LABOUR ACT, 2007

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AN ACT to provide for the administration of labour, the recruitment and hiring of labour, the protection of wages, and the registration of trade unions and employer organisations and for matters connected therewith.

[See section 1]

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. This Act may be cited as the Labour Act, 2007, and comes into force on such date as the Secretary of State shall, by Order published in the Gazette, appoint.
2. (1) In this Act, unless the context otherwise requires-

"apprentice" means a person who has entered into a contract of employment for a period during which the employer undertakes, on predetermined conditions, to provide methodical and complete vocational training to that person who in return undertakes to serve the employer as an employee for the duration of the contract;

"Authority" means the National Training Authority established under the National Training Authority Act, 2002;

"bargaining agent" means a trade union which has agreed with an employer to represent a category of that employer's employees in negotiations concerning any matter which may be the subject of a trade dispute;

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

"Commissioner" means the Commissioner of Labour in the Department of Labour;

"contract of employment" means an agreement, oral or written, implied or explicit, between an employer and a person by which that person undertakes to make his or her services personally available to the employer in return for remuneration and in a manner that gives the employer control over the person's work and working environment;

"dock worker" includes transit shed labour and tally clerk;

"domestic service" means a service provided by a person engaged to work wholly or mainly in or around a dwelling house, connected with that dwelling house or personally to those residing in that dwelling house;

"employee" means-

(a) a person who offers his or her services under an oral or written contract of employment, whether express or implied;

(b) a person, including a tenant sharecropper, who performs work or services for another person for remuneration or reward on such terms and conditions that he or she is in relation to that person-

(i) in a position of economic dependence, and

(ii) under an obligation to perform duties for that person more closely resembling the relationship of employer than that of an independent contractor; or

(c) where the context requires, a former employee;

"employer" means-

(a) a person, corporation, public authority, governing body of an unincorporated association, partnership, or any other institution or organisation whatsoever that employs an employee, and includes a heir, successor and an assignee of the employer; or
(b) where the context requires, a former employer;

“enterprise” includes a body corporate, individual business, partnership and other group of persons doing business;

“industrial action” means a concerted withdrawal of labour or restriction on the availability or quantity of labour on the part of workers, or a lockout by which one or more employers deny work to workers;

“industrial undertaking” means -

(a) a mine, quarry or any other work for the extraction of minerals;

(b) an undertaking in which-

(i) articles are manufactured, altered, cleaned, ornamented, finished, adapted for sale, broken up or demolished, or

(ii) materials are transformed,

and includes an undertaking engaged in food processing, agro-processing activities, ship building or in the gene-ration, transformation or transmission of electricity or motive power of any kind; or

(c) an undertaking engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work;

“Joint Industrial Council” means a Joint Industrial Council established under section 110;

“labour-only subcontractor” means an employer or a person who, by himself or herself or through others, procures, engages, hires or supplies, or attempts to procure, engage, hire or supply, a worker to be employed by himself or herself or any other person, where the worker does not provide services to the employer but supplies them to a client or contractor;

“management grade” means a level of employee who-

(a) has a duty to supervise other employees or organize the work of other employees, or to participate in the administration of a business as distinct from directly participating in the production of goods; and

(b) is designated by the employer as engaged in management;

“officer” means a public official, including the Commissioner, a labour officer authorized by him or her, and where the context requires, any other person authorized to administer or give effect to this Act or any other law relating to the employment of persons in The Gambia;

“public service” means the entire body of employees directly employed by the Government in the service of the Government;

“recruiter” means a person who recruits employees for other persons;

“Registrar General” means the Registrar General appointed under the Companies Act;
"remuneration" means all things of monetary value received by an employee in exchange for his or her services;

"Secretary of State" means the Secretary of State responsible for labour;

"trade dispute" means any dispute between an employer and a worker or between an employer and a group of workers over any of the following matters -

(a) a term or condition of employment or performance of work;

(b) the engagement or non-engagement of a person;

(c) the demotion, suspension, termination or imposition of any other penalty or discipline on an employee;

(d) the complaint of an employee concerning his or her employment;

(e) the machinery for negotiation of any of the matters specified in paragraphs (a) to (d), or for the settlement of a grievance or dispute relating to an employee;

"trade union" means an organisation registered as a trade union under this Act;

"Tribunal" means the Industrial Tribunal established by section 26; and

"worker" means a person who offers his or her services personally to another whether under a contract of employment or otherwise.

