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LABOUR AND EMPLOYMENT ACT OF BHUTAN 2007

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## **PREAMBLE**

WHEREAS, the well being of workers contribute to the Gross National Happiness.

WHEREAS, workers play a crucial role in the development of the Kingdom, it is essential that their welfare is promoted and protected through a fair and just labour administration system suitable for Bhutan.

WHEREAS, it is the desire of His Majesty King Jigme Singye Wangchuck, that all Bhutanese, particularly the educated youth are gainfully employed.

WHEREAS, it is the desire of the country to create employment opportunities including self-employment.

WHEREAS, it is the desire of the government to encourage private sector development and entrepreneurship.

Therefore, the Labour and Employment Act governing employment and working conditions have been enacted by the National Assembly of Bhutan during its 86th Session, on the Sixteenth Day of the Eleven Month of the Male Fire Dog year, corresponding to the Fourth Day of the First Month of the year 2007.

# **CHAPTER - I**

## **PRELIMINARY**

### **Title, Commencement and Extent**

1. This Act shall:
  - (a) be called “THE LABOUR AND EMPLOYMENT ACT OF BHUTAN 2007”.
  - (b) come into force on the Third Day of the First Month of the Female Fire Hog Year, corresponding to the Twentieth Day of the Second Month of the Year 2007; and
  - (c) extend to the whole of Bhutan.

### **Application of this Act**

2. This Act shall apply to matters relating to labour and employment in the Kingdom of Bhutan.
3. This Act shall not apply to the employment and working conditions of :
  - (a) the uniformed members of the Royal Body Guards;
  - (b) the uniformed members of the Royal Bhutan Army;
  - (c) the uniformed members of the Royal Bhutan Police.
4. Any matter pertaining to labour and employment not covered under any other laws shall be covered by this Act from the date of its enactment.

## **Repeals**

5. The following are hereby repealed:
  - (a) the Rules and Regulations for Employment of Bhutanese Nationals in the Private Sector (1998).
  - (b) chapters 1,2,4 and 5 and paragraphs 1,2,3,4,5,and 7 on the procedure for recruitment of Foreign Workforce of the Chathrim for Wage rate, Recruitment Agencies and Workmen's Compensation 1994.

## **CHAPTER - II PROHIBITIONS**

### **Prohibition of forced or compulsory labour**

6. No person shall make use of, cause or permit any form of forced or compulsory labour that is extracted from any person under the menace of any penalty and for which the person has not offered himself or herself voluntarily.
7. Section 6 does not apply to:
  - (a) work required of a prisoner to assist in public services;
  - (b) work required of a person in times of an emergency such as war, fire, flood, famine, earthquake, violent epidemic or epizootic diseases, that would endanger the existence or the well-being of the whole or part of the population; and
  - (c) work required of a person for shabtog lemi or other labour contributions for important local and public celebrations.
8. A person who contravenes section 6 shall be guilty of an offence which shall be a felony of the fourth degree.

## **Prohibition of the worst forms of child labour**

- 9.** No person shall subject a child to:
- (a) any form of practices such as sale and trafficking, debt bondage, forced or compulsory labour, including recruitment for use in armed conflict;
  - (b) the use, procuring or offering of the child for prostitution, for the production of pornography or for pornographic performances;
  - (c) the use, procuring or offering of the child for illicit activities, in particular for the production and trafficking of drugs;
  - (d) work under particularly difficult conditions such as work for long hours or during night or work where the child is unreasonably confined to the premises of the employer; or
  - (e) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of a child including:
    - (i) work which exposes a child to physical, psychological or sexual abuse;
    - (ii) work underground, under water, at dangerous heights or in confined spaces;
    - (iii) work with dangerous machinery, equipment or tools, or which involves the manual handling or transport of heavy loads; or
    - (iv) work in an unhealthy environment that may expose the child to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to his or her health.

10. A person who contravenes section 9 shall be guilty of an offence which shall be a felony of the third degree.

### **Prohibition against discrimination of employees and job seekers**

11. An employer and an employment agent shall not discriminate against employees or job applicants for vacancies in connection with recruitment, dismissal, transfer, training and demotion.
12. An employer shall not discriminate against an employee with regard to wages and working conditions.
13. Discrimination regarding pay conditions takes place in the case of failure to give equal pay for equal work or work of equal value.
14. Sections 11 to 13 do not apply where:
  - (a) a member of the employer's immediate family is considered for the particular job;
  - (b) a distinction, exclusion or preference is made by the employer in respect of a particular job based on the inherent requirements of that job; or
  - (c) special assistance or protection is provided to a person having special requirements relating to sex, age, disablement or family responsibilities.
15. A person who contravenes sections 11 to 13 shall be guilty of an offence and shall be liable to pay a fine of minimum one year to a maximum of three years of the Daily Minimum National Wage Rate.

### **Prohibition against sexual harassment**

16. An employer shall not sexually harass:
  - (a) a person seeking employment with that employer; or

- (b) an employee of that employer.
- 17.** An employee shall not sexually harass:
- (a) another person employed by his or her employer;
  - (b) his or her employer; or
  - (c) a person seeking employment with his or her employer.
- 18.** For the purposes of sections 16, 17 and 19, sexual harassment includes:
- (a) making an unwelcome sexual advance or an unwelcome request for sexual favours to the other person; or
  - (b) engaging in any other unwelcome conduct of a sexual nature in relation to the other person.
- 19.** In sections 16 to 18 "conduct of a sexual nature" includes-
- (a) subjecting a person to any act of physical intimacy;
  - (b) making any oral or written remark or statement with sexual connotations to a person or about a person in his or her presence; or
  - (c) making any gesture, action or comment of a sexual nature in a person's presence.
- 20.** A person who contravenes sections 16 to 19 shall be guilty of an offence which shall be a petty misdemeanour. In addition, the Court may impose fine at the rate of the Daily Minimum National Wage Rate to a maximum of 3000 days in accordance to the severity of the offence.



## **CHAPTER - III**

### **LABOUR ADMINISTRATION**

#### **Functions of the labour administration**

- 21.** The labour administration shall provide policies and programmes in the areas of :
- (a) employment promotion;
  - (b) labour protection;
  - (c) labour relations;
  - (d) vocational education and training; and
  - (e) occupational standards setting and certification.

#### **Functions of the Chief Labour Administrator**

- 22.** The Head of the Secretariat of the Ministry shall be the Chief Labour Administrator whose functions shall be to:
- (a) promote effective co-operation between the Labour Inspection Division and other government agencies engaged in similar activities;
  - (b) promote the collaboration between the labour inspectorate and employers and employees;
  - (c) provide advice to the Minister on policies, programmes and activities relating to the administration of this Act and regulation;
  - (d) bring to the notice of the Minister of any defects or abuses at workplaces not specifically covered by existing legal provisions;
  - (e) refer a matter to the Minister for a decision to prosecute for breach of this Act; and
  - (f) perform any other functions as may be necessary to carry this Act into effect.

## **Powers of the Chief Labour Administrator**

- 23.** The powers of the Chief Labour Administrator are:
- (a) to approve, recommend and endorse any matter relating to the administration of the Act and to issue licenses, required under this Act;
  - (b) to intervene on behalf of an employee in any civil proceedings against his or her employer in respect of any cause of action arising out of this Act and to give evidence in a prosecution for breach of this Act;
  - (c) to exercise the powers and functions of a labour Inspector under section 26 to 29 of this Act;
  - (d) to receive and require production of information required by this Act and its regulations;
  - (e) to determine appeals against the issue of improvement and prohibition notices issued under section 40 to 43 of this Act;
  - (f) to direct the dispute resolution process under this Act and to certify a record of agreement ; and
  - (g) to exercise any other power as may be necessary to carry this Act and its regulations into effect.
- 24.** The Chief Labour Administrator may delegate in writing to an officer of the Royal Government of Bhutan, the exercise of his or her powers (except his or her powers under section 48 and 49 of this Act) and the performance of his or her functions:
- (a) either as a whole or in part; and
  - (b) subject to any specified conditions, qualifications or reporting requirements that the Chief Labour Administrator may set.

