduled work day immediately before and his scheduled work day immediately after the said public holiday.

(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.
Distribution of service charge

43. (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 employees every 4 weeks in accordance with this section.

(2) Where the establishment has at least 5 employees, the employer shall establish a Service Charge Committee (in this section called the “Committee”) for the periodic distribution of the service charge.

(3) The Committee shall consist of 4 representatives as follows—

(a) 2 persons appointed by the employer to represent the employer; and

(b) 2 persons representing the employees to be elected by the employees.

(4) The election in subsection (3) shall take place within the first 6 weeks of each year and the elected persons shall each 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 a person so elected is unable for any reason to serve his full term, the employees may elect another person to represent them in his stead or for the remainder of the term and shall file the result of the election with the Commissioner within 14 days of obtaining that result.

(5) The total amount of service charge accumulated over every period of 4 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.

(6) The employer shall prepare a record showing the total amount of service charge accumulated in each period of 4 weeks (the total amount of Government tax which has been deducted, if applicable) 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 employee.

(7) Tips or gratuities paid to an employee for his personal service are the sole property of the employee.

(8) An employer or his agent who fails to distribute service charge in accordance with this section commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

(9) Where an employer or his agent is found to be guilty under section (8) the Court shall order the employer or agent to pay the amount of service charge outstanding along with any interest accruing.

PART 7
PROTECTION OF WAGES

Agreement to pay wages paid otherwise than in money, illegal

44. (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 accepted in Anguilla.

(2) An agreement to pay wages 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 Anguilla and the cheque is dishonoured by non-acceptance upon presentation for payment, the employer is liable to pay to the employee, in addition to the employee’s wages—

(a) \( \frac{1}{10} \) of the value of the employee’s cheque; and

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

**Agreement as to place or manner of spending wages, illegal**

45. (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 and void.

(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 seeks to impose on an employee a condition as to the place or manner in which the employee’s wages are to be spent is guilty of an offence under the Code.

**Wages to be paid entirely in money and on working day**

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

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

**Wages to be paid directly to employee**

47. 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 in writing.

**Wages not to be paid on certain premises**

48. 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.

**Pay periods**

49. (1) An employer shall pay or cause to be paid wages to his 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.
Authorised deductions

50. (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.

(2) The total sum, which may be deducted in any pay period, shall not exceed 1/3 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, and such amount 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 duty, or has admitted to theft.

Prohibited deductions and deductions for work permit fees

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

(2) Except for work permit fees, an employer shall not seek to recover from an employee, whether by way of deduction from wages or otherwise, any sum or fee incurred in relation to the recruitment of the employee, including visa fee or security bond.

(3) Subject to the direction of the Labour Commissioner and after consultation with the employee, an employer may deduct a reasonable amount of wages to cover no more that 50% of the amount of the work permit fee.

(4) The Labour Commissioner may direct the amount of work permit fees to be deducted from the employee’s wages if the Labour Commissioner is satisfied that the deductions made by the employer are unreasonable.

(5) Where an employer intends to deduct work permit fees from an employee who is being recruited from overseas, the employer shall inform the employee in writing of the amount of fees to be deducted prior to the employee accepting the contract of employment or departing the overseas jurisdiction.
(6) Nothing in this section precludes an employer from granting a loan with interest to his employee provided that the loan is not an advance on unearned salary.

Payment of wages on termination of employment

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

(2) In the case of casual employees wages shall be paid immediately on completion of the work.

Employment benefits

53. (1) An employer shall pay to the employee the full amount of wages in cash only and any agreement to do otherwise is void.

(2) As part of the overall employment package an employer may, in addition to the payment of wages, pay to an employee employment benefits in cash or kind including—

(a) accommodation, utilities, health care and other amenities supplied at the sole expense of the employer;

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

(c) severance benefits, retirement benefits and gratuity;

(d) shares, stocks, bonds or other corporate benefits; and

(e) other gifts.

(3) Employment benefits must be—

(a) of fair and reasonable value and appropriate to the monetary value placed on the benefit;

(b) of personal benefit and appropriate for the employee or his family; or

(c) customary or desirable in the particular industry or occupation concerned.

(4) Employment benefits must not—

(a) be in the form of liquor, tobacco, cigarettes, weapons, noxious drugs or substance; and

(b) exceed in its cash value $\frac{1}{3}$ of the employee’s regular wages for a completed pay period and this refers only to benefits in kind.

(5) The question of whether or not employment benefits are within the meaning of this section shall be decided by the Commissioner and the Commissioner’s decision shall be final.
Employee’s right to recover

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

Wages to be priority debt

55. 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

56. An employer shall keep a register of payment of wages, service charge distributions, and all other payments to his 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

57. (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 $\frac{1}{2}$ in respect of maintenance payments;

(b) up to $\frac{1}{3}$ 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

58. (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; and
(h) the amount of the net wage paid to the employee.

Offences under this Part

59. An employer or his 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 wages due to him as required under this Part;

(e) pays an employee wages in whole or part in the form of intoxicating liquor, tobacco, cigarettes, noxious drugs or substance contrary to this Part;

(f) fails to distribute a service charge, share of profits or commission contrary to this Part;

(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 $10,000.

Repayment of wages

60. (1) On conviction of an employer under this Part, the court shall have power to order the employer to pay the employee his wages or any part of his 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

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

(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 believed to be the actual offender in the first instance without first proceeding against the employer.

Prosecution to be instituted within one year of offence

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

PART 8
MINIMUM WAGES

Fixing of minimum wage

63. (1) The Minister 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 or trade or occupation, 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 Minister 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

64. (1) The Minister may at any time 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 include the following 7 members appointed by the Minister—

(a) 2 members representing employers and 2 members representing employees of which one member from each group should be from the hotel and tourism industry;

(b) one member nominated by the Social Security Board; and

(c) 2 other persons the Minister deems fit.

(3) The Minister shall appoint the chairperson of the Committee from the members under subsection (2) and where no secretary has been nominated the chairperson may act as secretary to the Committee.

(4) The members representing employers and employees shall be appointed by the Minister after consultation with representative organisations of the employers and employees
concerned and in the absence of such organisations, with the employers and employees concerned.

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

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

Procedure

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

(2) A quorum shall consist of a simple majority of the members of the Committee including the Chairperson or, in the Chairperson’s absence, the Deputy Chairperson and one member each from the employees and employers groups.

(3) In the case of an equality of votes, the Chairperson shall, in addition to his 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 Minister to make minimum wages

66.  (1) On receipt of the recommendations from the Committee, the Minister shall cause the rates recommended to be published in the Gazette and the public shall be given a period of at least one 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 Minister may issue an Order prescribing the minimum rates of wages payable and any other related matters.

Matters for consideration in proposing a minimum wage

67.  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.

Effect of Minimum Wage Order

68.  (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 employee 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 employer shall not reduce his wages or terms and conditions of employment to those prescribed in the Minimum Wage Order.

Posting of Minimum Wage Order

69. 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

70. An employer who contravenes this Part commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

PART 9

LEAVE

Annual holiday terms and conditions

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

(a) 12 working days where he is employed with the employer for less than 5 years;

(b) 15 working days where he is employed with the employer for more than 5 but less than 10 years; and

(c) 20 working days where he is employed for 10 and more years.

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

(3) Where practicable, the annual paid holiday shall be given and taken in one period, or not more than 2 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) Unless otherwise agreed in writing between the employer and the employee, the annual paid holiday shall be taken by the employee before the end of 3 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) 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.
(7) Periods of absence from work due to maternity leave, or to illness or injury for a period not exceeding 3 months shall not be deducted from the period of an employee’s service for the purpose of the calculation of annual paid holiday entitlement.

**Payment in respect of annual holiday**

72. (1) An employee’s annual holiday pay shall be calculated on the basis of the employee’s wages in respect of the period of employment to which such annual holiday relates.

(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.

**Exclusions from annual holiday**

73. 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.

**Paid annual holiday upon termination**

74. (1) Where an employee’s employment has been terminated, he shall be paid wages in lieu of annual paid holiday or proportionate part due and not taken.

(2) Where the employee has taken his paid annual holiday in advance of his 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**

75. (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 one day for every 22 days worked, provided that he has worked for his 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 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 employer for any period of illness—
(a) in respect of which he 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 fails to notify his employer within the first working day of his illness, and if the period exceeds 2 days, to furnish the employer with a certificate from a duly qualified medical practitioner, stating that he is unfit for work due to an illness and specifying the period of unfitness for work.

(5) 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 Act.

Maternity leave

76. (1) Subject to section 78, on the production of a certificate from a duly qualified medical practitioner stating the presumed date of confinement, a female employee who has—

(a) completed 12 months continuous employment shall be granted a period of maternity leave with pay by her employer; or

(b) been employed for less than 12 months shall be granted a period of maternity leave with pay by her employer but such leave shall be prorated.