3. (1) Subject to subsection (2), this Act applies to all employment by any employer.

(2) The Act does not apply to -

(a) the Civil Service;

(b) the Armed Forces, except those employed in a civil capacity;

(c) the National Guard, Police Force, Security Service or the Prisons Service, except those employed in a civil capacity;

(d) domestic service;

(e) employment of a member of the employer's household living in the employer's house.

(3) The Secretary of State may extend the application of this Act to any class of persons excluded in this section by an Order published in the Gazette.

(4) Notwithstanding subsection (2), the Secretary of State may make regulations to set out the terms and conditions for the employment of persons in the domestic service.

PART II – ADMINISTRATION

4. The Commissioner, acting under the authority of the Secretary of State, is responsible for the administration and application of this Act.
5. (1) The Commissioner may authorize an officer of the Department of Labour to exercise any or all of his or her powers to enforce this Act, subject to such conditions as the Commissioner may set.

(2) An authorization shall be in writing and may be revoked at any time by written notice.

(3) The Commissioner shall notify the Secretary of State whenever he or she gives or revokes an authorization.

6. (1) The Commissioner shall furnish a certificate of authority to every officer authorized by him or her under section 5.

(2) An officer shall-

(a) when acting under an authority, produce his or her certificate of authority on the request of any person affected by the authority; and

(b) surrender the certificate to the Commissioner if so requested.

(3) The Commissioner shall, so far as is reasonably practicable, endorse on the certificate of authority the date of its revocation.

7. A person who impersonates an officer of the Department of Labour or a person authorized by the Commissioner commits an offence and is liable on conviction to a fine of not less than twenty thousand dollars or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

8. (1) For the purpose of satisfying himself or herself that the provisions of this Act or any other law relating to the employment of persons, including the Industrial Injuries Act, are being complied with, the Commissioner or an officer authorized by him or her, or a Medical or Health Officer exercising his or her own authority-

(a) may, subject to subsection (2)(a), enter-

(i) a workplace freely and without prior notice at any hour of the day or night,

(ii) during the day, any premises which he or she reasonably believes to be a workplace;

(b) shall not enter the private home of an employer pursuant to paragraph (a), except with the consent of the employer or under the authority of a warrant issued by a proper judicial officer;

(c) may, in general, carry out any examination, test or enquiry which he or she considers necessary in order to satisfy himself or herself that the provisions of this Act or any other law relating to the employment of persons, or the recruitment or housing of employed persons, are being strictly observed, and in particular, may-

(i) interrogate, alone or in the presence of witnesses, the employer or employees on any matter concerning the application of this Act and any other law relating to the employment of persons,
(ii) require the production of any record, book, register or other document, the keeping of which is prescribed by this Act or any other law relating to the employment of persons or conditions of work, and make a copy of or take an extract from a document;

(iii) enforce the posting of any notice required by this Act or any other law relating to the employment of persons, and

(iv) take or remove, for purposes of analysis, samples of materials and substances used or handled, but the employer or the employer’s representative must be notified of any sample or substance taken or removed under this paragraph;

(e) may require from employers and employees information as to the remuneration, hours and conditions of work;

(f) may inspect any record of accidents or occupational disease kept by the employer pursuant to the Injuries Compensation Act or any other law and require from an employer information on the causes and circumstances relating to any accident or occupational disease that may have occurred on the employer’s premises or in the course of employment;

(g) may be accompanied by a member of the police force if he or she has reasonable cause to apprehend any serious obstruction in the execution of his or her duty; and

(h) may take steps, with a view to remedying defects observed in plant lay-out, installation or working methods which he or she reasonably believes constitute a threat to the health or safety of employees.