## **Functions of Labour Relations Officer**

- 25.** The Labour Relations Officer shall be a civil servant and his or her functions are:
- (a) to promote workplace harmony and co-operation;
  - (b) to provide advice and information to employers and employees about their rights and obligations under this Act;
  - (c) to investigate the nature and causes of a labour dispute and assist the parties to reach a resolution to their dispute;
  - (d) to advise a conciliator appointed under section 196 to 198 of this Act on the rights and obligations of employers and employees under this Act;
  - (e) to report to the Chief Labour Administrator on matters relating to the conduct of a labour dispute; and
  - (f) to perform any other functions as may be necessary to promote workplace harmony and co-operation.

## **Functions of the Labour Inspector**

- 26.** The Labour Inspector shall be a civil servant and his or her functions are :
- (a) to advise and inform employees and employers about their rights and obligations under this Act;
  - (b) to facilitate the implementation of this Act by providing information, advice and guidance to employers, employees and to self-employed and other workers who are not subject to contracts of employment;

- (c) to investigate and, when necessary, take action in accordance with this Act and regulations to deal with alleged contraventions of this Act;
- (d) to report to the Chief Labour Administrator on the results of inspections and of any defects and problems in workplaces; and
- (e) to enforce the posting of notices required by this Act or the regulations.

## **Powers of the Labour Inspector**

- 27.** The Labour Inspector, with prior authority of the Chief Labour Administrator may:
- (a) enter at reasonable times any factory, plant or establishment, construction site or other areas, workplace or environment where work is performed by any employee of an employer where the inspector believes activities or information relevant to the provisions of this Act is present; and
  - (b) inspect and investigate during regular working hours and other reasonable times and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein, and to question privately any such employer, owner, operator, agent or employee if the Labour Inspector believes that conditions likely to endanger employees exist.
- 28.** In making his or her inspection and investigations under this Act, the Labour Inspector may require the attendance and testimony of witnesses and the production of evidences.
- 29.** In the case of failure or refusal of any person to appear as a witness, the Labour Inspector may:
- (a) obtain an order from the Dzongkhag or Dungkhag court under whose jurisdiction the person is found requesting that person to produce evidence or give testimony relating to the matter under investigation or in question;

- (b) require under a warrant from the nearest Royal Court of Justice, the production of any books, registers or other documents prescribed by this Act relating to conditions of work, in order to see that they are in conformity with the legal provisions and to copy or make extracts from the documents; and
- (c) take or remove for purposes of analysis, samples of materials and substances used or handled.

## **Identity Cards**

- 30.** The Chief Labour Administrator shall issue each Labour Inspector and Labour Relations Officer with an identity card which they shall present on entry into a workplace.

## **Confidentiality**

- 31.** A Labour Inspector, Labour Relations Officer and any other person advising a Labour Inspector under section 34 of this Act shall treat as confidential and not reveal any manufacturing or commercial secrets which may come to his or her knowledge in the course of executing his or her duties unless:
- (a) the Inspector is required to divulge this information by a Court of law; or
  - (b) the Inspector is required to divulge this information as a part of his or her work as a Labour Inspector.
- 32.** A Labour Inspector, Labour Relations Officer and any other person advising a Labour Inspector shall treat as confidential the source of any complaint relating to a breach or suspected breach of this Act.

**33.** A Labour Inspector, Labour Relations Officer or Advisor who contravenes sections 31 and 32 shall be guilty of an offence which shall be misdemeanour. In addition, the Ministry may initiate administrative action against the offender.

### **Person with specialised knowledge**

**34.** The Chief Labour Administrator may request a person with specialised knowledge to attend a workplace or other premises to assist and advise the Inspector in executing his or her powers under this Act.

### **Duty to avoid conflicts of interest**

**35.** A Labour Inspector, a Labour Relations Officer or an Advisor to an Inspector, who has the personal, pecuniary or direct interest that may prejudicially affect the consideration of any matter before him shall not inspect or supervise on that matter so as to avoid the possibility of prejudice.

**36.** A Labour Inspector, Labour Relations Officer or an Advisor who contravenes section 35 shall be guilty of an offence which shall be petty misdemeanour.

### **Entry and inspection to be allowed**

**37.** A person shall at reasonable times allow an Inspector or Inspector's advisor acting under section 34, exercising his or her powers under this Act and regulations access to premises, workplaces and other places.

- 38.** A person who obstructs or prevents an inspector or an advisor from carrying out his or her duties under this Act commits an offence which shall be a petty misdemeanour.

### **Protection from prosecution**

- 39.** While acting in his or her position as Labour Inspector, Labour Relations Officer or an Advisor, no Labour Inspector, Labour Relations Officer or Advisor is liable for any other act done in relation to the performance of his or her duties or functions under this Act.

## **CHAPTER - IV**

### **NOTICES**

### **Improvement Notice**

- 40.** Where a Labour Inspector is of the opinion that a person:
- (a) is contravening any provision of this Act or its regulations; or
  - (b) has contravened a provision in circumstances that make it likely that the contravention will continue or be repeated, the inspector may issue to the person an improvement notice requiring the person to remedy the contravention or likely contravention.

The Labour Inspector shall specify a day that is more than 7 and less than 35 calendar days after the day the notice was issued, before which the person is required to remedy the contravention or likely contravention.

- 41.** A person who contravenes section 40 shall be liable to pay a fine at the rate of the Daily Minimum National Wage Rate to a maximum of 360 days.

42. Section 40 does not apply to a person who has lodged an appeal under section 47.

### **Prohibition Notice**

43. If a labour inspector is of the opinion that there is occurring or may occur any activity at a workplace involving an immediate risk to the health and safety of any person, the inspector may issue a prohibition notice to the person who has or may be reasonably presumed to have control over the activity, to prohibit the activity.
44. If a Labour Inspector is of the opinion that at the workplace there is occurring or may occur an activity which involves or will involve an immediate risk to the health and safety of any person, the inspector shall specify the reason for that opinion.
45. A person who contravenes section 43 and 44 shall be guilty of an offence which shall be:
- (a) a misdemeanour; or
  - (b) if aggravated circumstances exist, a felony of the fourth degree.
46. Section 43 and 44 does not apply to a person who has lodged an appeal under section 47.

### **Appeals against notices**

47. A person issued with an improvement notice or a prohibition notice may appeal to the Chief Labour Administrator in writing within fifteen calendar days after the notice is issued.
48. The Chief Labour Administrator shall inquire into the circumstances relating to the notice and, giving his or her reasons in writing within 15 working days.



- 49.** Pending the decision of the Chief Labour Administrator under section 48, the operation of the notice shall:
- (a) in the case of an improvement notice, be suspended; and
  - (b) in the case of a prohibition notice, remain in force until the Chief Labour Administrator makes his or her decision.
- 50.** A person who fails to comply with a notice that is affirmed by the Chief Labour Administrator under section 48 shall be guilty of an offence which shall be:
- (a) a misdemeanour; or
  - (b) if aggravated circumstances exist, a felony of the fourth degree.

## **CHAPTER - V**

### **CONTRACTS OF EMPLOYMENT**

#### **Application of Chapter V**

- 51.** Chapter V applies to employment for a duration of one year or more except for employment arrangements between members of a family unless a contract of employment specifies otherwise.
- 52.** If an employer assigns the same or similar work for the same wages to an employee employed for one year or more, the employee shall be deemed to have been employed under a contract of employment as set out in chapter V.

#### **Existing contracts to continue in force**

- 53.** A contract of employment that is in force at the time of the commencement of this Act is deemed to have been made under this Act provided that the minimum conditions set out in this Act are met.