(2) The period of maternity leave shall not be less than 14 weeks of which not less than 6 weeks compulsory leave shall be taken after the date of confinement.

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

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

Additional period of maternity leave

77. 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, without pay, not exceeding 3 months.

Amount of maternity leave pay

78. The employer shall pay to an employee, during the full period of maternity leave not exceeding 14 weeks, the basic wage and remuneration, less any amount payable as maternity benefits under the Social Security Act.

Paternity leave

79. Where a female employee is granted maternity leave under this section, the husband or father of the baby shall be granted paternity leave without pay for such period as requested in the application; but in any case not exceeding one month in any given year to be taken during the
period beginning with the date of confinement and ending not later than 6 months from the birth of the child.

**Entitlement to adoption leave**

80. An employee is entitled to leave of 4 weeks after adoption of a child but the child must be no more than 3 years.

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

81. An employer is prohibited from giving a notice of dismissal to—

(a) a female employee on maternity leave;

(b) a male employee on paternity leave; or

(c) an employee who is on leave in relation to the adoption of a child.

**Special leave for jury service and other purposes**

82. (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 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 Court under this Code.

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

**Penalties and employee’s right to recover**

83. (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 this Part;

commits an offence and is liable on summary conviction to a fine not exceeding $10,000, and for each subsequent offence to a fine not exceeding $10,000.

(2) An employee shall be entitled to recover in a court so much of his wages as have not been paid to him, 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

84. (1) An employer may take disciplinary action against an employee for misconduct including a breach of employer’s policy or unsatisfactory performance when it is reasonable to do so in 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 of up to 2 weeks with or without pay;
(d) demotion;
(e) dismissal.

(4) Where an employer disciplines an employee, the employer shall not impose a fine or monetary penalty on the employee as a further measure of disciplinary action.

(5) Subsection (4) shall not prevent an employer from recovering from an employee the cost of property wilfully damaged by the employee.

Valid reason for disciplinary action and termination

85. (1) It is unlawful for an employer to discipline or dismiss an employee without a valid and fair reason for such discipline or termination connected with the capacity or conduct of the employee or with the operational requirements of the undertaking, establishment or service.

(2) An employer shall not discipline or terminate the appointment of an employee unless the 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 representative a fair opportunity to defend himself or herself.

(3) The Tribunal or Court may award an amount as it considers appropriate in all the circumstances to compensate an employee for any financial loss sustained by him or her which is attributable to the imposition of unfair or invalid disciplinary proceedings or unfair or wrongful termination.

Unfair dismissal

86. (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, nationality, social origin, political opinion or affiliation, trade union affiliation or activity, disability, sexual orientation, gender identity, HIV status, 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 choice;

(e) the employee’s temporary absence from work due to illness or injury taken in accordance with the Code;

(f) the employee’s absence from work due to compulsory military service, national service, public duty or other civil obligation in accordance with law;

(g) 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;

(h) the employee’s participation, or proposed participation, in legitimate industrial action, including strikes;

(i) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of the Code.

(2) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

Constructive dismissal

87. (1) An employee is entitled to terminate his 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 constructive dismissal has been proven, the employee shall be deemed to have been unfairly dismissed by the employer.

Summary dismissal for serious misconduct

88. (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 abuse of alcohol 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 a 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 or has a detrimental effect on the business of the employer or the work relationship.

(4) When terminating an employment contract under 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

89. (1) Where an employee is found to be in breach of his terms and conditions of employment or is guilty of any misconduct such that the employer cannot reasonably be expected to continue to employ him if it is repeated, the employer shall 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 terms and conditions of employment or is guilty of any misconduct in the following 12 months, the employer shall suspend the employee with or without pay for a period of up to 2 weeks 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 2 more times or warned and suspended is again found to be in breach of his terms and conditions of employment or is guilty of any misconduct in the following 12 months, the employer may dismiss the employee.
(4) An employer shall be deemed to have waived his right to dismiss an employee for a particular offence if he has failed to do so within 12 months after knowledge of the particular offence provided that any investigation has been completed.

(5) Where a warning is issued to an employee under this section, a copy of that warning shall be forwarded to the Commissioner.

**Unsatisfactory performance**

90. (1) Where the employee is not performing his 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, in writing, a further 2 times, does not during the following months demonstrate that he is able to perform and that he has performed in a satisfactory manner, the employer may dismiss the employee.

**Dismissal for reason of incapacity or abuse of sick leave**

91. (1) Where an employee has been—

   (a) continuously ill for a period exceeding 26 weeks and absent from his job; or

   (b) injured in a manner that makes it difficult or impossible for him to continue to perform his job;

the employer, after a qualified medical practitioner has certified such incapacity and it is determined that the employee is incapable of performing his 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 or amounts to an abuse of sick leave, the employer may seek to discipline the employee 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.

**Termination during probation**

92. An employer may terminate the employment contract of an employee at any time during the probationary period for any valid and fair reason.

**Termination with notice**

93. (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 one year’s service, one week,

      (ii) one 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 one year’s service, one month,

(ii) one 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.

(3) Where an employee intends to resign, he must give the employer notice similar to what he was entitled to receive from his 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 been employed during that period.

**Time off to seek alternative employment**

**94.** Where an employer gives an employee notice of termination his employment contract, the employee may, if he so requests, be granted reasonable time off with pay by the employer to seek alternative employment.

**Remuneration due upon dismissal**

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

**Burden of proof**

**96.** (1) 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 and in accordance with the principles and practices of good industrial relations.
Remedies for unfair dismissal

97. (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 annual paid holiday pay earned, but not taken;

(b) any wages lost by the employee, on account of the dispute, up to the date of determination of the issue by the Tribunal;

(c) the termination notice to which the employee would have been entitled and the manner in which the employee was dismissed;

(d) the employment category of the employee, his seniority and the ease or difficulty with which he can secure alternative employment; and

(e) the duty of the employee to seek to mitigate his losses.

Recovery of wages and notice pay

98. (1) An employer shall pay outstanding remuneration and holiday pay due to an employee whose service has been terminated 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.

99. (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 behalf, to the following payments to which he 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 service charge relating to work performed during the 26 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 12 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.

Death of employer

100. 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

101. (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

102. 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 2 days or illness certified by a qualified medical practitioner where the absence from work exceeds 2 days;

(c) occupational injury;
Rights of employees on change of ownership

103. (1) Where there is a change of ownership of a business or undertaking and the successor-employer offers any or all employees continued employment with the business, the employees shall carry forward their service and accrued rights to the successor-employer.

(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 this section.

(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.

Effect of sale of business

104. 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.

Termination due to redundancy

105. (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 because—
(a) the employer has modernised, automated or mechanised all or part of his business;

(b) the employer has discontinued to carry on all or part of his business;

(c) the employer has sold or otherwise disposed of all or part of the business;

(d) the employer has reorganised or relocated his business to improve efficiency;

(e) the employer’s need for employees in a particular category has ceased or diminished;

(f) it has become impossible or impracticable for the employer to carry on his 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

(g) 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 recognised 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 recognised 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 but not less than 6 weeks before the intended date of 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 decides to hire a person, within a period of 6 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.

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

106. (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; or

(e) 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 terminated.

Severance pay

107. (1) On termination of employment due to redundancy, an employee who has completed one year of continuous service with his 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 5 years;

(b) 2 weeks’ wage for each completed year of service in excess of 5 years and up to 10 years;

(c) 3 weeks’ wage for each completed year of service in excess of 10 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 employee over the last year preceding his 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.
(4) Severance pay shall only apply in respect of the service of the affected employee rendered after the commencement of the Code.

Retirement benefits
108. (1) Notwithstanding any contractual term, an employer shall make provision for retirement benefits to be paid to his 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 20 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 matching that of employees.

PART 11
EQUALITY OF TREATMENT IN EMPLOYMENT

Definition of “discrimination”
109. (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 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

110. (1) Subject to sections 111, 112 and 113, 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 person for purposes of training, apprenticeship or employment, discriminate against that 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 or performed;

(e) the creation, classification or abolition of jobs.

(2) Subject to sections 117, 118 and 119, 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 detriment or 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

111. (1) Nothing in section 110 shall apply to any distinction, exclusion or preference based on the grounds listed in section 109 (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 status, 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) in relation to 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 person with disability which the employer cannot reasonably be expected to perform.

Reasonable accommodation for religious observances

112. (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 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 committed an act of discrimination under this Part.
(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.

