

SAMOA

LABOUR AND EMPLOYMENT RELATIONS ACT 2013

Arrangement of Provisions

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LABOUR AND EMPLOYMENT RELATIONS ACT 2013
2013, **No.7**

AN ACT to:

- (a) provide new provisions relating to labour and employment relations to ensure compliance with International Labour Organization requirements; and**
- (b) improve provisions relating to conditions of employment for national and foreign employees, including wage protection, contracts of service, holidays, leave, hours of work, overtime, conciliation procedures; and**
- (c) repeal the Labour and Employment Act 1972 and amend other relevant Acts; and**
- (d) provide for related matters.**

[Assent and commencement date: 5 April 2013]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

PART 1
PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Labour and Employment Relations Act 2013.

(2) This Act commences on the date of assent of the Head of State.

2. Interpretation – In this Act, unless the context provides otherwise:

“Act” includes Ordinance;

“award” means the giving of compensation in any form by a person or body that is in a position to grant, bestow or give compensation;

- “approved form” means a form approved under section 80;
- “assessor” means a person appointed under section 65 or 66;
- “CEO” means the Chief Executive Officer of the Ministry appointed under section 14, and includes a person delegated by the CEO to exercise any of the powers exercisable by the CEO under this Act;
- “citizen” means a person who is a citizen of Samoa by virtue of the Citizenship Act 2004 and includes a person holding a permanent residence permit under section 14 of the Immigration Act 2004;
- “conciliation committee” means a conciliation committee authorised under section 64;
- “contract of service” means an agreement whereby 1 person agrees to employ another as an employee and that other agrees to serve his or her employer as an employee, and includes an apprenticeship contract;
- “Court” means the Supreme Court of Samoa;
- “day” means a period of 24 hours beginning at midnight;
- “disability” means a congenital or permanent physical impairment, including a sensory impairment, or intellectual or developmental disability, or loss or abnormality of physiological or anatomical structure or function;
- “discrimination”:
- (a) means a distinction, exclusion or preference based on any or more arbitrary grounds, including those listed in section 20(2), which have the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; but
 - (b) does not include the exclusion or preference of a certain person or group for employment based on the inherent requirements of the job;
- “employee”:
- (a) means a person who enters into or works under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise and whether it be a contract of service or apprenticeship or a contract personally to execute work; and
 - (b) includes a worker and a managerial personnel;
- “employees’ organisation” means a group of persons, whether incorporated or not, who are acknowledged in writing by

the CEO as collectively representing the interests of employees in Samoa;

“employer” means a person employing an employee, and includes an employer’s agent, representative or a person acting on the employer’s behalf;

“employers’ organisation” means a group of persons, whether incorporated or not, who are acknowledged in writing by the CEO as collectively representing the interests of employers in Samoa;

“employment” means an activity undertaken for gain or reward, but does not include the following:

- (a) representation on an official trade missions recognised by the Government of Samoa;
- (b) employment as a sales representative of an overseas company in Samoa for a period or periods no longer than 3 months in a calendar year;
- (c) activity in Samoa as an overseas buyer of Samoan goods or services for a period or periods no longer than 3 months in a calendar year;
- (d) official business in the service of a government or international organisation that is entitled to privileges and immunities under the Diplomatic Privileges and Immunities Act 1978;
- (e) business consultations or negotiations in Samoa on establishing, expanding, winding up a business enterprise in Samoa or carrying on a business in Samoa for a period or periods no longer than 3 months in a calendar year;
- (f) study or training under a scholarship or other award approved by the Minister.