- 54.** The Chief Labour Administrator may add a term or terms to a contract of employment to ensure that the minimum conditions set out in this Act and its regulations are complied with and such term or terms shall be complied with from the date of the commencement of this Act.

### **Implied terms in a contract of employment**

- 55.** An employer shall provide an employee with work during the contracted period that is the same or of a similar nature to the primary duties in the contract.
- 56.** If the employer fails to provide work, the employer shall pay the employee wages at the same rate as if the employee had performed the day's work unless:
- (a) the employee has broken the contract of employment; or
  - (b) it is impossible to uphold the contract of employment due to circumstances beyond either party's control.
- 57.** An employee shall be willing and available to work in accordance with the terms of the contract of employment unless:
- (a) the employer has broken the contract of employment; or
  - (b) it is impossible to uphold the contract of employment due to circumstances beyond either party's control.

**58.** A contract of employment is deemed to be broken if-

- (a) the employer fails to pay wages in accordance with Chapter VIII; or
- (b) the employee is continuously absent from work for more than three consecutive work days without the prior leave of the employer, unless the employee has a reasonable excuse for such an absence and has informed or attempted to inform the employer of the excuse prior to or at the earliest opportunity during such absence.

### **Transfer of contract of employment to another employer**

**59.** If an employer sells or otherwise transfers to another person a business in which an employee works under a contract of employment, the employer shall not transfer the contract of employment to the other person unless the employee has freely consented to the transfer.

**60.** If a contract of employment is transferred from one employer to another:

- (a) the terms and conditions of the contract are preserved on that transfer; and
- (b) any rights the employee may have had against the transferring employer are preserved against the new employer.

### **Contracts to be in writing**

**61.** An employer shall ensure that a contract of employment with an employee is in writing and that a copy of it is provided to the employee.

62. If a contract of employment is not in writing, the contract is deemed to be an unwritten contract of employment and the minimum standards set out in the Act shall apply.
63. An employer who contravenes sections 61 and 62 shall be guilty of an offence of violation.

### **Term and Conditions of a contract of employment**

64. An employer shall ensure that a contract of employment specifies:
  - (a) the duration;
  - (b) a specific task to be performed;
  - (c) notice period for termination of the contract; and
  - (d) wages, working hours, probation period and leave provisions.
65. Unless there is proof to the contrary, if a contract of employment (whether written or unwritten) fails to specify a term of duration, it is presumed that the contract of employment is for an indefinite period and shall continue in force until it is terminated in accordance with this Chapter.
66. An employer who contravenes sections 64 and 65 shall be guilty of violation. In addition to, the Ministry may direct the employer for payment of appropriate damages or compensatory damages.

### **When a contract of employment is enforceable**

67. A contract of employment is enforceable if it-
  - (a) has been signed or personally marked by the employer or the employer's representative and the employee or, in the case of an unwritten contract, there is evidence of an oral agreement between the parties;

- (b) clearly defines the rights and obligations of the employer and employee;
- (c) is for lawful purposes; and
- (d) was freely entered into without threat or undue influence.

## **Notice period for termination of a contract of employment**

- 68.** An employer shall ensure that a contract of employment with an employee specifies a notice period for the termination of the contract of not less than 30 days.
- 69.** If a contract of employment fails to specify a notice period or if the contract of employment is an unwritten contract, the notice period is deemed to be the relevant notice period specified in section 68.
- 70.** The length of notice period shall be same for the employer and the employee.
- 71.** An employer or the employee who contravenes sections 68 to 70 shall be guilty of violation.

## **Probation**

- 72.** A contract of employment of one year or more may contain a period of probation of a maximum of 180 days within which period either party may terminate the contract by giving the other party notice of 7 days.
- 73.** An employer shall not require an employee to repeat a probationary period in relation to the same work or materially similar work.
- 74.** Sections 72 and 73 do not apply to training agreement.
- 75.** An employer who contravenes sections 72 to 74 shall be guilty of an offence which shall be petty misdemeanour.

## **Internal service rules**

- 76.** An employer with an enterprise that is either-
  - (a) a registered company under the Companies Act of the Kingdom of Bhutan (2000); or

- (b) a small, medium or large scale industry - shall prepare and implement internal service rules in consultation with the Workers' Association or, if there is no such Association, with the employees at the enterprise.
77. The internal service rules shall be framed as per the Rules and Regulations to this Act.
78. The internal service rules may contain terms and conditions of employment that are more than the minimum set down in this Act but any terms or conditions which are less than the minimum terms of this Act shall be void.
79. The internal service rules are not enforceable until they have been approved by the Chief Labour Administrator as being in compliance with this Act.
80. An employer who contravenes sections 76 to 79 shall be liable to pay a fine at the rate of the Daily Minimum National Wage Rate to a maximum 3 years of the Daily Minimum National Wage Rate.

### **Automatic termination of a contract of employment**

81. A contract of employment shall be terminated:
- (a) by mutual agreement;
  - (b) if either party is unable to fulfill the contract due to circumstances outside the control of the parties;
  - (c) if the employee dies;
  - (d) the employee retires; or
  - (e) at the end of the agreed term of the contract or on the completion of the task specified in the contract of employment.

## **Termination by either party**

- 82.** A party to a contract of employment may at any time give to the other party notice in writing of his or her intention to terminate the contract.
- 83.** Either party may terminate the contract without waiting for the end of the notice period, by the terminating party paying to the other party a sum equal to the basic rate of pay which the employee would have earned during the notice period.
- 84.** The relevant notice period is the period referred to in sections 68 to 70.

## **Unlawful reasons for termination**

- 85.** An employer shall not terminate a contract of employment because:
  - (a) the employee is or has acted in the capacity as a health and safety representative or as a member of a Workers' Association;
  - (b) the employee has filed a complaint or participated in proceedings against an employer involving an alleged violation of laws;
  - (c) of the employee's race, colour, sex, marital status, pregnancy, religion, political opinion or social origin;
  - (d) the employee is absent from work on maternity leave or paternity leave;
  - (e) the employee has exercised his or her right to remove himself or herself from dangerous work under sections 162;
  - (f) the employee has been temporarily absent from work because of illness or injury, as certified by a medical practitioner; or

- (g) the employee has absented himself from work for a long duration with prior permission of the employer.
- 86.** An employer who contravenes section 85 shall be guilty of an offence which shall be a misdemeanour. In addition, the court may direct the employer for reinstatement of the employee or for payment of appropriate damages or compensatory damages.

### **Summary dismissal for serious misconduct**

- 87.** An employer may terminate a contract of employment by dismissing an employee without notice or payment in lieu of notice if the employee has been guilty of serious misconduct that makes it unreasonable for the employer to continue to employ that employee if:
- (a) the employer has first taken all reasonable steps to ascertain whether or not the employee's conduct amounts to serious misconduct; and
  - (b) the employee has been given a reasonable opportunity to defend himself or herself against the allegations.
- 88.** For the purposes of section 87, serious misconduct includes:
- (a) fraud, theft or misuse of the employer's property, including the employer's intellectual property;
  - (b) assault and other serious crimes;
  - (c) wilful insubordination or disobedience of a repeated or serious character;
  - (d) habitual irregular attendance;
  - (e) sabotage;
  - (f) wilful damage;



- (g) sexual harassment within the meaning of sections 16 to 20;
  - (h) abandonment of the employee's post;
  - (i) persistent absence from the workplace without good excuse; or
  - (j) wilfully offending the Tsa Wa Sum.
- 89.** An employee terminated under section 87 and 88 shall be entitled to his or her pay that is owing to him or her up to the time of the dismissal or abandonment.