**National preference**

113. (1) An employer shall—

(a) seek to employ, promote or advance a belonger of Anguilla in preference to a non-belonger where such national is found to be qualified and competent; and

(b) not terminate the employment of a belonger in preference to a non-belonger where there is no other substantial justification for the dismissal.

(2) The court retains the right to determine on a balance of probabilities whether the employer has taken action either directly or indirectly to defeat the purpose of subsection (1).

(3) Where it is found that the employer took action either directly or indirectly to defeat the purpose of subsection (1), the employer shall be made to pay aggravated or exemplary damages.

**Special positive action**

114. 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**

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

**Equal remuneration**

116. (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**

117. (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 109—
(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

118. 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 110—

(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 limiting his access to any benefits, facilities or services provided by the organisation;

(ii) by depriving him of membership or varying the terms of membership;

(iii) by limiting his, or depriving him of, access to, or the acquisition of, leadership positions within the organisation; or

(iv) by subjecting him to any other detriment.

Inducement to discriminate

119. (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 inducement or 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.

Victimisation

120. (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 $10,000.

(2) For the purposes of subsection (1), a person shall be taken to commit an act of victimisation against an employee if he 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 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).

(3) Notwithstanding subsection (2), an employee may bring a claim for victimisation on any other ground that threatens or subjects the employee to detriment which includes but is not limited to—

(a) violating the employee’s dignity;

(b) harassing the employee; or

(c) by creating an intimidating, hostile, degrading, defeatist, humiliating or offensive work environment.

(4) For the purpose of subsection (3), “harassing” means that the employer either directly or indirectly engages in conduct whether singly or over a period of time which is determined to be unreasonable and oppressive.

(5) In deciding whether conduct amounts to victimisation each of the following must be taken into account—

(a) the perception of the employee;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(6) Victimisation may occur after the termination of the employment.

(7) Where it is found that the employer victimised an employee, the Court shall order the employer to pay aggravated or exemplary damages.

Burden of proof

121. (1) 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 of discrimination, inducement or
attempted inducement, as the case may be, upon which the burden of proof shall shift to the respondent to prove otherwise.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provision concerned, the court must hold that the contravention occurred.

**Offences and penalties under this Part**

122. (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 $7,000 and for a second or subsequent offence, to a fine not exceeding a further $10,000.

(2) Where any partnership, or group of persons proposing to form themselves into a partnership, contravenes section 110(1), the individual partners shall, upon the contravention being proved, be each liable to a fine not exceeding $7000 and for a second or subsequent offence, to a fine not exceeding a further $10,000.

(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.

**PART 12**

**PROTECTION OF CHILDREN AND YOUNG PERSONS**

**Prohibition of employment of children**

123. (1) Subject to subsection 3, it is unlawful to employ a child.

(2) A person who employs or causes to be employed a child, subject to exceptions provided for in subsection (3), commits an offence and is liable on summary conviction to a fine not exceeding $8,000, and in the case of a second or subsequent offence to a fine not exceeding $10,000.

(3) A person may, during an academic year, employ a child who has attained the age of 14 years—

(a) during the prescribed vacation periods;

(b) on Saturday, Sunday or any other day on which the child is not required to attend school;

(c) at any time, other than during school hours, if—

(i) the employment of the child is part of a school programme to prepare students for future employment, or
(ii) the child is employed by his or her parent—

(A) at home in domestic work or light agricultural or horticultural work; or

(B) in an undertaking in which only members of the child’s family are employed.

Liability of parent or guardian

124. 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 proves that the employment occurred without his knowledge, consent, acquiescence or connivance and is liable on summary conviction to a fine not exceeding $8,000, and in the case of a second or subsequent offence to a fine not exceeding $10,000.

Restrictions on employment of young persons

125. (1) A person shall not employ a young person unless that young person has been found fit for the work he 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 year and that he is fit for the work that he is expected to perform.

(2) 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 6:00 a.m. on the following day.

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

(4) 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 (4), “rehabilitation” shall include access to education, training and social welfare.

Penalties

126. A person who contravenes section 124 commits an offence and is liable on summary conviction to a fine not exceeding $10,000 and in the case of a second or subsequent offence to a further fine not exceeding $10,000.

Inducement to commit an offence

127. A person who employs or induces another to employ or procures the employment of a or young person in the worst form of child labour, commits an offence and is liable on summary conviction to a fine of $20,000 or imprisonment for a term not exceeding 2 years or both.

Employment whether or not on contract, etc.

128. A child or young person is considered employed whether or not he is in an employment contract or is paid or not paid for his services.
Registers to be kept

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

(2) The register referred to in subsection (1) shall contain particulars of the names, addresses and dates of birth of young persons, the names and addresses of their parents or guardians 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 $10,000, and in the case of a second or subsequent offence to a further fine not exceeding $10,000.

False representation as to age

130. 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 $10,000, and in the case of a second or subsequent offence to a fine not exceeding $10,000.

Vacation or school work programme for students

131. (1) The prohibitions and restrictions under this Part on the employment of children and young persons shall not apply to students who participate in any 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.
PART 13
FORCED LABOUR

Interpretation

132. 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

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

(2) Notwithstanding anything contained in paragraphs (b) and (c) of section 132, 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 $10,000 or imprisonment for a term of 2 years or both.

Work done by prisoners

134. 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

Interpretation

135. In this Part, unless the context otherwise requires—

“construction 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 services, and the expression “to employ” shall be construed accordingly;

“employer” means any person or undertaking, corporation, company, public or Government 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 subcontractor, employment agency; and includes the heirs, successors and assigns of an employer;

“hazardous material” means any item or agent (biological, chemical, radiological or physical) which has the potential to cause harm to humans, animals or the environment either by itself or through interaction with other factors;

“occupier” means the person who has the ultimate control over the affairs of a workplace or any other place of employment or work and includes the self-employed;

“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, (but not the operator of a machine or implement), or a self-employed person;

“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 to oversee quality control at a construction site; and

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

“work equipment” means any equipment, machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not).

**Duties of employers**

136. (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 the Code and the Regulations are carried out;

(c) every supervisor and every employee performing work complies with the Code and the Regulations;

(d) every reasonable precaution is taken in the circumstances for the protection of an employee;

(e) reasonable precaution is taken in the circumstances to protect the general public who comes into contact with the work site or who is affected by the undertaking;

(f) a written occupational Health and Safety Committee is prepared and reviewed at least annually in consultation with the Health and Safety Committee or safety and health representative, if any, or an employee selected by the employees 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, protective devices and clothing are provided and where a risk assessment is done the employer shall provide the equipment, materials, protective devices and clothing identified by the assessment as being required;

(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, work equipment and processes under his control are safe and without risk to safety and health as far as is reasonably practicable;

(l) that the work equipment is in good condition; and

(m) that the work equipment complies with the Code and the Regulations.
Registration of workplaces

137. (1) The employer and operator of a workplace shall, within 6 months of the Code coming into force, file with the Commissioner a notice stating—

(a) the hazardous materials present in the workplace and indicating whether the workplace is a major hazard; 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 the Code shall, within 3 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.

Risk assessment

138. (1) Every employer shall make a suitable and sufficient assessment of—

(a) the risks to the safety and health of his 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 employment arising out of or in connection with the conduct by him of his undertaking;

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

(2) Any assessment referred to in subsection (1) 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 20 or more employees, he shall record—

(a) the significant findings of the assessment; and

(b) any group of his employees identified by it as being especially at risk.

(4) Arising out of the risk assessment, the employer shall take measures to prevent and control the risk and shall inform his employees of the risks identified and the measures adopted to prevent or control the risk.

(5) An employer must file an annual risk assessment report with the Department of Labour by 31 December of every year.
Safety and health policy and emergency plan

139. (1) An employer of a workplace where 20 or more employees are employed shall prepare or revise, in consultation with the employees’ representatives—

(a) a written statement of his 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 the Code; and

(b) an emergency plan in writing, in collaboration with the Department of Disaster Management and Fire Services Department, based on a risk assessment which shall include—

(i) suitable and rapid means of obtaining first aid help and transportation from the workplace to a hospital for injured workers, and

(ii) measures and procedures to be used to control hazards identified in their risk assessment, to react to serious damage to the workplace, to evacuate the workplace 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 of bodily injury.

Health

140. The employer and operator of a workplace shall—

(a) keep the workplace in a clean state and orderly manner;

(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;

(g) provide adequate sanitary conveniences; and

(h) implement a regular and effective regime to prevent the breeding of insects, rats, mice or other vermin.

Safety

141. (1) The employer and operator of a workplace shall—

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

c) ensure that the workplace is properly maintained;

d) provide safety training, where appropriate;

e) provide fire extinguishers for the class of fires;

(f) provide personal protective equipment;

(g) provide measures on notification of employer in the event of a hazard or accident.