(2) A person exercising authority under subsection (1)(h), has the power to make an order requiring-

(a) such alteration to the plant installation or layout, to be carried out according to a written order stating the date it takes effect and the corrective action required to terminate its effectiveness, as may be necessary to secure compliance with the legal provisions relating to health or safety of employees; or

(b) where there is imminent danger to the health or safety of the employees, the taking of measures, including plant closure with immediate executory force.

(3) In this section, “employment of persons” includes the recruitment of persons for employment and the provision by the employer of housing and food for employees or persons being recruited for employment.
9. An officer shall, when on an inspection visit, notify the employer or the employer's representative of his or her presence, unless the officer considers that such notification may be prejudicial to the performance of his or her duties.

10. An employer shall—

(a) grant an employee every opportunity and necessary facilities for communicating freely with an officer; and

(b) when so requested, afford every reasonable assistance to an officer.

11. An employer shall not victimize an employee for anything done by the employee in pursuance of the provisions of this Part.

12. (1) An officer shall not, while in office or subsequently, reveal any manufacturing or commercial secret or working process, which comes or came to his or her knowledge in the course of his or her duties.

(2) An officer shall treat as absolutely confidential the source of any complaint bringing to his or her notice a contravention of this Act and shall not reveal to the employer or the employer's representative that inspection was made in consequence of a complaint that a breach of this Act appeared to have been committed.

13. An officer shall not have any interest, direct or indirect, in an enterprise under his or her supervision.

14. An officer shall, in exercise of his or her powers—

(a) take into account the size, capitalization and degree of formality of the operation of an enterprise under his or her supervision; and

(b) make all efforts to assist smaller and informal enterprises in understanding and complying with this Act and any other law relating to the employment of persons.

15. (1) The Commissioner may—

(a) where a person is sick or the conditions of his or her employment, or recruitment centres are not conducive to the rapid recovery of the person's health, require the employer or recruiter, at the earliest opportunity and at his or her own expense, to send the person to the place of his or her engagement or to hospital, as the case may require;

(b) prohibit the further engagement of a worker at any place of employment where the conditions in the place do not comply with the requirements of this Act or regulations made under it.

(2) Whenever any question, difference or dispute concerning the employment relationship arises between an employee and an employer, either party may report the matter to the Commissioner who shall take such steps as seem to him or her to be expedient to encourage settlement between the parties.
(3) Whenever the Commissioner acts under subsection (2), the employee shall be asked whether he or she is a member of a trade union and if so, an appropriate official of the trade union shall be informed in writing of the matter.

16. A breach of the Industrial Injuries Act revealed by the exercise of authority under this Act shall be reported to the Industrial Injuries Commissioner.

17. A person who -
   
   (a) delays or obstructs an officer;
   
   (b) fails to comply with any reasonable request or inquiry made by an officer; or
   
   (c) conceals or otherwise prevents or attempts to conceal or otherwise prevent a person from appearing before or being examined by an officer,

exercising a function under this Act, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

18. (1) An employer of more than five persons shall supply in writing to the Commissioner on or before a date fixed by the Commissioner, such information as he or she may request concerning the employment of persons by the employer.

   (2) This section does not apply to an employer who is exempted by written notification of the Secretary of State to the Commissioner.

19. The Commissioner shall furnish all information supplied under section 18 to The Gambia Bureau of Statistics in a form specified by that Bureau and, on request, to any other agency of the Government authorized to receive it.

20. The Commissioner may, if employee consents assist in the preparation and presentation of any civil claim by the employee under any provision of this Act.

21. Where the Commissioner considers that a contravention of this Act has occurred, he or she may take such steps as may be necessary to enforce this Act, including making the facts known to the police or any other appropriate public authority or otherwise bringing the person concerned before an appropriate court.

PART III - LABOUR ADVISORY BOARD

22. There is hereby established a board to be known as the Labour Advisory Board (in this Part referred to as "the Board")

23. (1) The Board shall consist of eight members comprising-
   
   (a) equal numbers of representatives of employers and employees; and
   
   (b) such public officers and other persons as the Secretary of State may, from time to time, by Notice published in the Gazette, appoint.