## **Redundancy**

- 90.** An employer may terminate a contract of employment if the employer no longer requires:
- (a) the work which is carried out by an employee or a number of employees; or
  - (b) the skills and ability of an employee or employees.
- 91.** If an employer terminates a contract of employment under section 90, the employer shall:
- (a) consult with the Workers' Association or, if there is no such Association, the employees at the workplace, advising of the number of employees likely to be made redundant and the period over which this may occur;
  - (b) give notice according to sections 68 to 70 and additional notice of seven days for every year of continuous employment by the employee for that employer up to a maximum of 42 days; and

- (c) notify the Chief Labour Administrator of the proposal, including the number and categories of employees involved and the reasons for their termination.

## **When a contract of employment may be terminated**

**92.** A contract of employment is terminated:

- (a) when the conditions specified in section 81 occurs; or
- (b) by either party giving notice or making payment according to sections 82 and 83, provided the employer does not terminate a contract for an unlawful reason specified in section 85.

## **Wrongful dismissal**

**93.** If an employer terminates a contract of employment in a manner or for reasons that contravene sections 92, the employee may initiate the dispute resolution procedures set out in Chapter XII.

## **Remedies for wrongful dismissal**

**94.** If proceedings have been initiated in a Court of law under section 204 and 205 for wrongful dismissal, the Court may do one or more of the following-

- (a) with the consent of the employee and the employer, order that he or she be reinstated to his or her employment to the same or equivalent position and that the employee be treated as if he or she had never been dismissed;

- (b) order the employer to pay compensation to the worker in a sum equal to one month's pay for that worker for each year of continuous employment with that employer up to a maximum of six months pay; and
  - (c) order costs to be paid by one party to the other in such sums as the Court considers just in all the circumstances.
- 95.** In an action for wrongful dismissal, the burden of proving the existence of a valid reason for the termination shall rest on the employer.

## **CHAPTER - VI**

### **COMPENSATION AND BENEFITS**

#### **Compensation**

- 96.** An employer shall compensate all his or her employees against:
- (a) death due to work accident or occupational diseases;
  - (b) total permanent disablement;
  - (c) temporary partial disablement.
- 97.** Section 96 applies to all types of employment.
- 98.** An employer who contravenes section 96 and 97 shall be guilty of an offence which shall be a felony of the fourth degree. The court may order payment of compensation as prescribed in the rules.

## **Benefits**

- 99.** An employee, upon retirement from the services shall be entitled to the following benefits:
- (a) Gratuity; and
  - (b) Provident fund or Pension.
- 100.** Section 99 applies to employees employed under contract of employment under chapter V.
- 101.** The entitlements and procedure for the entitlement of sections 96 and 99 shall be as specified in the rules to this Act.
- 102.** An employer who contravenes section 99 to 101 shall be guilty of an offence which shall be a felony of the fourth degree. The court may order payment of compensation as prescribed in the rules.

## **CHAPTER - VII HOURS OF WORK AND LEAVE**

### **Application of Chapter VII**

- 103.** Chapter VII applies to all forms of employment

### **Working Hours**

- 104.** The Ministry shall fix the duration of working hours from time to time and an executive order shall be issued to this effect.
- 105.** No employee shall be required to work beyond the maximum working hours specified in the executive order.

### **Leave**

- 106.** An employee is entitled to the following type of leaves.
- (a) Sick Leave;

- (b) Annual Leave;
- (c) Casual Leave;
- (d) Maternity Leave; and
- (e) Paternity leave.

**107.** The procedure for entitlement of the above leave shall be as specified in the rules to this Act.

### **Public holidays**

**108.** An employee is entitled to a minimum of 9 public holidays each year, inclusive of the birth anniversary of His Majesty the King and the National Day, to be taken as leave with pay based on the employee's normal rate of pay that was paid to the employee in his or her most recent pay period.

**109.** An employer may agree with his or her employees to substitute a public holiday under section 108 with another public holiday.

**110.** If an employee is required to work by the employer on a public holiday, the employer shall pay additional 50% of the employee's normal rate of pay.

### **Night work and risky work**

**111.** An employer shall not require a pregnant employee to work between the hours of 10 o'clock at night and 8 o'clock in the following morning:

- (a) 140 days before she is due to give birth and 56 days after she has given birth to the child; or

(b) at any other time if the employee produces a medical certificate showing that such work would endanger the child or the mother.

**112.** If an employee is withdrawn from night work under section 111 or if, due to her pregnancy or breastfeeding, an employee's work is a risk to the health or safety of the employee or her unborn or newborn child:

(a) the employer shall temporarily adjust the employee's working conditions or hours of work to avoid exposure to the risk; or

(b) if an adjustment is not feasible or can not reasonably be required to be made, the employer shall transfer the employee to other appropriate work that-

(i) will not expose her to the risk; and

(ii) is, as nearly as possible, comparable in status and pay to that of her present work.

### **Work on return from maternity leave**

**113.** On return from maternity leave, the employer shall place the returning employee in the same or a materially similar position to the position held by the employee immediately before starting the leave.

### **Nursing mothers**

**114.** An employer shall allow an employee to interrupt her work every 4 hours for one hour for a period of one month immediately after the expiry of her maternity leave to nurse her child and those interruptions shall be treated as work time for which the employee shall be paid.

## **Continuous employment**

- 115.** If the Chief Labour Administrator is of the opinion that an employer is intentionally avoiding the payment of leave to an employee by breaking a contract of employment, the Chief Labour Administrator may deem a contract or contracts to be continuous for the purposes of calculating the leave entitlement of the employee.
- 116.** A person who contravenes sections 111 to 115 shall be guilty of an offence which shall be a misdemeanour.

## **CHAPTER - VIII**

### **WAGES**

#### **Application of Chapter VIII**

- 117.** Chapter VIII applies to all forms of employment

#### **Payment of wages**

- 118.** A contract of employment shall specify a pay period of one month or less at the end of which the employer shall pay the employee his or her wages.
- 119.** An employer shall pay the employee the wages owing to him or her at the end of the period specified under section 118.
- 120.** An employer shall pay wages to an employee directly and not through another person:
- (a) in cash to the employee directly;

- (b) to the employee's credit in an account with a bank within the Kingdom of Bhutan nominated by the employee; or
  - (c) by bank cheque, draft, money order or electronic fund transfer;
    - (i) on a working day; and
    - (ii) at the employee's workplace.
- 121.** An employer shall not charge an employee any costs associated with the way the employer pays a wage to an employee.
- 122.** An employer shall not pay wages at a shop, store or place where alcohol is served unless the employee's workplace is a shop, store or place where alcohol is served as part of the employer's normal trade or business.
- 123.** An employer who contravenes sections 118 to 122 shall be liable to pay a fine at the rate of the Daily Minimum National Wage Rate to a maximum of 90 days of the Daily Minimum National Wage Rate.

## **Overtime**

- 124.** An employer shall pay an employee employed below supervisory level, overtime of a minimum of the employee's normal rate of pay when the employee is required to work outside any of the periods referred to in section 104

## **Pay rates for night work**

- 125.** If an employee below supervisory level is required by the employer to perform night duty besides his normal day shift by the employer and outside the time period referred to in section 104 the employer shall pay the employee additional 50% of the employee's normal rate of pay for the number of hours worked.
- 126.** An employer who contravenes section 125 shall be guilty of an offence which shall be a petty misdemeanour.



## **Payment of wages on termination of contract of employment**

**127.** An employer shall pay all wages owing to an employee within 7 calendar days after the termination of a contract of employment with that employee.

**128.** An employer who contravenes section 127 shall be liable to pay a fine at the rate of the Daily Minimum National Wage Rate to a maximum of 90 days of the Daily Minimum National Wage Rate.

## **Unclaimed wages**

**129.** If an employee has left the employment of an employer and the employer cannot locate the employee to pay his or her wages owed, the employer shall:

- (a) immediately notify the Chief Labour Administrator that the employee cannot be located; and
- (b) take all reasonable steps within 60 calendar days of the termination of the employment to locate and pay the wages to the employee or to the employee's nearest relative.

**130.** An employer who contravenes section 129 shall be liable to pay a fine at the rate of the Daily Minimum National Wage Rate to a maximum of 90 days of the Daily Minimum National Wage Rate.