(2) The employer is entitled 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 to request the employee to take a drug test.

Welfare
142. 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 hand 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 kit; and

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

Special protective measures
143. It is the responsibility of the employer of any workplace to take measures to mitigate the risks identified in the risk assessment and, 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 moisture 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.

Protective clothing and devices

144. (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 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 materials

145. (1) An employer shall—

(a) ensure that all hazardous materials present in the workplace are labelled in a way easily understandable to the employees, or are identified in the prescribed manner;

(b) obtain or prepare, as may be prescribed, a chemical safety data sheet for all hazardous materials 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 materials 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 materials which are no longer required and containers which have been emptied but which may contain residues of hazardous materials, so that the risk to safety and health and to the environment is eliminated or minimized.

(2) An employer shall ensure that a hazardous material is not used, handled or stored in the workplace 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 chemical safety data sheet required by this Part in respect of hazardous materials 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 the 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 hazardous materials.

(6) An employer shall—

(a) ensure that protective equipment necessary for handling hazardous materials 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 risk of injury or of contracting a disease caused by contact with the hazardous materials;

(c) keep a record of the results of examinations and assessments under paragraph (b) which shall include the monitoring of the work environment.

Special protection for pregnant employees

146. (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 6 months after the 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.
Employment of young persons on dangerous machines

147. (1) In every workplace, a young person shall not work at a machine, unless he 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, documented and signed by himself or herself, 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 of a dangerous character that a young person ought not to work at them unless the requirements of subsection (1) are observed.

Disposal of waste

148. An employer shall comply with the laws regulating the disposal of wastes and effluents and in any event shall not dispose of them in a manner that results in any danger to persons, property or to the environment.

Noise and vibration

149. (1) An employer shall take adequate steps to prevent hearing impairment caused by noise, and diseases caused by vibration, from occurring to persons in his 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

150. (1) An employee shall make use of all means, appliances, conveniences or other things provided under the Code for the health, safety and welfare of employees, to the extent that his 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 employer or supervisor—

(a) the absence of, or defect in, any equipment or protective device and clothing of which he 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 is aware;

(c) report any hazardous situation.

Prohibition of deduction of wages

151. The operator of a workplace shall not, in respect of the cost of anything done or to be done by him 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 to any person employed, nor shall he receive or allow any other person to exact or to receive any payment in lieu of such deduction.

Safety and health representatives

152. (1) The employer shall, at a construction site or other workplace where a committee is not required and where the number of employees regularly exceeds 5, cause the employees to select at least one safety and health representative from among the employees at the workplace who does not exercise any 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.

Joint workplace safety and health committees

153. (1) Subject to subsection (2), a joint workplace Health and Safety Committee is required at a workplace at which 20 or more employees are regularly employed.

(2) This section does not apply—

(a) to an employer at a construction site at which work is expected to last less than 3 months; or

(b) to such employer or workplace or class of employers or workplaces as may be prescribed by Regulations.
(3) A committee shall consist of—

(a) at least 4 persons, for a workplace where fewer than 50 employees are regularly employed; or

(b) at least 6 persons or such greater number of persons as may be prescribed, for a workplace where 50 or more employees are regularly employed.

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

(5) 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.

(6) Where there is a trade union or trade unions representing the employees referred to in subsection (1), the selection of the members of a committee referred to in subsection (1) may be delegated by a majority of such employees to the trade union or trade unions.

(7) 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.

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

(9) 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.

(10) 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 (d) conducted in or about the workplace if the designated member believes his presence is required to ensure that valid testing procedures are used or to ensure that the test results are valid.

Special powers of inspector

154. (1) An inspector may take for analysis samples of material used or intended to be used in a workplace which he reasonably believes 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 person employed or performing duties, shall serve written notice upon the operator thereof of an intention to recommend that the Commissioner issues a direction in accordance with subsection (3).

(3) The Commissioner may issue the following directions—

(a) the cessation, immediate or otherwise, of any activity, operation or process;

(b) the vacation, immediately or otherwise, of any premises;

(c) the alteration of any premises or plant;

(d) the introduction of such temporary measures as may be expedient pending the institution or completion of permanent measures; or

(e) with the written consent of the Minister, closure of the workplace.

(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 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

155. (1) An employer shall, within 8 hours of death and 24 hours of a non-fatal accident referred to in this section, report to—

(a) the Commissioner, the joint workplace Health and Safety Committee, the employees’ safety representative and the recognised trade union an accident involving an employee, or any other person present in the workplace, which result in disability 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 work equipment or plant which results in the cessation of work beyond the shift or day on which the accident took place.

(2) An employer shall provide a report containing remedial action and preventative measures to the Commissioner within 30 days from the occurrence of any of the events in subsection (1).

Duties of an owner

156. The owner of a workplace that is not a construction site shall ensure that—

(a) the facilities as prescribed by Regulations are provided;

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

(c) the workplace complies with the Code and the Regulations.

Extensions

157. (1) The Minister may by Order extend the time for compliance of any of the provisions under this Part.

(2) An extension made under subsection (1) shall be effective for not more than 6 months and where there is a further extension by the Minister the Order shall set forth the reason for that further extension.

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

Regulations and Orders

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

(2) The Commissioner may, by directions require—

(a) the operator of a workplace to take special measures bearing on the health, safety or welfare of employees;

(b) 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) arrangements to be made for medical supervision in any workplace; or

(d) 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

159. 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

160. (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 Regulations or Order or 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, as well as the operator, is liable to be proceeded against.

Multiple offences

161. Where an employer employs persons in a workplace other than in accordance with this Part or any Regulations or Order, a separate contravention is committed in respect of each person so employed.

Penalties for specific offences

162. (1) A person who fails to comply with this Part commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

(2) A person who—

(a) forges or counterfeits any certificate or any recordkeeping 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 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;
(i) knowingly makes use of any false entry or declaration referred to in paragraph (g) or (h); or

(j) encourages an employee to make a false statement (whether that statement is written or verbal);

commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

(3) The operator of a workplace who—

(a) obstructs or delays an inspector in the due exercise of any power conferred on him 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 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 $10,000.

Power of court to order cause of contravention to be remedied

163. 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, 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

164. 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 were the employer or operator.

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

165. (1) When it appears 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 wilful fault of the operator,

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

(2) Where the Commissioner is satisfied that a contravention of this Part has occurred, he shall refer the matter to the Attorney General.
Records as evidence

166. (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 as prima facie evidence of the facts stated in the register or record; and

(b) the absence of the entry shall be admissible as prima facie 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

167. 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

Principles governing work permits

168. (1) The Minister is responsible for ensuring that belongers of Anguilla are engaged in gainful employment as a paramount consideration to all matters pertaining to work permits and the administration and interpretation of this Part shall be guided by this principle.

(2) In considering an application for the grant of a work permit the Minister shall be guided by the necessity to maintain high levels of employment throughout the island and firstly among persons who are belongers of Anguilla and secondly among persons who are lawfully resident on the island.

(3) The Ministry recognises the invaluable contribution to the development of Anguilla by persons who engage in employment on work permits and the Ministry through a balancing act shall develop policies that attract and foster the talent of persons who are non-belongers and the administration of any labour legislation shall be guided by this principle.

(4) The Ministry recognises that persons employed on work permits represent a group of persons with special vulnerabilities and will endeavour to ensure that such persons are treated fairly and are protected in accordance with labour laws and policies.

Work permit not a right

169. (1) No person is entitled to a work permit as of right.

(2) It is exclusively within the discretion of the Minister to—

(a) grant a work permit with or without conditions;

(b) refuse to grant a work permit;
(b) revoke a work permit with or without notice; or

(c) vary, renew or extend a work permit.

(3) The grant, variation, renewal or extension of a work permit in accordance with subsection (2) does not give rise to any right to or any expectation of a right to any further work permit.

Categories of work permits

170. (1) There are 3 categories of work permits—

(a) a general work permit;

(b) a temporary work permit; and

(c) a self-employment work permit.

(2) The Minister may by Regulations restrict the issuance of work permits to specified sectors or to specified trades if the Minister is of the view that—

(a) the skill set is no longer necessary for the development or advancement of that kind of business;

(b) businesses owned by belongers of Anguilla may be economically undermined; or

(c) there is a need to develop the talent of persons who are belongers of Anguilla in that business.

(3) The Director of Economic Planning shall provide the Minister with quarterly statistics concerning the applications and grants of licences to operate businesses.

(4) Before a business licence is issued the Director of Economic Planning shall consult with the Ministry.

Role of Labour Commissioner

171. (1) The Labour Commissioner shall assist the Ministry perform its functions under this part by—

(a) processing all applications for work permits;

(b) advising the Minister as to whether an application satisfies the ministerial policies; and

(c) performing any other function delegated to the Labour Commissioner.