   (2) A member of the Board shall be appointed for a term of three years from the date of appointment and is eligible for reappointment when that term expires.
(3) The Secretary of State may remove a member of the Board only for misconduct rendering him or her personally unfit to be a member.

(4) The Board may make provisions for the conduct of its meetings and the procedure to be followed at those meetings.

24. (1) The Board shall advise the Secretary of State on any matter-

(a) concerning legislation on labour or industrial relations;

(b) which the Secretary of State or Commissioner is required by this Act to consult the Board;

(c) connected with the subjects specified in paragraph (b);

(d) connected with the employment of workers, industrial relations or organisations of employers or workers;

(e) concerning the operation of the Industrial Injuries Compensation Scheme, and advise the Industrial Injuries Commissioner;

(f) connected with the operation of the Factories Act, and any other provision made concerning the safety of employees, and also advise the appropriate Secretary of State;

(g) in any way connected with international labour standards of the International Labour Organisation, including their setting, ratification, implementation, reporting requirement, or denunciation, and

(h) connected with the employment of persons in The Gambia.

(2) The Board shall review the classification of grades of employment and the wage levels established for trade tested employees, and submit its recommendations to the Secretary of State and the chairperson of the appropriate Joint Industrial Council.

25. (1) The Board’s advice shall be in writing, and shall be given, where requested, to the person requesting it, or shall otherwise be made known as the Board deems appropriate.

(2) Where any advice is given in the name of the Board, any one or more members may submit in writing to the recipient of the advice an alternative advice on any aspect of the same matter in the name of that member or those members.

PART IV - THE INDUSTRIAL TRIBUNAL

26. (1) There shall be an Industrial Tribunal in the City of Banjul and in such other Local Government Areas as the Chief Justice may determine.

(2) The Tribunal has the jurisdiction conferred on it by this Act and any other law.
27. (1) The Tribunal shall be presided over by a First Class Magistrate as the Chairperson and a panel of members appointed by the Chief Justice, on the recommendation of the Secretary of State.

(2) The Secretary of State shall, in making a recommendation under subsection (1), consult with organisations of employers, trade unions, and the management of public corporations.

(3) The members of the Tribunal shall be -

(a) persons with experience of management, or as trade union officials or otherwise representing workers in industrial relations;

(b) appointed for a term of three years from the date of appointment and are eligible for reappointment when that term expires; and

(c) paid such sitting allowances approved by the Chief Justice as reasonable for any day on which they act in respect of the work of the Tribunal.

28. (1) Officers of the Magistrate’s Court appointed under section 24 of the Courts Act shall be the officers of the Tribunal.

(2) The officers of the Tribunal -

(a) may exercise such powers and perform such duties, in so far as they are applicable to the business of the Tribunal, as those exercised or performed by them in the Magistrate’s Court; and

(b) shall be subject to the same liabilities and penalties and have the same protections as attach by virtue of the Courts Act to a person exercising or performing similar powers or duties under that Act.

(3) The Commissioner may, in addition to the officers of the Tribunal specified in this section, authorize any public officer to assist in conciliation under this Act.

29. (1) Subject to the provisions of subsection (2), the Tribunal has jurisdiction in respect of all individual claims arising under any contract of employment.

(2) The Tribunal has jurisdiction in any matter specified in subsection (1) against any person in The Gambia at the time the claim is brought whether or not the cause of action arose in The Gambia and whether or not any person by or against whom the complaint is brought, is ordinarily resident in The Gambia.

(3) The Tribunal has exclusive original jurisdiction in any matter specified in subsection (1).

30. (1) The Tribunal may exercise all the powers of a First Class Magistrate in respect of all proceedings before it, but has unlimited jurisdiction to make pecuniary awards.

(2) The Tribunal may, in proceedings before it -

(a) adjust and set off one against the other, all claims of the parties arising out of or incidental to the employment relation between them, whether under provisions of this Act or otherwise;
(b) may direct the payment by one party to the other of any sum it finds due.