“employment exchange services” means the act of providing advice concerning employment for employees, and directing employees to suitable workplaces for the purpose of assisting employers to obtain manpower;

“employment permit” means a permit issued under section 60;

“forced labour” means all involuntary work or service undertaken by an employee or person seeking employment under the threat of a penalty or punishment, but does not include the following:

- (a) a work or service undertaken in accordance with compulsory military service for work of a purely

- military character;
 - (b) a work or service which forms part of the normal service of a person towards his or her family, church or village;
 - (c) a work or service undertaken from a person as a consequence of a conviction in a court of law, provided that the work or service is carried out under the supervision and control of a public authority and that the person is not hired or placed at the disposal of private individuals, companies or associations;
 - (d) a work or service undertaken in cases of emergency, such as war, or a calamity or threatened calamity such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general a circumstance that would endanger the existence or well-being of the whole or part of the population of Samoa;
- “foreign employee” means a person who is not a citizen of Samoa and undertakes employment in Samoa;
- “Forum” means the National Tripartite Forum established under section 4;
- “gain or reward” includes a payment or benefit that can be valued in monetary terms and includes board, lodgings, goods and services;
- “harassment”:
- (a) means any unwelcome and offensive conduct that induces the fear of harm or serious disturbance to a fellow employee; and
 - (b) includes the following -
 - (i) conduct of a sexual nature;
 - (ii) an offensive joke or name calling;
 - (iii) physical assault or threat;
 - (iv) intimidation;
 - (v) ridicule or mockery;
 - (vi) insult;
 - (vii) offensive object or picture;
 - (viii) interference with work performance;
- “industrial dispute” means a dispute arising between 1 or more employers and employees in relation to industrial or labour

matters;

“industrial grievance” means a matter related to an employee’s employment which is considered by that employee to be a legitimate ground of complaint;

“industrial or labour matter” means a matter affecting or relating to work done or to be done by employees or the privileges, rights and duties of employers or employees;

“industry” means:

(a) a business, trade, manufacture, employment arrangement or agreement, or calling of employers; or

(b) a calling, service, employment, or occupation of employees;

“Labour Inspector” means an officer or employee of the Ministry duly appointed by the Forum under the Public Service Act 2004 to be a Labour Inspector for the purposes of this Act;

“managerial personnel” means a person who:

(a) is primarily responsible for overseeing the work of other employees within a place of employment; and

(b) has the authority to hire or dismiss an employee.

“Minister” means the Minister responsible for labour and employment relations;

“Ministry” means the Ministry responsible for labour and employment relations and continued under section 11;

“misconduct” means behaviour which is a serious breach of the employee’s conditions of employment and includes but is not limited to the following:

(a) sexual or other physical, verbal or mental harassment of fellow employees or the employer;

(b) conviction for committing a crime for which a sentence of imprisonment is imposed by the Court;

(c) dishonest conduct including theft or perjury or otherwise knowingly making a false statement whether orally or in writing;

(d) any other behaviour which brings disrepute to the employer or the employer’s business;

“overtime” means the number of hours worked in excess of the limits of hours of work specified in section 47;

“part-time employee” means a person who is under employment for less than 6 hours a day;

- “person living with a disability” means an individual whose prospects of securing, retaining and advancing in suitable employment are affected as a result of a physical or mental disability;
- “piece work” means an arrangement whereby an employer and employee agree that the employee is to be paid a wage based upon a specific task or number of tasks to be undertaken by the employee, after which, the employment arrangement is deemed to be terminated;
- “place of employment” means a place where work is carried out by an employee for or on behalf of an employer;
- “probationer” means an employee who is on probation for a period of 90 days;
- “public holiday” has the same meaning as in the Public Holidays Act 2008;
- “rate of pay” means the total amount of money including allowances to which an employee is entitled under his or her contract of service, either for working for a period of time or for other periods as may be stated or implied in his or her contract of service, or for piece work, but does not include the following:
- (a) additional payments by way of overtime payments;
 - (b) additional payments by way of bonus payments;
 - (c) travelling, food, or house allowance;
- “remuneration” includes the ordinary, basic or minimum wage or salary and any additional emoluments payable by the employer to the employee and arising out of the employee’s employment;
- “service of Samoa” has the same meaning as in Article 111(1) of the Constitution;
- “shift employee” means an employee who:
- (a) works in shift work; or
 - (b) normally works on a Sunday or public holidays;
- “shift work” relates to a place of employment where business is to operate 24 hours continuously each day of the week and where the minimum hour expected to be worked by an employee is 6 and the maximum hours is 12 per day for all employees except Maritime employees who have a maximum of 14 hours per day;
- “Sunday” means a Sunday or a day of rest observed according to the religious beliefs of the employee as a day obliging

him or her to abstain from work, and includes a day of rest agreed to between the employee and the employer;