(2) The Minister shall not take any action regarding a work permit until the application for a work permit has been processed by the Labour Commissioner.

Engagement in employment

172. (1) Subject to subsection (2), a person shall not—
Anguilla Labour Code, 2018

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(a) engage in employment unless he or she is a belonger of Anguilla; and
(b) employ another person who is a non-belonger of Anguilla.

(2) A person who is a non-belonger of Anguilla may work in Anguilla if that person is—
(a) authorised to do so by a work permit; or
(b) exempt from obtaining a work permit under section 173.

Exemptions

173. (1) The following persons are exempt from obtaining a work permit—

(a) the judges, support staff and consultants of the Eastern Caribbean Supreme Court;
(b) members of Her Majesty’s regular navy, military or air force;
(c) contract workers employed in the Public Service;
(d) diplomatic representatives accredited to Anguilla or to the United Kingdom by or under the authority of Her Majesty;
(e) representatives of the United Nations or any of its specialised agencies or of any similar international organisation of which the United Kingdom is a member;
(f) representatives of any regional organisation of which Anguilla is a member;
(g) persons performing unpaid voluntary work or persons working for non-profit or charitable organisations;
(h) children born in Anguilla but who are not considered to be belongers of Anguilla;
(i) the spouse of a belonger of Anguilla; and
(j) persons as the Minister may exempt by Order.

(2) The Minister may exempt classes of persons from obtaining a work permit in the manner prescribed.

Application for a work permit

174. (1) A person who seeks to be self-employed or a prospective employer may apply for a work permit in the manner prescribed.

(2) An applicant who requires a visa to enter Anguilla shall, unless an exemption is granted by the Chief Immigration Officer, attach a notarised copy to the application for a work permit.

Matters to be considered on application for work permit by prospective employer

175. (1) In considering an application from a prospective employer, the Ministry shall take into consideration the following matters—
(a) that the prospective employer has demonstrated a genuine need to engage the services of the prospective worker;

(b) subject to subsection (2), that the prospective employer has sought by advertising for 2 consecutive weeks in a media outlet approved by the Labour Commissioner to ascertain the availability of any one or more of the following in the order in which they are listed—

(i) a belonger of Anguilla,
(ii) the spouse of a belonger of Anguilla, and
(iii) a person legally and ordinarily resident on Anguilla who is qualified and willing to fill the position.

(c) the reasons why the prospective employer is not employing a belonger of Anguilla or any of the other persons listed under paragraph (b).

(2) The Minister may exempt a prospective employer from the requirement to advertise under subsection (1)(b) if the Minister is satisfied that the skill set necessary to perform the work is not available in Anguilla or given the context of the application it would be unreasonable for the prospective employer to advertise.

(3) Where an employer has been granted work permits for a professional, managerial or skilled occupation the Minister may impose the following conditions and restrictions—

(a) that the employer develop and submit an employee training programme or an employee understudy programme which is satisfactory to the Ministry;

(b) establish a scholarship programme or contribute to a scholarship fund which is managed in a manner satisfactory to the Ministry; or

(c) notify the employer that a work permit or group of work permits shall not be renewed after a specified period.

(4) In considering whether to grant a prospective employer a work permit the Minister shall consider whether the employer has complied with any other legal and policy obligations.

**Matters to be considered for self-employed worker and prospective employee**

176. (1) The self-employed worker or the prospective employee shall provide the Ministry with the following information—

(a) evidence of their character, reputation and health, and where relevant, the character, reputation and health of any dependants;

(b) their professional and technical qualifications and their experience or competence to undertake the position applied for;

(c) the economic and social benefits which he or she may bring to Anguilla;

(d) the sufficiency of their financial resources and their ability to maintain their dependants without recourse to public funds;
(e) his ability to use the English language;

(f) the location, type and suitability of the accommodation available for the worker and his dependants, if any, throughout the term of the work permit; and

(g) for a prospective employee the terms of the proposed employment contract.

(2) In considering whether to grant a self-employed worker or a prospective employee a work permit the Minister shall consider whether this person has complied with any other legal or policy obligations.

Grant of a work permit and the employment contract

177. (1) Subject to subsection (2), the Minister may grant a work permit for a term that the Minister considers necessary but any term shall not exceed one year.

(2) The Minister may, by Regulations, determine the duration of a work permit according to the category of work permit or the kind of business but the duration of any work permit shall not exceed 2 years.

Obligation on applicant to inform of all relevant facts

178. (1) It is the responsibility of an applicant for a work permit to ensure that all information, evidence and submissions that the applicant wishes to have considered in support of the application are provided when the application is made.

(2) The Ministry is not obliged to seek any further information, evidence, or submissions and may determine the application on the basis of the information, evidence, and submissions provided.

Change of employer

179. Where a change of employer is contemplated the Minister may—

(a) vary the work permit if the employer and the prospective employer agree; or

(b) cancel the work permit.

Expiration or cancellation of work permit

180. Unless permission has been granted by the Chief Immigration Officer for an extension of stay in accordance with the Immigration Act and immigration policies the holder of a work permit must leave Anguilla when it has been cancelled or expired.

Rights of work permit holder

181. (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 home country or country of recruitment prior to his arrival in Anguilla.

(2) Except for domestic workers, a work permit holder shall not be compelled to live with his employer.
(3) A work permit holder who is employed as a domestic worker is not obliged to remain in the household of his employer during periods of weekly rest and holidays.

(4) A work permit holder shall have the right to keep in his possession his 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.

Replacement

182. A work permit holder may apply to the Ministry in the prescribed manner for the replacement of a work permit.

Fees

183. The Minister shall specify in the manner prescribed the fee and security deposit to be paid solely by the employer for every application for grant, renewal or extension of a work permit under this Part.

Offences

184. (1) An employer or any other person who contravenes this Part commits an offence and is liable on summary conviction to a fine not exceeding $5,000.

(2) 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 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 $5,000.

(3) Any person not belonging to Anguilla who is convicted of an offence under this Part may be deemed a prohibited immigrant under the Immigration Act and be dealt with as such.

(4) On the trial of any person for an offence under this section it shall be presumed that the person alleged to have been engaged for profit or reward or to have been employed for a wage or other remuneration is not a person belonging to Anguilla unless the contrary is proved.

PART 16
TRADE UNIONS AND EMPLOYERS’ ORGANISATIONS

Interpretation

185. 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 Companies and includes the person for the time being acting for him;
“Regulations” means the Regulations made under the Code by the Minister;

“rules” means rules made by a trade union as authorised by this Code;

“trade dispute” means any dispute or difference between employers and employees, 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, 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 organisation or association that is dominated by an employer or employers’ organisation.

Exemption

186. This Part shall not apply to members of the Royal Anguilla Police Force, except those employed in their civilian capacity, but as far as possible their conditions of service should not be less favourable.

Basic employee rights

187. 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 officers, shop stewards or safety representatives;

(f) be elected an officer, shop steward or safety representative or be a candidate for such election;

(g) act in the capacity of an officer, shop steward or safety representative;

(h) exercise any right conferred or recognised by the Code or any law and assist any employee, shop steward, safety representative or trade union in the exercise of such rights.

Freedom of association protection for employees

188. (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 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 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 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

189. 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

190. 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

191. (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 or federation if he pays any fees that are properly payable to it, and such person has the right to remain a member as long as he 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, gender identity, religion, ethnic origin, national extraction, colour, indigenous population, social origin, political opinion, disability, HIV or perceived HIV status, age, pregnancy, marital status or family responsibilities.

Federations

192. Trade unions and employers’ organisations may participate in, be affiliated to, contribute to or join any national or international federation of trade unions or employers’ organisations.
Remedies

193. (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 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) Where the Tribunal finds that the complaint is well founded, it shall make such order as it considers 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 of any benefit, entitlement or advantage, and an order for the payment of compensation.

Register of trade unions

194. The Registrar shall keep a register of all trade unions registered under this Act, with the name, date of registration, address, names of incorporators and officers and such other information as may be required by Regulations.

Registration

195. (1) Every trade union and employers’ organisation shall be registered in accordance with the Code.

(2) The rights and benefits conferred by the Code upon trade unions and employers’ organisations and their members may be exercised only if those organisations are registered in accordance with 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 the Code and the Constitution of Anguilla and does not contain provisions which are contrary to 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 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 considered registered under the Code.

(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 make an application for judicial review to the Eastern Caribbean Supreme Court.