31. The Tribunal may order cancellation of a contract of employment, subject to such conditions as to payment of remuneration or other money due under the contract or of damages or compensation as the Tribunal sees fit to impose, but shall not make an order in respect of any non-contractual right granted by this Act.

32. (1) The Tribunal shall receive claims, conduct its proceedings, make awards and orders, and otherwise conduct its business in accordance with the Industrial Tribunal Rules set out in the First Schedule.

(2) The Secretary of State may, from time to time, amend the Rules set out in the First Schedule.

PART V — LABOUR-ONLY SUBCONTRACTING

33. (1) A person who operates as a labour-only subcontractor without a certificate of exemption issued under section 36 commits an offence in respect of each employee engaged by him or her.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding five hundred dalasis for each day of each offence or imprisonment for a period not exceeding two years, or to both the fine and imprisonment and to deportation from The Gambia if he or she is not a citizen of The Gambia.

34. (1) A person who enters into a contract or arrangement for labour-only services with a labour-only subcontractor who does not hold a certificate of exemption issued under section 36—

(a) is deemed for all purposes to be the employer of a worker whose services he or she obtains under the contract or arrangement; and

(c) commits an offence in respect of each person whose services he or she obtains.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding fifty thousand dalasis for each offence.

35. A person seeking an exemption to operate as a labour-only subcontractor shall apply in writing to the Commissioner specifying—

(a) the clients or contractors to whom he or she intends to supply a worker;

(b) the categories of workers he or she intends to supply; and

(c) any exceptional terms and conditions of employment he or she anticipates will be applicable to the workers.

36. (1) The Commissioner may issue a certificate of exemption if he or she is satisfied that—

(a) the circumstances which led to the desire of the client or contractor to secure labour by way of a labour-only subcontractor are wholly exceptional; and
(b) without resort to the labour-only subcontracting, Gambian workers will lose or fail to secure employment.

(2) The Commissioner may only issue a certificate of exemption on the following conditions, namely –

(a) the labour-only subcontractor will only supply labour to the persons, not exceeding five in number, specified in the certificate;

(b) the terms and conditions of employment are not less favourable than those that might reasonably be expected by the workers in employment in that part of The Gambia;

(c) the person to whom the certificate is issued makes appropriate contributions to all statutory social security, industrial injuries, national insurance, training and insurance funds appropriate to the workers;

(d) the person to whom the certificate is issued makes a return to the Commissioner not less than once in every three months showing –

(i) the charge he or she makes to each client or contractor,

(ii) the numbers and classes of workers supplied to each client or contractor, and

(iii) the wages paid to each class of workers in each case during the whole of the period since the previous return; and

(e) the person to whom the certificate is issued deposits an approved banker’s certificate of credit-worthiness.

(3) The Commissioner may charge such fee as is approved by the Secretary of State for the issue of a certificate of exemption and the filing of the required returns.

(4) A certificate of exemption issued by the Commissioner shall –

(a) have affixed to it a photograph of the exempted person; and

(b) state the name and address of the exempted person; and

(c) state the date of commencement and of expiry of the certificate.

(5) A certificate of exemption remains in force for not more than three years, but may be renewed on proof of satisfaction of the conditions laid down in this section.

(6) A labour-only subcontractor operating under a certificate of exemption issued under this section is deemed for all purposes to be the employer of the workers engaged by him or her.

PART VI – MAINTENANCE AND DEVELOPMENT OF HUMAN RESOURCES

37. (1) An employer shall ensure that –
(a) newly engaged or transferred employees are either able to undertake their job adequately and safely or are provided with appropriate training to enable them to do so; and

(b) where new work methods are introduced to an existing job, adequate training is provided as would enable an employee of reasonable ability, in the performance of the job before the introduction, to continue to perform his or her work adequately and safely under the changed circumstances.

(2) Where an employee might reasonably be considered to have qualified to receive a trade certificate as a result of training provided consistent with this section, he or she is deemed to have applied to be examined for the trade certificate and the employer shall notify the examining authority of the application.