“trade union” means an organisation, whether temporary or permanent, incorporated or un-incorporated, formed primarily for the purpose of regulating the relations between employees and employers, or between employees and employees, or between employers and employers, or for imposing restrictive conditions on the conduct of a trade or business, and includes a federation of 2 or more trade unions;

“wage” means all remuneration including a salary or allowance payable to an employee in respect of work done under his or her contract of service, but does not include the following:

- (a) the value of a house accommodation, supply of light, water, medical attendance, or other amenity;
- (b) a contribution paid by the employer on his or her own account to a pension fund or provident fund;
- (c) a travelling allowance or the value of a travelling concession;
- (d) a sum paid to an employee to defray special expenses entailed on him or her by the nature of his or her employment;
- (e) a gratuity payable on discharge or retirement;

“wage period” means a period not exceeding 1 month in respect of which the contract of service specifies the payment of wages to be payable;

“week” means a continuous period of 7 days.

3. Application of Act and existing legislation - (1) This Act does not apply to the following services:

- (a) service of Samoa;
- (b) the Police Service;
- (c) to service rendered to a matai under the aiga system or subsistence agricultural activities;
- (d) a service or class of service which may be determined by the Minister by order published in the Savali.

(2) This Act applies only where it does not conflict with the Shops Ordinance 1961 or any other Act currently in force.

(3) Nothing in this Act is taken as relieving a person who enters into a contract of service either as employer or an employee from a

duty or liability imposed upon him or her by the Shops Ordinance 1961 or any other Act currently in force.

- (4) This Act applies to:
- (a) a public body as defined under the Public Bodies (Performance and Accountability) Act 2001, whether or not duly incorporated by an Act of Parliament; and
 - (b) all private or non-government business entities, including but not limited to business involving the agricultural and fisheries sector.

PART 2 NATIONAL TRIPARTITE FORUM

4. Establishment of the National Tripartite Forum - (1) The National Tripartite Forum is established consisting of the following 12 members:

- (a) the CEO who is to be the Chairperson;
- (b) the Secretary of the Public Service Commission;
- (c) the Chief Executive Officer for the Samoa National Provident Fund;
- (d) the Chief Executive Officer for the Accident Compensation Corporation;
- (e) four representatives from the employers' organisation to be appointed by the Head of State upon the advice of Cabinet;
- (f) four representatives from the employees' organisation to be appointed by the Head of State upon the advice of Cabinet.

(2) Secretarial support for the Forum is to be provided by the Ministry through the Assistant CEO responsible for labour or a person acting on his or her behalf.

(3) Forum members under subsection (1)(a) to (d) may have a deputy or representative to represent them at Forum meetings where the member is unable to attend a Forum meeting on account of illness or other sufficient cause.

(4) No deputy or representative of members appointed under subsection (1)(e) and (f) is to sit in a Forum meeting.

(5) A deputy or representative allowed to represent a Forum member is taken to be a member of the Forum but is not entitled to be paid an allowance for participating in a Forum meeting.

5. Terms of office of appointed members - (1) Subject to subsection (3), a member appointed under section 4(1)(e) and (f) holds office for a term of 3 years and is eligible for reappointment.

(2) A member appointed under section 4(1)(e) and (f) may resign his or her office by notice in writing to the Chairperson.

(3) The Head of State, acting on the advice of Cabinet, may remove an appointed member under section 4(1)(e) and (f).

(4) If a member appointed under section 4(1)(e) and (f) resigns or is removed from office or dies, the Head of State, acting on the advice of Cabinet, may appoint another person in place of that member to hold office until a replacement member is appointed on the advice of Cabinet.

(5) A member appointed under section 4(1)(e) and (f), unless the member sooner vacates office, holds office during his or her term of appointment, and is to continue in office after the expiry of his or her term, until his or her successor comes into office.