## **Deductions**

**131.** An employer may deduct from an employee's wages:

- (a) income tax payable by the employee;
- (b) a deduction for absence from work (other than being on leave) equivalent to the normal rate of pay the employee would have earned if he or she were not absent.

- (c) a deduction for the actual cost of meals supplied by the employer at the request of the employee;
- (d) a deduction to repay any advance in wages paid to the employee by the employer;
- (e) payment towards the employee's personal fund, group insurance scheme, and superannuation or membership subscription, if the employer has the employee's written consent;
- (f) the reasonable cost of any loss or damage to tools or other property caused by the negligence of the employee;
- (g) overpayments of wages made by mistake to the employee if the overpayment was made in the immediately preceding 3 months;
- (h) repayments of any loan the employer made or guaranteed to the employee; and
- (i) any other deduction allowed by law.

**132.** An employer shall not deduct an amount that would reduce the wages payable to the employee for a pay period to less than one half of the total wage.

**133.** An employer who contravenes section 132 shall be guilty of an offence which shall be a petty misdemeanour.

## **Wage records**

**134.** An employer shall advise an employee in writing of his or her entitlement to wages, immediately at the commencement of an employee's employment and when there is a change to the employee's entitlements, including:

- (a) the employee's position (if relevant);
- (b) the normal rate of pay and the total earnings of the employee based on the normal rate of pay (expressed monthly or, if the contract of employment is for a lesser period, for that period).

- (c) the overtime rate of pay (if relevant);
- (d) any other allowances or payments which may be due; and
- (e) any deductions made from the total earnings of the employee, specifying the amount of deductions, where the deductions are to be paid and how frequently the deductions will be made.

**135.** An employer shall advise an employee in writing each time an employer pays a wage to the employee:

- (a) the pay period for the payment of the wages;
- (b) the employee's position (if relevant);
- (c) the number of working days or hours worked at normal rates of pay and the normal rate of pay;
- (d) the amount of overtime worked during the wage period (if any) and the rate for that overtime;
- (e) any other allowances or payments due;
- (f) any deductions made from the total earnings of the employee; and
- (g) the total amounts due to the employee after all deductions have been made for that wage period.

**136.** The employer shall establish and maintain a register of the information referred to in sections 134 and 135 and keep that register for 5 years.

**137.** An employer who contravenes section 136 shall be liable to pay a fine at the rate of the Daily Minimum National Wage Rate to a maximum of 3 years of the Daily Minimum National Wage Rate.

## **Ministry's power to fix a minimum wage or wages**

- 138.** The Ministry may in consultation with the government, the employers and the employees fix a minimum wage or wages to come into effect:
- (a) 90 calendar days after the making of the order; or
  - (b) from a date fixed by the Ministry in the order but not earlier than the date of the order.
- 139.** Every minimum wage shall be expressed in a daily rate and a monthly rate.

## **CHAPTER - IX OCCUPATIONAL HEALTH AND SAFETY**

### **Application of Chapter IX**

- 140.** Chapter IX applies to all types of employment except in farming.

### **Employer's Duty to employees**

- 141.** An employer shall provide and maintain a working environment for employees that is safe and without risks to health.
- 142.** An employer shall provide accident compensation for all the employees.
- 143.** Without limiting sections 141 and 142, an employer shall:
- (a) identify existing and new hazards at work and assess each identified hazard to determine whether or not it is a hazard to any employee at work;
  - (b) eliminate or reduce the health and safety risks of each significant hazard at the workplace;

- (c) provide such information, instruction, training orientation and supervision as is necessary to enable employees and health and safety representatives to perform their work in a manner that is safe and without risks to health;
- (d) incorporate occupational health and safety planning and management in the design and planning stages of a project;
- (e) institute and maintain effective communication and co-operation with a health and safety representative (if any) and employees about health and safety matters at the workplace; and
- (f) implement systems-
  - (i) to monitor the health and safety conditions at the workplace;
  - (ii) to keep information and records relating to the health and safety of employees at the workplace;
  - (iii) to provide the results of any health monitoring of an employee to that employee;
  - (iv) without revealing confidential medical information about an individual employee, to provide the results of monitoring under subsection (i) to a health and safety representative at the workplace;
  - (v) to compensate an employee if personal injury is caused to the employee by accident arising out of and in the course of his employment. However, the employer is not liable in respect of an injury caused by an accident which is directly attributable to:
    - (i) the wilful disobedience of an employee to an order expressly framed for the purpose of securing the safety of the employees, or
    - (ii) the wilful removal or disregard by the employee to any safety guard or other device when he or she knew to have been provided for the purpose of securing the safety of the employees.

(g) compensate an employee in the event of the employee contracting an occupational disease which arises out of the workman's occupation or employment, and is peculiar to that employment.

**144.** More detailed Occupational Health and Safety standards for specific sector for specific types of work shall be as specified in the regulation to this Act.

**145.** An employer who contravenes sections 141 to 144 shall be guilty of an offence which shall be a felony of fourth degree. In addition, the court may impose appropriate compensatory damages.

### **Employer's duty to non-employees**

**146.** An employer shall ensure that, persons (other than the employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the undertaking of the employer.

**147.** An employer who contravenes sections 146 shall be guilty of an offence which shall be a felony of fourth degree. In addition, the court may impose appropriate compensatory damages.

### **Employer to bear the cost of occupational health and safety**

**148.** An employer shall not require an employee to pay for any machineries, systems, arrangements, facilities, equipment, protective clothing and equipment, information, instruction, training or supervision provided and maintained at a workplace in relation to occupational health and safety.

**149.** If an employee is made to bear the cost under section 148 by the employer, the Ministry may direct the employer to refund the amount incurred by the employee.

## **Health and safety policy**

**150.** An employer that is either-

- (a) a registered company under the Companies Act of the Kingdom of Bhutan (2000); or
- (b) a small, medium or large scale industry; or
- (c) falling outside section 150 (a) and (b) and having twelve or more employees,

shall prepare and implement an occupational health and safety policy that ensures that each workplace of the enterprise is safe and healthy by:

- (i) addressing the hazards and risks at the workplace or workplaces;
- (ii) outlining the procedures and responsibilities for preventing, eliminating and minimising the effects of those hazards and risks;
- (iii) identifying the emergency management plans for the workplace or workplaces; and
- (iv) specifying how consultation, training and information are to be provided to employees at the workplace or workplaces.

**151.** The employer shall prepare and implement the policy in consultation with the health and safety representative and Workers' Association (if any) at each workplace of the enterprise or, if there is no such representative or association, the employees at each of the workplaces.

**152.** The employer shall display the policy in a prominent place at each permanently sited workplace of the enterprise.

**153.** An employer who contravenes section 150 to 152 shall be liable to pay a fine at the rate of the Daily Minimum National Wage Rate to a maximum of 1 year.

### **Reporting of an accident or incident**

**154.** An employer shall immediately notify the Chief Labour Administrator of an accident or an incident that:

- (a) resulted or could have resulted in death, loss or impairment of bodily function, loss of consciousness, electrical shock, acute or chronic symptoms of exposure to any substance at the workplace, any other serious bodily injury or any injury or disease requiring medical treatment; or
- (b) caused a loss of production or working time at the workplace.

**155.** In the event of death of his or her employee due to accident at work an employer shall immediately notify the nearest police station giving details of the accident.

**156.** An employer who contravenes sections 154 and 155 shall be liable to pay a fine at the rate of the Daily Minimum National Wage Rate to a maximum of 1 year of the Daily Minimum National Wage Rate.

### **Accident records**

**157.** An employer shall prepare a written record of the accident or incident referred to in sections 154 and 155 and submit to the Chief Labour Administrator within 5 calendar days of the employer becoming aware of it.