Constitution

196. The constitution of every trade union and employers’ organisation shall include the following information—

(a) the name of the trade union or organisation;

(b) the objects of the trade union or organisation;

(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 officer;

(f) provision for a general meeting open to all members, at least once every 2 years;

(g) a provision that any member or delegate in good financial standing may propose a resolution at a general meeting, subject to the notice requirement of the rules or constitution of the trade union;

(h) the fees and other subscriptions payable, and the maximum period of arrears permitted before a member loses his good standing;

(i) the grounds on which an officer or member may be suspended or expelled from office or from membership;

(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, that he 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 organisation who shall not be a member of that trade union or organisation, 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 organisation’s funds;

(m) provision for the paying out of the trade union’s or organisation’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 organisation;

(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 organisation by its members;

(r) the manner of amalgamating with other trade unions or organisations; and

(s) the manner of dissolving the trade union or organisation.

Alterations in constitution or name

197. (1) A trade union or employers’ organisation may, in accordance with the procedures set out in its own constitution alter its 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 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

198. (1) Within 6 calendar months after the end of each financial year, every trade union or employers’ organisation shall submit to the Registrar a return which shall include—

(a) the trade union’s or employers’ organisation’s 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 apply for judicial review.

**Legal status**

199. (1) A registered trade union and employers’ organisation shall be entitled to be incorporated as 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**

200. (1) A trade union or employers’ organisation may, in accordance with its constitution and subject to the provisions of the Code, 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**

201. (1) Upon application by a member of a trade union or employers’ organisation, the Registrar may, after making such inquiries as it may consider necessary, declare the trade union or employers’ organisation to be defunct if the registrar is satisfied that it is no longer carrying on any of its activities for a period of over 2 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 consider 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 the Court of Appeal.

**Restraint of trade not unlawful**

202. (1) The purposes of any trade union registered under the 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 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

203. (1) An action against a trade union, 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 actionable 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

204. (1) An agreement by 2 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 2 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 law 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 Crown.

Removal of liability for interfering with another person’s business

205. 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 capital or his labour as he determines.

Peaceful picketing

206. 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.
Cancellation of certificate of registration

207. (1) The Registrar may cancel a certificate of registration of a trade union in the following cases—

(a) at the request of the trade union to be evidenced in the prescribed manner;

(b) on proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake;

(c) that such trade union has wilfully and after notice from the Registrar violated any of the provisions of the Code; or

(d) has ceased to exist.

(2) The Registrar shall give not less than 2 months’ previous notice in writing specifying briefly the ground of any proposed cancellation of certificate.

(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 to a penalty not exceeding $1,000 for every day during which such trade union continues in active operation.

Officers, accounts and audit

208. (1) Every treasurer or other officer of a trade union registered under the 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 a certified accountant.

(2) The treasurer, if 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

209. If any officer, member or other person 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, the Magistrate, 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.

Regulations

210. (1) The Minister, 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;

(f) the fee to be paid for an audit of the accounts of a trade union and, until such fee is fixed; and

(g) generally, for carrying this Part of the Code into effect.

Registered office of union

211. (1) Every trade union registered under this Code shall have a registered office to which all communications and notices may be addressed.

(2) Notice of the address 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 the Code.

Membership of minors

212. A person under the age of 18, but above the age of 16 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

213. (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 Commissioner may declare such election void and determine a date for the holding of fresh election.

Deposit and safeguard of funds

214. (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 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 court may make such order as it deems necessary to secure compliance with this Part of the Code.

Application for recognition as bargaining agent

215. (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 this Part, make application to the Commissioner to be certified as the exclusive bargaining agent of the employees in the unit.

(2) 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.

(3) 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.

(4) Where a collective agreement is in force the application may be made during the last 3 months of the term of the collective agreement or any renewal of it.

Application particulars

216. (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 Commissioner.
Appropriateness of bargaining unit

217. (1) The Commissioner shall on any application for certification 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 Commissioner may before certification include additional employees in or exclude employees from the bargaining unit.

Employer recognition or notice

218. (1) Upon receipt of a notice of the application for certification by a trade union, an employer may within 14 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 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 Commissioner and shall specify the employer’s reasons for doubting that the trade union is entitled to be so recognised.

Certification following employer recognition

219. (1) Where only one trade union has applied for certification, and the employer has indicated in writing his agreement to recognise the trade union as the bargaining agent, the Commissioner may certify the trade union as the bargaining agent.

(2) Where a trade union has applied for certification and the employer objects to the application, the Commissioner may carry out a membership survey to determine the extent of support which the trade union enjoys among the employees in the appropriate bargaining unit on the date such application was made.

(3) Where it appears to the 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, he shall certify the union as the recognised bargaining agent for that unit.

(4) The Minister shall make regulations governing the organisation and conduct of the survey.
The majority trade union determined by poll

220. (1) Where 2 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 which 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’s duties in conduct of poll

221. In relation to the conduct of the poll, an employer shall—

(a) take all necessary steps to ensure that his employees who are eligible to vote in a poll are given the opportunity to do so; and

(b) permit each 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

222. In relation to the conduct 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’s duties in conduct of poll

223. In relation to the conduct 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

224. (1) The Commissioner shall in writing within a reasonable period of time not to exceed 3 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

225. (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 Magistrate who may make any order he 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 offence and liable to summary conviction to a fine not exceeding $5,000.

(5) An employer who fails to comply with subsections (1) and (2) shall be guilty of an offence and be liable to summary conviction to a fine of $10,000 for every day the breach continues until the employer has complied with such provisions.

Duty of fair representation

226. Where a trade union has been certified as the exclusive bargaining agent for a bargaining unit, that trade union shall provide full and proper representation of the interest of all the 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

227. (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 Minister 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 not exceeding $10,000.

(3) In any prosecution under subsection (2) the onus shall be on the employer to prove that he gave the Minister and the union concerned the reasonable notice and good reasons.
Effect of certification as the recognised majority union

228. (1) Where a trade union is certified under the 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

229. 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 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

230. (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 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 Commissioner 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 3 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

231. (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 Eastern Caribbean Supreme Court for determination.

(2) In making a determination under subsection (1), the Eastern Caribbean Supreme Court shall endeavour in its decision to promote over time a system of orderly and effective collective bargaining.

Right to choose representative

232. Nothing in this Part prevents an employee from being assisted by a representative of his choice, including an officer of a trade union which has not been registered or certified under the Code, in an individual grievance or disciplinary matter.

Access to employer’s premises

233. (1) An employer shall not deny to an officer or authorised representative of any trade union certified under the 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

234. (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 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 the Code and such agreement shall remain in force until it expires or is replaced by another collective agreement.

**Enforceability of collective agreements**

**235.** (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 Eastern Caribbean Supreme Court to enforce the provisions of the agreement.

**Successor rights and obligations**

**236.** (1) If a business or a part of it is sold, leased, transferred, or otherwise disposed of—

(a) the purchaser, lessee or transferee is bound by all the proceedings under the 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 the Code.

**Penalties**

**237.** 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 $5,000.

**PART 17**

**MISCELLANEOUS**

**Limitation upon prosecution**

**238.** Prosecution for an offence under the Code shall not be commenced after the expiration of one year from the date on which the Commissioner becomes aware of the offence.

**Electronic documents**

**239.** (1) Where a written document, record or information is required under this Code that requirement may be met by information in electronic form.

(2) A legal requirement that arises as a result of proceedings under this Code that a person provides information in a prescribed paper format or other non-electronic form to the court or tribunal or to another person is satisfied by providing the information in an electronic form that—
(a) contains the same or substantially the same information as the prescribed paper format or other non-electronic form;

(b) is accessible to the other person so as to be usable or retrievable for subsequent reference; and

(c) is capable of being retained.

Electronic links

240. (1) The court or tribunal may, for the purposes of any proceedings, direct or allow a person to make a submission to the court or tribunal by way of video link, audio link, email or any other appropriate technological means.

(2) The court or tribunal shall only exercise the power under subsection (1) if it is satisfied—

(a) of the standard of the transmission; and

(b) the quality of communication and the security of the electronic link; and

in relation to video link, the parties must be able to clearly see and hear each other and in relation to audio link, the parties must be able to clearly hear each other.

(3) The power conferred on the court or tribunal under subsection (1) may be exercised on the application of a party to the proceedings concerned or on the court’s own initiative.

(4) Any testimony done in accordance with subsection (1) must be given on oath or affirmation unless the court or tribunal is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.

(5) Where the testimony is given otherwise than on oath or affirmation, the court or tribunal shall give the testimony such weight as the court or tribunal thinks fit in the circumstances.

Disclosure of information

241. (1) The complainant in any summary matter before the court may request that the court issues an order of disclosure.

(2) The court may make an order of disclosure where it is satisfied on a balance of probabilities that—

(a) the information is such that without it the case of the complainant would be impeded; and

(b) that it would be in keeping with good industrial relations that the information be disclosed.