6. Meetings of the Forum - (1) Meetings of the Forum are to be held at such times and places as the Chairperson appoints.

(2) Subject to subsection (3), the Chairperson must call a meeting whenever required to do so in writing by any 6 members.

(3) Despite subsection (2), the Forum must meet at least 2 times within a 90 day period.

(4) At a meeting of the Forum:

(a) six members form a quorum;

(b) the Chairperson must preside if he or she is present at the meeting;

(c) if the Chairperson is for any reason absent from a meeting, the members present must appoint one of their numbers to preside at that meeting;

(d) the Chairperson or the member presiding, has deliberate vote, and in case of an equality of votes, also has a casting vote;

(e) any question arising must be decided by a majority of votes recorded on the question.

(5) The Forum is to regulate its procedures and processes for its meetings in such manner as it thinks fit.

7. Duties and functions of the Forum - (1) The Forum has the following duties and functions:

- (a) consult on labour and employment policies relating to employees' employment security and working conditions;
 - (b) consult on industrial, economic and social policies having impact on employees' employment security and working conditions;
 - (c) consult on the principles and directions of structural adjustments in the public and private sector;
 - (d) consult on the ways the resolutions made at the Forum is to be implemented;
 - (e) consult on the reform of institutions, consciousness and practices for better labour and employment relations;
 - (f) consult on the ways to support the programs designed to increase tripartite cooperation, thereby promoting industrial peace and contributing to a balanced growth of the national economy.
- (2) The Forum must consider and advise the Minister on any matter affecting labour and employment relations.

8. Remuneration of Forum members - Members of the Forum are entitled to remuneration, sitting allowances, travelling allowances and other expenses and benefits as may be fixed by Cabinet.

9. Powers of investigation and inquiry - (1) For the purposes of carrying out its duties and functions, the Forum has the same powers and authority to summon witnesses and receive evidence as are conferred upon Commissions of Inquiry under the Commission of Inquiry Act 1964 and the provisions of that Act applies accordingly.

(2) An investigation or inquiry conducted by the Forum under this Act may be conducted by a member of the Forum or an officer or Labour Inspector or other person appointed in writing by the Forum to conduct the investigation or inquiry.

(3) A person appointed to carry out an investigation or inquiry under subsection (2) has the same powers and authority given to the Forum under subsection (1).

(4) In all Forum inquiries, the Attorney-General or a legal practitioner appointed by the Attorney-General may assist the Forum as legal counsel, to be known as counsel assisting.

**PART 3
ADMINISTRATION**

10. Minister responsible for labour and employment relations - (1) The Minister must control and direct the policy of the Ministry.

(2) The Minister may exercise the powers reasonably necessary and for the effective performance of the functions of the Ministry.

11. Ministry responsible for labour and employment relations - (1) The Ministry responsible for labour and employment relations, which was known as the Labour Department that was continued under section 5 of the Labour and Employment Act 1972, is continued.

(2) The Ministry is responsible for the administration of this Act and other functions as may be lawfully conferred on it.

12. Functions of the Ministry - The general functions of the Ministry are:

- (a) to advise Cabinet through the Minister on policy matters pertaining to labour and employment relations; and
- (b) to advise employees or employers on all labour and employment relations matters; and
- (c) to ensure full compliance of employees or employers by inspecting and investigating under this Act; and
- (d) to encourage and promote the principle of good faith and harmonious employment relationships between employers and employees; and
- (e) to ensure the proper fulfilment by employees, employers, and employment agencies of obligations placed upon them under awards and industrial agreements and by the Acts and regulations administered by the Ministry; and
- (f) to assess and decide on applications of foreign employees for employment in Samoa and to issue employment permits for foreign employees whose applications are approved.