**158.** The contents of the record shall be as specified in the rules and regulations to this Act.



## **Duties of employees**

**159.** While at work, an employee shall:

- (a) take reasonable care for his or her own health and safety and for the health and safety of any other employee or person who may be affected by his or her acts or omissions at the workplace; and
- (b) shall not be under the influence of alcohol, drug or any psychotropic substance.

**160.** An employee shall not:

- (a) wilfully or recklessly interfere with or misuse anything provided in the interests of health and safety or welfare at the workplace; or
- (b) wilfully place at risk the health or safety of any person at the workplace.

**161.** An employee who contravenes sections 159 and 160 shall be liable to pay a fine at the rate of the Daily Minimum National Wage Rate to a maximum of 1 year of the Daily Minimum National Wage Rate

## **Right of an employee**

**162.** If an employee has reasonable justification to believe that a work situation presents an imminent and serious danger to his or her life or health, the employee may remove himself or herself from that situation.

**163.** An employee taking action under section 162 shall immediately report to the employer's representative or to the employer of that situation.

**164.** An employer shall not:

- (a) require an employee to return to a work situation where there is a continuing or imminent threat of serious harm to an employee; or
- (b) withhold pay from the employee by reason of his or her action under section 162 provided that the employee stays at the workplace and continues to demonstrate his or her willingness to work.

**165.** An employer shall be liable for violation if the employer takes any punitive or discriminatory action against an employee who exercises his or her right under section 162 to 164.

### **Appointment of health and safety representative**

**166.** The employees at a workplace may appoint one of its members to be their health and safety representative at that workplace to:

- (a) act on behalf of the employees in relation to health and safety matters;
- (b) raise issues which are of concern to the employees about occupational health and safety;
- (c) consult with the employer's representative or if there is no such representative, the employer, on health and safety matters; and
- (d) provide a focal contact for labour inspection and for the employer in relation to occupational health and safety.

## **Duties of other persons**

**167.** A person who designs, manufactures, imports or supplies any machineries or chemicals for use at a workplace shall:

- (a) ensure that the machineries or chemicals are designed, manufactured and labelled to be safe and without risks to the health or safety of employees when used properly and in accordance with relevant information and instructions provided by the designer, manufacturer, importer or supplier; and
- (b) take such steps to provide adequate information and instructions to purchasers and users about the use for which each machine or chemical has been designed, its correct installation and any requirements necessary to ensure that it will be safe and without risks to health when properly used.

**168.** A person who contravenes section 167 shall be liable to get his business licence:

- (a) suspended, in the first instance; and
- (b) cancelled, in the second instance.

## **CHAPTER - X**

### **MINIMUM AGE FOR ADMISSION TO EMPLOYMENT**

#### **Application of Chapter X**

**169.** Chapter X applies to all forms of employment.

#### **Age of employment**

**170.** Minimum age of employment shall be 18 years.

- 171.** The employment of a child between 13 to 17 years of age shall be limited only to the categories of work and in workplaces as specified in the rules and regulation to this Act subject however, to the conditions laid down under section 9
- 172.** A person who contravenes section 170 and 171 shall be guilty of an offence which shall be a felony of the third degree.
- 173.** The Ministry shall make reasonable efforts to provide vocational education and training opportunity to a Bhutanese who is below 18 years old seeking employment.

### **Questions as to age**

- 174.** For the purposes of this Chapter, if a question arises about the age of a child, a labour inspector may refer any of the documents such as the Census Identity Card, Birth Certificate, School Leaving Certificate, Health Card, etc. issued by the relevant authorities.

### **Deeming employment**

- 175.** If a person causes or permits a person to:
- (a) work as a domestic servant in a home which is not the home of the person's immediate family; or
  - (b) participate or assist in a business, trade, calling or occupation carried on for profit:
- the person is deemed to be employed whether or not he or she receives payment or other reward for his or her participation or assistance.

# **CHAPTER XI**

## **WORKERS' ASSOCIATION**

### **Formation of Workers' association**

**176.** The workers of an enterprise of twelve or more workers employed under contract of employment as per chapter V may form one workers' association to represent their interests.

**177.** No managerial employee shall be elected to a workers' association, and a workers' association shall not represent the interests of a managerial employee.

### **Functions of a workers' association**

**178.** A workers' association-

- (a) may represent the employees concerned in any matter affecting their rights and interests arising out of their employment at the enterprise;
- (b) is entitled to negotiate a collective bargaining agreement with the employer relating to the terms and conditions of employment of the employees concerned;
- (c) may participate in the dispute resolution process in Chapter XII; and
- (d) may perform any other functions specified by this Act.

**179.** If a workers' association has been elected to represent the workers at an enterprise, no person or association other than the workers' association or its authorised representative may act or purport to act for the workers in negotiating a collective bargaining agreement.

## **Duty to negotiate in good faith**

- 180.** An employer, a workers' association and the workers at an enterprise shall negotiate with each other:
- (a) in good faith;
  - (b) in a manner that serves the Tsa Wa Sum; and
  - (c) in accordance with the procedures (if any) set out in regulations.
- 181.** The rights and proceedings of the meetings of the workers' association shall be specified in the rules and regulations to this Act or shall be governed by other relevant Acts of the Kingdom.
- 182.** Notwithstanding sections 176 to 181, the workers' associations shall be prohibited from propagating any activity that will adversely affect the security of the people and the economic wellbeing of the country.
- 183.** A person who contravenes section 180 to 182 shall be guilty of an offence as defined in the Penal code of Bhutan.

## **CHAPTER - XII**

### **RESOLUTION OF LABOUR DISPUTES**

#### **Application of Chapter XII**

- 184.** Chapter XII applies to all types of employment.

#### **Employee's right to time off with pay to attend procedures**

- 185.** An employee who is a party to a workplace grievance or a labour dispute is entitled to time off with pay based on the employee's normal rate of pay in order to attend the grievance, conciliation or Court proceedings or procedures relating to the dispute.

**186.** If a grievance or dispute is unambiguously resolved in favour of the employer, the employee shall refund to the employer any pay paid to him or her under section 185.

**187.** A person who contravenes section 185 and 186 shall be guilty of an offence which shall be a petty misdemeanour.

## **Workplace grievance procedure**

**188.** An employer of an enterprise with 12 or more employees shall in consultation with the worker's association at the enterprise or, if there is no such association, the employee(s), prepare and implement a workplace grievance procedure for use at each workplace.

**189.** The workplace grievance procedure shall:

- (a) be in writing;
- (b) give an employee an opportunity to raise his or her grievance and to be heard;
- (c) enable the prompt and fair resolution of a grievance which arises at the workplace;
- (d) allow any issue or situation at the workplace relating to the conditions of employment to be grounds for a grievance;
- (e) enable an employee raising a grievance to participate directly in the grievance procedure and to be assisted or represented by the workers' association (if any) or a person of his or her own choosing;
- (f) ensure that the party or parties raising a grievance is kept informed of the steps being taken under the procedure and of the action taken on the grievance;

- (g) if the parties to a grievance consider it necessary, provide for minutes of the proceedings to be drawn up in mutual agreement and be made available to the parties; and
- (h) allow the parties to a grievance to draw up an agreement resolving the dispute that is binding on the parties, provided that the agreement does not contravene the provisions of this Act.

**190.** The employer shall make the grievance procedure known and available to the employees at the workplace.

**191.** An employer who fails to comply with sections 188 to 190 shall be guilty of an offence which shall be a petty misdemeanour.

### **Settlement of a dispute at the workplace**

**192.** If a grievance arises at a workplace, the parties to the grievance shall genuinely attempt to settle the grievance by applying the grievance procedure or, if there is no grievance procedure, by meeting to discuss the matter in dispute.

### **Notification of a dispute**

**193.** If a grievance remains unresolved following an attempt to settle it by applying the workplace grievance procedure at a workplace, the party or parties who initiated the grievance shall notify the Chief Labour Administrator that a labour dispute exists.