(3) Subject to subsection (4), an order for disclosure may entail information about—

(a) pay and benefits: principles and structure of payment systems, salaries and other benefits;
(b) **conditions of service**: policies on recruitment, redeployment, redundancy, training, equal opportunity, promotion, health, welfare and safety;

(c) **manpower**: numbers employed and analysed according to grade, department, location, age, sex, labour turnover, absenteeism, overtime, short-time, manning standards, planned changes in work method, materials, equipment, available manpower plans and investment plans;

(d) **performance or appraisal systems**: productivity and efficiency data;

(e) **financials**; and

(f) any other information that the court considers to be relevant to the case.

(4) Information disclosed shall not include—

(a) cash flow information;

(b) commercial information about the market share of products;

(c) government assistance; and

(d) information that would cause substantial injury to the employer’s business.

(5) This section applies to proceedings under the Tribunal.

**Leading evidence**

242. For the purposes of leading evidence during a trial, the Code shall be treated as always having had effect.

**Conflict between the Code and other law**

243. To the extent that there may be conflict or inconsistency between any provisions of the Code and any other law relative to labour matters, the provision of the 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 exceeding $5,000.

**Regulations**

245. (1) The Minister may make Regulations—

(a) prohibiting smoking in the workplace; and

(b) giving effect to the principles and provisions of the 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 $5,000.

(3) Regulations made by the Minister shall be published in the Gazette.
(4) Regulations made by the Minister shall, as soon as convenient after its publication in the Gazette, be laid before the Parliament.

Repeals and savings

246. (1) Subject to subsection (2), the undermentioned Acts are repealed—

(a) Fair Labour Standards Act;

(b) Labour Department Act;

(c) Employment of Children (Restrictions) Act;

(d) Employment of Women, Young Persons and Children Act;

(e) Trade Unions Act;

(f) Control of Employment Act.

(2) The following enactments are saved—

(a) in the Fair Labour Standards Act—

(i) Section 64, “Entitlement to paid leave to carry out parental responsibilities”; and

(ii) Schedules 2, 3 and 4;

(b) the Schedule to the Labour Department Act;

(c) 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; and

(d) 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.

Consequential amendments

247. (1) Section 24(1) of the Social Security Act is amended by inserting after paragraph (b) the following paragraph—

“(ba) paternity benefit, that is to say, a payment of periodical payments to an insured man or the husband of an insured wife;”.

(2) Section 19 of the Benefits Regulations is amended by replacing the number “13” with the number “14”.
Citation

248. This Act may be cited as the Labour Code, 2018.

Terry T. C. Harrigan
Deputy Speaker

Passed by the House of Assembly this day of , 2018

Lenox J. Proctor
Clerk of the House of Assembly
OBJECTS AND REASONS

The Labour Code seeks to consolidate and modernise the law relating to labour administration, employer and employee relations, health and safety, trade unions and collective bargaining.

Part 1 - Preliminary

The part defines key terms and confirms the Code’s applicability to all employees except police officers, employees in the Anguilla Public Service and persons with diplomatic immunities. However, despite this, parts of the Code related to equality of treatment, protection of children and young persons, forced labour, health and safety and trade unions are made applicable to all employers including Government.

Part 2 - Administration

This part deals with the establishment of the Labour Department and the responsibility of the Labour Commissioner for the administration of the Department and the enforcement of the Code. It provides for the appointment of Inspectors to monitor and enforce the provisions in relation to basic terms and conditions of employment, protection of wages, minimum wage, leave and work permits and health and safety. Inspectors are empowered to enter workplaces during normal hours to carry out inspections and request information to ensure that there are no breaches of the law. Employers are obligated to cooperate with the inspectors.

Part 3 – Settlement of Disputes

Under this part, employers and employees are encouraged to settle their disputes through negotiation, failing which the dispute can be referred to the Labour Commissioner to assist the parties to reach a voluntary settlement. In the absence of a settlement the Minister can facilitate the resolution of disputes by either meeting with the parties to achieve settlement, referring the matter to mediation or to a Tribunal. The membership and powers of the Tribunal are outlined in this part. They include the power to summon witnesses. The decisions of the Tribunal are binding and can only be appealed in the High Court on a point of law. Limitations are placed on industrial action in essential services. However, strikes and lock outs can take place in non-essential services so long as efforts to resolve the dispute have failed, the majority of employees voted for the action and the relevant trade union has given the Minister or employer three notices.

Part 4 – Advisory Committees

The Minister is empowered to consult with employees and employers in relation to the administration of the Code and to appoint advisory committees to consider and recommend policies to support the administration of the Code, greater collaboration and productivity.
**Part 5 - Fundamental Principles and Policy**

The Code is to be interpreted in a manner which is consistent with the Conventions of the International Labour Organisation. Additionally, several policies which underpin the interpretation of the Code are outlined. These include:

- the legitimate employment interests of belongers of Anguilla shall be paramount;
- 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.

**Part 6 – Basic Conditions of Employment**

This Part outlines the minimum standards that must be adhered to as regards any employment relationship. It requires that the basic terms of the employment are provided in writing to the employee within ten days of engagement. It allows for differing probationary periods of one, three or six months depending on the type of employee and obligates the employer during that period to provide the employee the necessary training and orientation needed for the employee to satisfactorily complete the probationary period.

This Part provides for a standard 8 hour work day and 40 hour work week with a minimum of 1 day’s rest in every 7 day period. Additionally, meals intervals of not less than 1 hour are to be provided after 5 hours of continuous work. The overtime provisions of one and half times the normal wage on regular days and double pay on public holidays have been maintained. Further, employees who have reported to work but who have been stopped or prevented from working by the employer or act of God, must be paid. Additionally, employees on stand-by at the work place or on call must be paid accordingly. Employees paid by the hour or the day must be paid for public holidays even though they have not worked, so long as they did work on their scheduled work day before and after the holiday.

The payment of service charge is provided for in this Part. It is to be pooled and distributed every 4 weeks. An employer with at least 5 employees is obligated to establish a service charge committee to oversee the distribution of service charge. Tips however are the sole property of the employee.

**Part 7 – Protection of Wages**

This part seeks to ensure that employees receive remuneration for their work. As such, it provides that an employee’s wages are to be paid in EC or US currency at regular intervals (ie. daily, weekly, fortnightly or monthly). An employer cannot impose on an employee any restriction on how or where they should spend their wages. While an employer can make lawful
and authorized deductions from an employee’s wages, the deductions should not exceed one third of the gross wage. An employer is prohibited from deducting from an employee’s wage any fees associated with the recruitment of the employee including not more than 50% of work permit fees (subject to the direction of the Labour Commissioner), and visa fees. Where an employee has been terminated, he/she must be paid outstanding wages within one week of termination. While wages must be in cash, an employer can give the employee additional benefits in cash or in kind (e.g. accommodation, health care, retirement, gratuity, shares, stock etc), but these must not be in the form of alcohol, cigarettes, weapons or controlled drugs.

Employees have the right to seek redress in court to recover wages. Amounts owed by employers to employees will be given priority over all other debt claims against an employer. No more than 50% of an employee’s wages are entitled to attachment or seizure by the court.

**Part 8 – Minimum Wages**

Under this part the Minister of Labour is empowered to fix a minimum wage for employees generally and to fix different minimum wages for different categories of employee. To assist in this process, the Minister can appoint a minimum wage committee to consider and advise on an appropriate minimum wage. After a period of consultation, the wage is fixed by Order of the Minister and employers are obligated to comply.

**Part 9 – Leave**

This part outlines the leave entitlement of employees. Employees are entitled to annual paid holiday leave of 12, 15 or 20 working days depending on their length of service. Periods of absence from work due to maternity, illness or injury cannot be deducted when considering length of service. Where an employee has been terminated, they are entitled to be paid for any holidays that they have not yet taken. Employees are also entitled to paid sick leave, maternity leave for up to 14 weeks, paternity leave for up to 1 month in any given year and leave of up to 1 month after adoption of a child 3 years old or less. Additionally employees are also entitled to full pay while doing jury service, and half pay when representing Anguilla at national level at any sport or cultural event approved by Executive Council.

**Part 10 – Disciplinary Action, Termination of Employment and Continuity of Employment**

An employer may take disciplinary action in relation an employee for misconduct or unsatisfactory performance. This Part sets out the disciplinary options available to an employer as well as the procedure to be followed. It prohibits disciplinary action or termination on grounds related to:

- the employee’s race, colour, sex, religion, ethnic origin, nationality, social origin, political opinion or affiliation, trade union affiliation or activity, disability, sexual orientation, gender identity, HIV status, marital status or age;
- participation in industrial action
- any complaint made by the employee against the employer for violation of the Code.