13. Duties of the Ministry - (1) The general duties of the Ministry are as follows:

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- (a) to register employment agencies to provide employment exchange services for the purpose of Advising employees seeking employment where there may be suitable employment opportunities in order to assist employers to obtain manpower;
- (b) to enforce the provisions of this Act and applicable national standards and policies on labour and employment relations;
- (c) to advise employees or employers on how best to comply with this Act;
- (d) to provide advice to the Minister on proposed changes to the legislative framework relating to labour and employment issues;
- (e) to investigate grievances or complaints and assist with conciliation efforts where there are disputes between employers and employees;
- (f) to promote harmonious relations and social dialogue between employers and employees;
- (g) to inspect conditions of work and to take any necessary action to ensure compliance by individuals with any of the Acts and regulations administered by the Ministry;
- (h) to maintain registers of places of employment generally as may be deemed necessary for the fulfilment of the Ministry's functions;
- (i) to collect and publish information relating to labour relations, employment relations, unemployment, wages, and such other matters relevant to the functions of the Ministry as the CEO may require;
- (j) to conduct surveys and forecasts of the classes of employment required or available or likely to be required or available;
- (k) to promote effective cooperation between government organisations and non-government organisations engaged in labour protection, as well as with employees and employers and their organisations;
- (l) to promote effective cooperation with other government services and private institutions engaged in labour protection, as well as with employees and employers and their organisations;
- (m) to generally do all things necessary or expedient for

the proper administration of this Act.

(2) The CEO must submit an annual report for the Ministry to the Minister for the purpose of tabling such report before the Legislative Assembly for each calendar year.

14. CEO and other officers - (1) The Chief Executive Officer of the Ministry is the administrative head of the Ministry.

(2) The CEO is appointed under the Public Service Act 2004.

(3) Labour inspectors, other officers and other employees of the Ministry are to be appointed under the Public Service Act 2004.

(4) The person holding office at the commencement of this Act as the CEO is taken to have been appointed under this Act.

(5) All other persons who at the commencement of this Act are officers and employees of the Ministry and have been appointed under the Public Service Act 2004 are taken to have been appointed under this Act.

(6) Officers and employees of the Ministry must act under the lawful direction of the CEO in the performance of the Minister's and the CEO's powers, duties and functions conferred by this or any other Act.

15. Delegation of powers by Minister – The Minister may delegate to the CEO or an officer or employee of the Ministry all or any of the powers which are conferred on him or her as Minister by this or any other Act, except this power of delegation.

16. Powers of the CEO – (1) Subject to subsection (4), in the exercise of the CEO's duties under this Act, the CEO may carry out the following powers:

- (a) enter and inspect at all reasonable times a place of employment;
- (b) examine, test, or inquire where necessary in order to satisfy himself or herself that the provisions of this Act are being observed;
- (c) require an employer to produce a document relating to an employee which includes but is not limited to wages sheets, books, registers, leave records relating to the employment of such employee;
- (d) take or remove materials or substances used or handled at a place of employment, but the employer or a person acting on his or her behalf is to be notified of

- any samples or substances so taken or removed;
- (e) interview an employer or an employee, either alone or otherwise as the CEO may think fit, and to require such person to give him or her any information in his or her possession relating to the employee; or
- (f) require an employer to post and keep posted at areas reasonably accessible to the employees, any notices served on the employer by the CEO; or
- (g) inquire into and endeavour to resolve any complaints or any grievance between an employee and his or her employer arising out of any term of the contract of service or the provisions of this Act.

(2) The CEO may copy or make extracts from a document or records in the possession of the employer which relate to an employee provided that the document is not one protected by professional privilege or a Court order.

(3) The CEO, in exercising any powers or duties under this Act, must carry on his or her person an identity document in the approved form and must produce such document on request to any person, and it is lawful for a person to refuse anything required of him or her by the CEO until such identity document has been produced.

(4) Despite anything in this section, the CEO:

- (a) must not enter or inspect a private dwelling house without the consent of the occupier thereof; or
- (b) must notify the employer or the employer's representative of the CEO's intention to make an inspection under this section, unless the CEO reasonably believes that such notification may prejudice the performance of the CEO's duties; or
- (c) upon the request of an employer, must be accompanied by an inspector, officer or employee of the Ministry during an inspection or examination of an employer or the employer's representative.

(5) The CEO may, by writing, either generally or particularly, delegate to an inspector, officer or employee of the Ministry all or any of the powers which are conferred on him or her as CEO by this Act or any other Act, except this power of delegation.