(3) Nothing in this section precludes an employer from terminating an employee otherwise than in conformity with this Act.

38. An employer shall pay to his or her employee during any period of training wages not less than the amount he or she was entitled to receive immediately before the commencement of the period of training.

39. (1) The National Training Authority may at any time inspect any training facility provided or used by an employer and make recommendations as to the conduct and quality of training provided at the facility.

(2) An employee undergoing training, or a trade union acting on his or her behalf, may, at any time, before, during or within one month of the conclusion of a training, complain to the Authority that the conduct, nature or quality of the training will not, does not or did not provide the skills needed to enable the employee to do his or her job.

(3) Where a complaint is made under subsection (2), the Authority shall conduct an inquiry and shall, if it finds the complaint wholly or partially well-founded, give such recommendations as are necessary to ensure that adequate training is provided for the employee.

(4) An employer or training facility that fails to comply with the recommendations of the Authority under subsection (3) shall, on a finding by the Tribunal, be ordered to pay to the Tribunal a sum equivalent to five times the wages which the employee would be entitled to receive during the whole period of training.

(5) On receipt of the sum specified under subsection (4), the Tribunal shall, in consultation with the Authority, arrange to provide a suitable alternative course of training for the employee.

40. (1) Unless otherwise provided in this section, every employer shall maintain one suitable apprentice for every ten employees, each of whom shall be engaged on a course of apprenticeship approved by the Authority.

(2) Without prejudice to subsection (1)-

(a) an employer of less than an aggregate of ten persons at all its establishments, or

(b) any other employer,
may also send such number of his or her employees as approved by the Authority to one or more courses approved by the Authority, conducted by a technical institute or other institute or by the employer.

(3) An employer shall engage and supply employees of suitable ability to satisfy his or her obligation under subsection (1).

(4) The Authority may, on application by an employer, permit the substitution of some other suitable course of training for any one or more of the apprenticeships required by subsection (1).

(5) The Secretary of State may, by Order published in the Gazette, exempt an employer from the provisions of subsection (1).

(6) An apprenticeship commenced by reason of this section shall not be terminated because-

(a) the number of those employed by his or her employer falls below that required to impose an obligation to institute a course of apprenticeship; or

(b) he or she becomes exempt from the obligation imposed by subsection (1).

41. (1) An employer who is party to a contract of employment with an apprentice shall retain the apprentice in his or her employment and offer him or her appropriate training throughout the term of the contract unless, subject to –

(a) the Injuries Compensation Act, personal injuries to the apprentice has made it reasonably impracticable to continue that training; or

(b) section 84, the apprentice has been dismissed.

(2) An employer who has an apprentice and proposes to go out of business before the completion of the period of apprenticeship shall –

(a) arrange to transfer the apprenticeship to another suitable employer; or

(b) if the apprentice reasonably refuses the transfer or no transfer is offered, pay to the Authority compensation of such amount as may be prescribed by the Secretary of State for each uncompleted year or part of an uncompleted year of the apprenticeship.

(3) Section 40 (6) applies to the continuation of an apprenticeship by the Authority under subsection (2).

(4) An amount of compensation payable by reason of subsection (2) is deemed to be a debt owed by the employer and is to be so treated on the insolvency, winding up or death of the employer.

42. (1) An employee who wishes to secure a certificate of competence in any trade or occupation to which a trade certificate is normally available may apply to the Authority for examination and certification.

(2) The Commissioner shall refer, to the Authority or such other examining body as may be appropriate, an application made to him or her under subsection (1).
(3) The Authority or other examining body referred to in subsection (2) shall, if satisfied, after appropriate examination, that the applicant is qualified to receive a trade certificate in respect of one or more trades, issue the applicant with the appropriate trade certificate.

43. (1) The Labour Advisory Board shall, from time to time, revise the recognized trade and job classifications and the job descriptions applicable to them in respect of a Joint Industrial Council.

(2) The Labour Advisory Board shall not revise trade and job classifications in any collective agreement made between one or more trade unions and one or more employers or organisations of employers.