The employee can terminate an employment relationship without notice if the employer has acted in a way that makes it unreasonable for the employment relationship to continue and claim against the employer for constructive dismissal. Similarly, an employer can dismiss an employee without notice in cases of serious misconduct including theft, fraud, gross insubordination, drug or firearm possession while on duty.

In cases of misconduct or unsatisfactory performance, the employer can use a series of actions including warnings to discipline the employee. Additionally, an employer can dismiss an employee who has been continuously ill for more than 6 months or who is injured, so long as it is determined that the employee no longer has the capacity to do the job. An employer can also discipline an employee for abuse of sick leave, but the onus is on the employer to prove such abuse.

The same notice periods for termination have been maintained in the Code. Where unfair dismissal has been proven, the employee is entitled to either reinstatement in their original position, reengagement in another position or compensation. In the event of winding up of the employer’s business, any amounts owed to employees take precedence to the claims of other creditors including Government and Social Security.

Where an employee has been given notice of termination, he/she is entitled to time off with pay to seek alternative work. Additionally, if so requested, the employer should provide the employee with a certificate of employment. In circumstances where there is a change in the ownership of the business, an employee who continues in employment with the new owner will carry forward all the years of service and accrued rights. If the employee is not employed by the new owner/employer, the old owner/employer must pay the employee all wages and benefits due including severance pay.

Under this part, termination of employees for reasons of redundancy is permitted. However, the employer must consult with and inform the employee’s trade union or representative and the Labour Commissioner. Criteria on selection of employees for redundancy are also outlined. An obligation is also placed on employers who rehire persons to carry out essentially the same functions within six months of redundancy to give first preference to the employees who were terminated. Where in making redundancy arrangements an employer invites employees to offer themselves for termination, severance pay exceeding that outlined in the Code must be offered.

Where an employee is terminated on grounds on redundancy, he/she is entitled to severance pay as follows

- one week’s wage for each completed year of service up to the first 5 years;
• 2 weeks’ wage for each completed year of service in excess of 5 years and up to 10 years;

• 3 weeks’ wage for each completed year of service in excess of 10 years;

All calculated on the basis of the highest wage earned by the employee in the year before termination.

Under this part, employers are also mandated to put in place a retirement benefits plan for their permanent employees.

**Part 11 – Equality of Treatment in Employment**

This Part prohibits discrimination on the grounds of 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 age, in relation to recruitment, selection and the terms and conditions for training, apprenticeship and employment. However it does allow for distinction and preference for genuine occupational qualifications, employment and promotion of belongers over non-belongsers and temporary measures to promote equality of opportunity. Sexual harassment is classified as discrimination based on sex. Equal pay to men and women for equal work is mandated. Additionally, trade unions and other similar organisations are also prohibited from discrimination in their membership requirements and membership rights. The victimisation of employees who have taken any action in relation to the Code is also prohibited and can result in the award of aggravated damages.

**Part 12 – Protection of Children and Young Persons**

Employment of children under 14 years old is absolutely prohibited. Children 14 years and older can be employed during vacation periods, on weekends or public holidays, as part of a school programme or in a family business (so long as it is not during school hours). Employers as well as parents and guardians are liable to penalties if these provisions are not observed. Young persons (ie persons who are no longer of compulsory school age, but still under 18 years), can be employed but not after 8:00pm nor in hazardous work. A child or young person can be considered employed whether or not he/she is paid.

**Part 13 – Forced Labour**

Forced labour is prohibited and cannot be used as a form of discipline, punishment, discrimination or political coercion. Work done by prisoners for private individuals on a work release programme must be consensual and the prisoner is entitled to wages and conditions of work as other employees.
**Part 14 – Health, Safety and Welfare**

It is the duty of every employer to provide employees with a safe, healthy and secure working environment and any equipment, protective devices and clothing necessary to carry out the work in a manner in which the employees’ health and safety are not compromised. This Part details the need for employers to conduct risk assessments of their workplaces and put in place any protective measures identified as being necessary by the assessment. These include putting in place a safety and health policy and emergency plan as well as ensuring special provision is made for dealing with hazardous materials, pregnant women, young persons, proper disposal of waste, mitigation of the effects of noise and vibrations etc. Employers also have to identify safety and health representatives and establish safety and health committees to, among other things, review workplace conditions and make recommendations for improvements.

Where on inspection of workplace it is found that the conditions are likely to cause bodily harm to employees, the Labour Commissioner has the power to direct:

- the cessation, immediate or otherwise, of any activity, operation or process;
- the vacation, immediately or otherwise, of any premises;
- the alteration of any premises or plant;
- the introduction of such temporary measures as may be expedient pending the institution or completion of permanent measures; or
- with the written consent of the Minister, closure of the workplace.

Employers are under an obligation to report to the Labour Commissioner workplace accidents which result in death or injury within and 8 or 24 hours respectively and thereafter a report outlining preventative measures and remedial action taken.

The Commissioner is empowered to direct employers or operators of workplaces to take special measures for the safety of the employees. The Minister has the power to extend the time required to comply with the requirements of the Code and also to make regulations prescribing standards to be adhered to in the operation of the workplace.

Failure to comply with this Part will result in criminal penalties in relation to each employee affected and the Court has the power to order remediation of the contravention.

**Part 15 – Work Permits**

This Part maintains the work permit requirements for persons who are not belongers of Anguilla. The administration of this Part of the Code is governed by some underlying principles which include:
• The responsibility of the Minister of Labour for ensuring that belongers of Anguilla are engaged in gainful employment as a paramount consideration to all matters pertaining to work permits; and

• The recognition of the invaluable contribution to the development of Anguilla by persons who engage in employment on work permits which requires that the Ministry through a balancing act develops policies that attract and foster the talent of persons who are non-belongers.

The Minister of Labour is empowered to grant, refuse, revoke, renew, vary or extend work permits. There are 3 categories of work permits – general, temporary and self-employed. The Minister can make regulations restricting the issuing of work permits for certain sectors or trades where he/she is of the view that the skill set in no longer necessary, local business may be undermined or local talent should be developed. The Director of Economic Planning must also first consult with the Ministry before granting business licences.

There are several categories of persons exempt from work permit requirements. These include children born in Anguilla (who may not be belongers of Anguilla) and spouses of belongers.

In considering work permit applications, consideration will be given to several matters including whether there is a genuine need to engage the perspective employee and whether efforts were made via advertising to recruit a belonger, spouse of a belonger or a person legally resident in Anguilla. Minister can exempt an employer from the advertisement process where he/she is aware that the skillset is not available or that it is unreasonable to do so based on the circumstances of the application.

A work permit issued for a professional, managerial or skilled occupation may be subject to conditions that (a) the employer develops and submits an employee training or understudy programme to the Ministry, or (b) establishes a scholarship programme or contributes to a scholarship fund, or (c) the permit will not be renewed beyond a specified period.

Work permit holders are not compelled to live with their employers; they are entitled to retain their travel documents and they have all the rights and benefits conferred by the Code.

Part 16 – Trade Unions and Employers’ Organisations

This Part is not applicable to the Royal Anguilla Police Force. It outlines the rights of employees to join trade unions and take part in their activities and protects their freedom of association from the interference of employers. Infringement of employees’ rights in this regard may be dealt with by the Tribunal. The registration requirements for trade unions are outlined as well as guidelines regarding the content of their constitutions. There are specific procedures in relation to the alterations to the trade union’s constitution or name, filing of annual returns, amalgamation, cancellation of registration and winding up. Where a trade union acts in furtherance of a trade dispute, it will not be liable in tort, nor for interference with an employer’s business, nor for conspiracy (so long as no criminal offence was committed). A duty is imposed
on trade unions to have a registered office, safeguard and not misapply funds, and keep proper accounts which must be audited.

There are extensive provisions with regard to the procedure for recognizing trade unions as the bargaining agent for a group of employees (bargaining unit). This includes application, consideration by the Labour Commissioner, recognition or objection by the employer, certification by the Labour Commissioner (including conducting of a poll if necessary). Once certified, the union has the right to bargain on the employee’s behalf and must be given due recognition by the employer. The union and employer can then enter collective agreements in relation to matters affecting the employees, which are binding on all parties including the employee. Collective agreements continue in force when a business is sold, leased, transferred or otherwise disposed.

**Part 17 – Miscellaneous**

Offences under the Code cannot be prosecuted after the expiration of a year from the date on which the Labour Commissioner is notified. The Minister of Labour is empowered to make regulations to give effect to the provisions of the Code. There are provisions which deal with court process such as disclosure of information, electronic documents and links. The Code also preserves the schedules to the Acts which are being repealed.