**194.** The notice under section 193 shall state:

- (a) the names of the parties to the dispute;
- (b) the place where the dispute exists; and
- (c) the subject matter of the dispute.



## **Investigation and report by Labour Relations Officer**

**195.** Within two working days of receipt of notice of a labour dispute under section 193 the Chief Labour Administrator shall direct a labour relations officer to:

- (a) investigate the labour dispute, including the facts of the dispute, the procedures which the parties have followed in attempting to resolve the dispute, and whether any of the parties are in breach of this Act or regulations;
- (b) advise the parties about their respective rights and obligations under the law in relation to the dispute and their options for settling the dispute;
- (c) assist the parties to reach a resolution to their dispute;
- (d) report back to the Chief Labour Administrator within 7 working days on the facts of the dispute and whether it has been resolved or not; and
- (e) report to the Chief Labour Administrator about the terms of the resolution if the parties have resolved the dispute.

## **Appointment of a conciliator**

**196.** The Chief Labour Administrator shall direct the parties to appoint a conciliator to assist the resolution of the dispute if:

- (a) a labour relations officer reports that the parties have failed to resolve the dispute; or
- (b) The Chief Labour Administrator is of the opinion that one or more terms of a resolution fails to comply with this Act.

**197.** The parties to the labour dispute shall jointly appoint a conciliator, in whom they share a mutual trust and confidence, within 4 calendar days of receipt of the Chief Labour Administrator's directive.

**198.** If the parties are unable to agree on a conciliator, the parties shall advise the Chief Labour Administrator of that fact within the 4 day period and the Chief Labour Administrator shall immediately appoint two conciliators to assist in the resolution of the dispute.

### **Duties of a conciliator**

**199.** A conciliator shall:

- (a) commence the conciliation promptly;
- (b) conduct the conciliation in the manner which is fair and balanced to each of the parties involved in the labour dispute;
- (c) call the parties to the dispute to attend meetings to discuss the dispute;
- (d) if the conciliator is not a labour relations officer, be assisted by a labour relations officer; and
- (e) allow the parties to appear on their behalf or be represented.

### **Conciliator's report and record of agreement**

**200.** Within 4 days after conducting conciliation under section 199, a conciliator shall:

- (a) in case of successful resolution of the dispute, submit to the Chief Labour Administrator:
  - (i) a report stating the names of the parties, the issues in dispute and how the dispute was resolved; and

- (ii) a record of the agreement reached and signed by the parties, indicating their free acceptance of the agreement; or
- (b) in the case of a failure to reach a resolution of the dispute, submit to the Chief Labour Administrator a report stating the names of the Parties, the issues in dispute and why in his or her opinion the dispute was not resolved.

**201.** A record of agreement is binding on the parties if the agreement has been certified by the Chief Labour Administrator as being in compliance with this Act.

### **Certification of record of agreement by Chief Labour Administrator**

**202.** If a record of agreement submitted to the Chief Labour Administrator is, in his or her opinion-

- (a) in compliance with this Act, the Chief Labour Administrator shall:
  - (i) certify in writing that the agreement is in compliance; and
  - (ii) notify the conciliator and the parties to the dispute that the record of agreement complies with the Act and is enforceable; or
- (b) not in compliance with this Act, the Chief Labour Administrator shall advise the conciliator and the parties as soon as possible that the agreement is not enforceable and specify where the agreement fails to comply with this Act.

## **Failure of conciliated agreement to comply with this Act**

**203.** If the parties to a labour dispute receive advice under section 202 (b) from the Chief Labour Administrator that a record of agreement is not enforceable, the parties shall, within 3 working days of that notification, seek to agree to amend the agreement to comply with this Act and:

- (a) if the parties agree to amend the agreement, they shall resubmit the amended agreement to the Chief Labour Administrator for certification under section 202; or
- (b) if the parties fail to agree to amend the agreement, the parties shall notify the Chief Labour Administrator in writing of that failure.

## **Settlement by court or arbitration**

**204.** This section applies to a labour dispute that:

- (a) has not been resolved following the conciliation procedures in this Chapter; or
- (b) has resulted in a record of agreement that, in the opinion of the Chief Labour Administrator, is inconsistent with this Act.

**205.** The Chief Labour Administrator shall direct the parties to such disputes:

- (a) in the case of a rights dispute, to take the dispute to a Court of law of the Kingdom of Bhutan for settlement; or
- (b) in the case of an interests dispute, to take the dispute to an arbitrator appointed under section 206 for settlement.

## **Appointment of an arbitrator**

**206.** The Ministry shall appoint a person to be an arbitrator to settle an unresolved interests dispute.

**207.** The arbitrator shall:

- (a) commence the arbitration promptly;
- (b) conduct the arbitration in a manner which is fair and balanced to each of the parties involved in the labour dispute;
- (c) if the arbitrator considers it necessary, appoint a person with expert knowledge to assist in an advisory capacity;
- (d) call the parties to the dispute to attend meetings to discuss the dispute; and
- (e) allow parties to appear on their own behalf or to be represented.

**208.** The arbitrator has the power to:

- (a) call the parties to the labour dispute;
- (b) call witnesses;
- (c) cause an oath to be administered and examine the parties and witnesses; and
- (d) call for the production of books, and documents.

**209.** A decision of the arbitrator shall be binding on the parties.

## **Appeal against arbitrator**

**210.** The party to a labour dispute who is aggrieved by the decision of an arbitrator may appeal against that decision to a Court of law on a matter of law.

## **CHAPTER - XIII**

### **EMPLOYMENT AGENTS**

#### **Prohibitions**

**211.** A person shall not act as an employment agent unless the person is licensed.

#### **Duties of an employment agent**

**212.** An employment agent shall ensure that if the agent recruits and places an employee with an employer, the terms and conditions of that employment complies with the provisions of this Act and regulations.

#### **Application for a licence**

**213.** A person may apply for an employment agent's licence for recruitment of foreign workers in the country and placement of Bhutanese workers abroad by submitting to the Chief Labour Administrator in the manner set out in the regulations to this Act and the Immigration Act.

#### **Grant, amendment, cancellation and renewal of licence**

**214.** The procedure for the grant, amendment, cancellation and renewal of licence shall be in accordance to the procedure specified in the regulations.

#### **Appeal against decision to grant, amend, renew or repeal a licence**

**215.** Any person aggrieved by a decision of the Chief Labour Administrator for grant, renewal and cancellation of licence may appeal to the Minister, who may determine the matter in such manner as the Minister considers just.

## **Offence of non-compliance with licence**

**216.** A person who is granted a licence under this Chapter shall comply with the terms and conditions of the licence.

**217.** A person who contravenes section 216 shall be guilty of an offence under the Licencing Rules and Regulations.

## **Employment agent to submit information**

**218.** An employment agent shall submit the following information to the Chief Labour Administrator on a quarterly basis:

- (a) the number of male and female job seekers registered with the agent;
- (b) the number of job vacancies registered with the agent;
- (c) the number of male and female job seekers placed in employment by the agent;
- (d) the number of males and females who came to the agent for career advice or any other service offered by the agent; and
- (e) any other information required by the Act and its rules and regulations.

## **CHAPTER – XIV**

### **EMPLOYMENT OF FOREIGNERS**

#### **Prohibition relating to the employment of a foreigner without a permit**

**219.** No person shall employ a foreigner unless the employer has an approval of the Chief Labour Administrator to employ a foreigner.

**220.** No person shall knowingly assist a person to employ a foreigner without a permit

**221.** No permit to employ a foreigner shall be varied or transferred to another person without the approval of the Chief Labour Administrator.

**222.** A person who contravenes sections 219 to 221 shall be guilty of an offence which shall be a felony of the fourth degree.

### **Other prohibitions relating to the employment of a foreigner**

**223.** No employer shall terminate a contract of employment of an employee who is a citizen or resident of the Kingdom of Bhutan for the purpose of employing a foreigner.