44. (1) The Commissioner shall establish and maintain an employment service designed to bring together persons offering and seeking employment, including, at the minimum, maintaining a register in Banjul of persons seeking employment.

(2) The Commissioner shall take such measures as he or she deems fit to promote the use of the employment service including—

(a) maintaining the Banjul register in a way that makes it an effective tool for matching employers with job seekers;

(b) encouraging employers to notify the employment service of vacancies in their establishments;

(c) encouraging job seekers to register their availability for work;

(d) consulting with trade unions, employers' organisations, and the Labour Advisory Board on how to make the employment service effective; and

(e) establishing services designed to attract users of the employment service in Banjul and throughout The Gambia.

PART VII – EMPLOYMENT OF CHILDREN

45. (1) Subject to subsection (2) and the Children's Act, 2005, no person shall engage a child in any public or private agricultural, industrial or non-industrial undertaking or in any of their branches.

(2) Subsection (1) does not apply to work done in a vocational or technical school or other training institution, if the work is—

(a) approved and supervised by a public authority; or

(b) an integral part of the educational or vocational training programme for which the school or institution is responsible.

46. (1) Subject to the Children's Act, 2005, no person shall engage a child in any occupation or activity that is likely to be—

(a) harmful to the health, safety, education, morals or development of the child; or
(b) prejudicial to his or her attendance at school or any other vocational or training programme.

(2) The Secretary of State may, in consultation with relevant organisations of employers and employees, specify, by notice published in the Gazette, occupations or activities, which, in his or her opinion, are likely to have the effect mentioned in subsection (1).

47. An employer shall keep a register of any person under the age of eighteen years employed by or working for him or her.

48. Subject to the Children’s Act, 2005, a person who contravenes a provision of this Part commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

PART VIII – CONTRACTS OF EMPLOYMENT

49. (1) Unless otherwise provided by this Act, this Part applies to all types of contracts of employment.

(2) A contract of employment shall be in any one of the following forms —

(a) a contract for an unspecified period of time;

(b) a contract for a specified period of time; or

(c) a contract for a specific task.

50. A term or condition, whether express or implied, in a contract of employment—

(a) prohibiting an employee from becoming or remaining a member of a trade union or any other organisation representing workers; or

(b) purporting to subject the employee to any penalty, loss of benefit or detriment by reason of membership of the trade union or organisation,

is null and void.

51. (1) In a contract of employment for a skilled worker, the parties may agree on the duration of the probationary period, but that period shall not exceed twelve months.

(2) During a probationary period, either party may terminate a contract of employment at any time without notice and without regard for the requirement set out in section 83 (1).

(3) In this section, “skilled worker” means an employee in an enterprise who through acquisition, programmed or otherwise, of knowledge, attitude and behaviour, has special ability to do something.

52. (1) Every employer shall give to his or her employee a written statement of particulars of employment.

(2) The statement referred to in subsection (1) shall be given, in the case of an employee—
(a) in employment at the commencement of this Act, within three months of the commencement of this Act; and

(b) employed after the commencement of this Act, within one month of his or her reporting for work.

(3) The statement referred to in subsections (1) and (2) shall include the following particulars -

(a) the names and addresses of the employee and of the employer;

(b) the job category, title or description of the work;

(c) the date of commencement of the contract;

(d) any provision for the termination of the contract, other than those provided by this Act;

(e) the rate of remuneration and the method of calculating remuneration;

(f) the intervals at which remuneration is paid;

(g) normal hours of work;

(h) any provisions for sickness or holidays, and payment during those periods, and pension rights, other than those provided by this Act; and

(i) any disciplinary rule applicable to the employee.

(4) For the purposes of this section, "employer" means a person, body corporate, an undertaking or a body of persons that has in his or her employment at least five employees.

53. (1) An employee shall receive a contract of employment in writing-

(a) where the contract is for a specified period of six months, or the equivalent in work-days of six months, or more;

(b) where the contract is with an employee other than a citizen of The Gambia and provides for employment ordinarily in The Gambia; or

(c) in any other case where the Commissioner so directs.

(2) A contract which is not in writing as required under subsection (1) is enforceable by the employee but not by the employer, but where the omission to make the contract in writing is due to the willful act of the employee, the contract is enforceable by either party.

54. (1) A contract of employment for an unspecified period of time may be terminated by either party subject to sections 55 and 83.

(2) A contract of employment for a specified period of time terminates automatically on the date specified for its termination, unless it is expressly or tacitly renewed or prolonged, no notice is required for its termination.

(3) A contract of employment to perform a specific task terminates on the completion of the task and no notice of termination is required of either party.

(4) A contract is deemed to be for an unspecified period of time, if-
(a) an employee is regularly and repeatedly employed and paid wages on the basis of completion of a quantity of work which can be completed in less than twenty-four hours; or

(b) the purpose or effect of a contract of employment, that is purported to be for a specified period of time or a specific task, is the filling on a lasting basis of a post connected with the normal and permanent activity of an undertaking.

55. (1) Subject to subsection (2), a contract of employment for an unspecified period of time may be terminated by either party on giving the other party the following minimum period of notice in writing where—

(a) the contract is to pay wages at a monthly rate, one month's notice;

(b) the contract is to pay wages at a fortnightly rate and the employee has been—

(i) employed for less than six years, one fortnight's notice, and

(ii) continuously employed for at least six years, one month's notice;

(c) the contract is to pay wages at a weekly rate and the employee has been—

(i) employed for less than two years, one week's notice,

(ii) continuously employed for a period of not less than two years but not exceeding six years, one fortnight's notice, and

(iii) continuously employed for at least six years, one month's notice;

(d) the contract is to pay wages at a daily or hourly rate and the employee has been—

(i) employed for less than six months, one day's notice,

(ii) continuously employed for a period of not less than six months but not exceeding two years, one week's notice,

(iii) continuously employed for a period of not less than two years but less than six years, one fortnight's notice; and

(e) where the employee has been continuously employed for a period of at least six years, two months' notice.

(2) An employee who has been continuously employed for a period of more than six years shall, notwithstanding the rate at which he or she is paid, give to his or her employer not less than one month's notice.

(3) Where the contract of employment for unspecified period of time is to pay wages at any rate, other than an annual rate, not provided for in subsections (1) and (2), either party may determine the contract at the close of any day without notice.

(4) The minimum period of notice for a contract of employment for a specified period of time is fourteen days.
56. (1) Nothing in this Act prevents the parties to a contract of employment for an unspecified period of time from agreeing to terms of notice of termination more beneficial to either party than those required by section 55.

(2) An agreement to any lesser period of notice than those required by section 55 is null and void.

57. An employee whose contract of employment is terminated by the employer for reasons set out in section 93 (1) is, notwithstanding the employers' compliance with the requirements of that section, entitled to six months' notice.

58. (1) Section 55 does not prevent either party from waiving his or her right to notice on any occasion or from accepting payment in lieu of notice.

(2) An employer shall, in lieu of providing notice of termination -

(a) pay the employee a sum equal to the remuneration that would have been received; and

(b) confer on the employee all other benefits due to the employee,

up to the expiration of the required period of notice.

(3) If an employee terminates a contract of employment without notice in a case where notice is required, and the employer has not waived the right to notice, the employee-

59. (1) On the termination of a contract of employment, an employer shall, if so requested by the employee, provide the employee with a certificate indicating—

(a) the name and address of the employer;

(b) the nature of the employer's business;

(c) the length of the employee's continuous employment with the employer;

(d) the capacity in which the employee was employed prior to the termination;

(e) the wages and other remuneration payable at the date of termination of the contract; and

(f) where the employee so requests, the reason for the termination of his or her employment.

(2) The certificate referred to in subsection (1) shall not contain an evaluation of the employee's work unless the employee requests the evaluation.

60. (1) Except as provided in subsection (2), a contract of employment shall not be transferred from one employer to another without the consent of the employee.