**224.** An employer shall not terminate the contract of employment of a citizen or resident of the Kingdom of Bhutan under sections 90 and 91 unless he or she has first terminated the contracts of all foreigners employed by him or her who are working in a capacity similar to that of the citizen or resident.

**225.** A person who contravenes sections 223 and 224 shall be guilty of an offence which shall be a misdemeanour.

### **Issue of criteria and quotas**

**226.** The Government may, by written notice, issue the Ministry with:

- (a) criteria for determining a recommendation to issue a permit;
- (b) quotas for:
  - (i) the maximum number of foreigners who may work in the Kingdom of Bhutan; and
  - (ii) the maximum number of foreigners who may work in specified industries, occupations or both in the Kingdom and which takes into account the research and recommendations from the Ministry to the government; and



- (c) directions on any other matter relating to the employment of foreigners that the government thinks fit.

### **Appeal against decision relating to a permit**

**227.** An applicant who is aggrieved by a decision of the Chief Labour Administrator may appeal to the Minister, who may determine the matter in such manner as he or she considers just.

### **Power of Department of Immigration**

**228.** The Department of Immigration shall, at any time exercise the powers and authority on matters relating to foreign workers in accordance with the Immigration Act.

### **Offences relating to permits**

**229.** A person who fails to comply with the terms and conditions of a permit shall be guilty of an offence which shall be a misdemeanour.

**230.** A person who forges or counterfeits a permit shall be guilty of an offence which shall be a felony of the fourth degree.

## **CHAPTER - XV**

### **MISCELLANEOUS PROVISIONS**

#### **Authority to prosecute**

**231.** The Ministry may institute proceedings in a Court of Law for an offence against this Act or the regulations.

## **Disclosure of Information**

**232.** The Chief Labour Administrator may require a person to whom this Act applies to provide such information as is reasonably necessary to enable the purposes of this Act to be carried out.

**233.** For the purpose of obtaining such information, the Chief Labour Administrator may issue a notice in writing requiring that person to produce the information specified in the notice and in such form and manner and within such time as specified.

## **Rule making power**

**234.** The Ministry may make rules and regulations necessary to carry out its functions economically, efficiently and effectively in accordance with law

## **Authoritative Text**

**235.** The Dzongkha text shall be the authoritative text if there exist any difference in meaning between the Dzongkha and the English text of the Act.

## **Amendments**

**236.** The amendment of this Act may be effected only by the Parliament.

## Definitions

**237.** For the purpose of this Act unless the context indicate otherwise, the words, phrases and acronym are defined as follows:

**“Act”** means the Labour and Employment Act, 2007 and includes any other regulations issued under the Act ;

**“Chief Labour Administrator”** means for the purpose of this Act, the Head of the Secretariat of the Ministry of Labour and Human Resources or an officer of the Royal Civil Service recruited, selected and appointed under the Bhutan Civil Service Rules to exercise the functions and powers in sections 22 to 24 of this Act;

**“Citizen or resident of the Kingdom of Bhutan”** for the purposes of Chapter XIV means a person:

- (a) who is a citizen by birth or registration under the Citizenship Law (1958);
- (b) who is a citizen by naturalisation under the Citizenship Act (1985); or
- (c) who is living in the Kingdom and whose father or mother is a Bhutanese citizen.

**“Collective bargaining agreement”** means an agreement made in writing between an employer and worker’s association under 178 and 179;

**“Contract of employment”** means an agreement, whether oral or in writing, expressed or implied to employ or to serve as an employee for payment and includes a contract of training;

**“Continuous employment”** means employment under an unbroken contract of employment, whether full or part time work;

**“discrimination”** means if a person is treated less favourably, either directly or indirectly, on the basis of race, colour, sex, marital status, pregnancy, religion, political opinion, social origin or involvement in a workers’ association or as an occupational health and safety representative;

**“employee”** means a person employed under a contract of employment;

**“employer”** means a person who employs one or more other persons under a contract of employment;

**“employment agent”** means a person, independent of the labour administration, who:

- (a) places employees with employers, resulting in their formation of a contract of employment but without the employment agent becoming a party to the contract of employment; or
- (b) employs an employee with a view to making that employee available to a third person and the third person assigns and supervises the execution of the employee’s tasks;

**“employment promotion”** may include policies, programmes and activities to:

- (a) register job seekers and job vacancies and to match and place job seekers against the vacancies;
- (b) provide career guidance and counselling services;
- (c) disseminate information on job and training opportunities; and
- (d) conduct job fairs from time to time.

**“enterprise”** means the business of an employer comprising of one or more workplaces;

**“foreigner”** for the purposes of Chapter XIV means a person:

- (a) who is not a citizen or resident of the Kingdom of Bhutan; or
- (b) who is living in the Kingdom and is married to a Bhutanese citizen;

**“grievance”** means a complaint by one or more employees, a workers’ association or an employer regarding any matter arising at a workplace that is affected by this Act;

**“interest dispute”** means a labour dispute about a demand from a party to a dispute to negotiate changes to, or the introduction of, new privileges or conditions relating to any matter arising at a workplace that is affected by this Act;

**“labour administration”** means the agency of the Royal Government of Bhutan charged with the administration of this Act and regulations;

**“labour dispute”** means an actual, threatened or probable dispute notified under section 193 involving any employer, one or more employees or a workers’ association about any other matter affected by this Act;

**“Labour Inspector”** means an officer of the Royal Civil Service recruited, selected and appointed under the Bhutan Civil Service Rules to exercise the functions and powers in sections 26 to 29 of this Act;

**“labour protection”** may include policies, programmes and activities to:

- (b) improve the working conditions at workplaces; and
- (c) promote and enforce occupational health and safety;

**“labour relations”** may include policies, programmes and activities to:

- (a) promote individual and collective workplace harmony and co-operation; and
- (b) minimise the number and impact of workplace conflict and labour disputes;

**“Labour Relations Officer”** means an officer of the Royal Civil Service recruited, selected and appointed under the Bhutan Civil Service Rules to exercise the functions in section 25 of this Act;

**“large scale industry”** means an industry whose input capital is from Ngultrum 100 million and above;

**“managerial employee”** means an employee who has supervisory or managerial responsibilities for the work of others, as well as his or her own work at a workplace;

**“medium scale industry”** means an industry whose input capital is from Ngultrum 10 million to 100 million;

**“Ministry”** means the Ministry of Labour and Human Resources;

**“Minister”** means Minister for Labour and Human Resources;

**“Department of Immigration”** means the Department of Immigration of the Ministry of Home and Cultural Affairs in the Royal Government of Bhutan;

- “night work”** means work between the hours of 10 o’clock at night and 8 o’clock the following morning;
- “normal rate of pay”** means the rate of pay for a specific unit of work or time and excludes allowances, bonuses, overtime payment and other benefits;
- “occupational health and safety representative”** means an employee elected under section 166 to represent the employees at a workplace on matters concerning occupational health and safety;
- “overtime pay”** means pay earned for performing overtime according to section 124 of this Act;
- “person”** includes an individual, partnership, company, unincorporated organization, government, governmental agency, trustee, executor, administrator or other legal representative;
- “rights dispute”** means a labour dispute about a function, right or entitlement created by this Act, a contract of employment or a collective bargaining agreement;
- “Royal Civil Service”** means the Royal Civil Service created under the Royal Charter of the Royal Civil Service Commission 1982 or any other legal authority;

- “small scale industry”** means an industry whose input capital is from Ngultrum 1 million to 10 million;
- “substance”** means any natural or artificial substance, whether in solid or liquid form or in the form of gas or vapour;
- “wages”** means remuneration or earnings that can be expressed in terms of money and payable by an employer to an employee by virtue of a contract of employment;
- “worker”** means an employee who is not a managerial or supervisory employee at a workplace; and
- “workplace”** means any place, whether a building or structure, open space, home, office or factory, where an employee works.