17. Powers of Labour Inspectors – (1) Labour Inspectors have the following powers:

- (a) subject to subsection (2), upon prior notice of at least 24 hours, to enter at any hour of the day or night into a place of employment to carry out an investigation or enquiry required under this Act;
 - (b) to carry out any investigation or enquiry which the Inspectors may consider necessary for ensuring compliance with this Act or any other Act;
 - (c) to require the production of books, registers or other documents the keeping of which is prescribed by this Act and regulations or any other Act as to conditions of work, in order to ensure compliance with this Act or any other Act, and to copy such documents or make extracts from them;
 - (d) to direct employers to do any lawful act required under this Act or any other Act;
 - (e) to take or remove for the purposes of analysis, samples of materials and substances used or handled, subject to the employer or his or her representative being notified of any samples or substances taken or removed for those purposes.
- (2) Despite subsection (1)(a), prior notice is not required if the Labour Inspector:
- (a) believes that notice would prejudice the performance of his or her duty; and
 - (b) has obtained the approval of the CEO for not giving of prior notice.
- (3) Where a Labour Inspector suspects an employer of using working methods which amount to a threat to the working conditions of an employee, the Labour Inspector may issue corrective action measures to that employer requiring the employer to make necessary alterations in order to secure compliance with this Act within a specified time.
- (4) The failure of an employer to comply with instructions issued by a Labour Inspector under subsection (3) within the specified time may result in the laying of formal charges against the employer.

PART 4 PRINCIPLES OF EMPLOYMENT

18. Forced labour – A person must not exact, procure, or employ forced labour.

19. Prohibition of sex discrimination in employment - (1) A female who is employed on like work with a male in the same employment is entitled to remuneration at the same rate as the male.

(2) A female is to be regarded as employed on similar work with males, if her work and the work of males are of the same or broadly similar in nature, and the differences, between the work she does and the work the males do are not of practical importance in relation to terms and conditions of employment.

(3) Subsection (1) does not apply in relation to a variation between the female's contract of service and the male's contract of service if the employer proves that the variation is genuinely due to a material difference (other than the difference of sex) between her case and his.

20. Fundamental rights and principles - (1) An employer must not require an employee or applicant for employment to perform forced labour.

(2) A person must not discriminate, directly or indirectly, against an employee or an applicant for employment in any employment policies, procedures or practices on 1 or more arbitrary grounds, including ethnicity, race, colour, sex, gender, religion, political opinion, national extraction, sexual orientation, social origin, marital status, pregnancy, family responsibilities, real or perceived HIV status and disability.

(3) Subsection (2) does not preclude a provision, programme, activity or special measure that has as its object the improvement of conditions of disadvantaged individuals or groups, including those who are disadvantaged on the grounds specified in subsection (2).

(4) An employer must pay male and female employees equal remuneration for work of equal value.

21. Right to bargain collectively - (1) A collective agreement relating to the following is one that may be made between 1 or more trade unions and 1 or more employers:

- (a) the wages, terms and conditions of employment;
- (b) relations between the parties;
- (c) other matters of mutual interest.

(2) The right to bargain collectively under subsection (1) also extends to a federation of trade unions or employers' organisations acting jointly for the purposes of collective bargaining.

(3) All parties to the negotiation of a collective agreement must negotiate in good faith and make every reasonable effort to reach agreement and each party to the negotiation must make available to the other party information relevant to the subject matter of the negotiation.

22. Freedom of association - (1) Employees and employers may establish organisations without any distinction for the promotion and protection of their economic and social interests, and to join any such organisation of their choice.

(2) Employees' organisations may join a trade union and to affiliate with, and participate in the affairs of an international employees' organisation and to contribute to, or receive financial assistance from the organisation.

(3) Employers' organisations may join other employers' organisations, and to affiliate with, and participate in the affairs of an international employers' organisation, and to contribute to, or receive financial assistance from the organisation.

(4) An employer must not make it a condition of a contract of service that the employee must not join or continue to be a member of a trade union or other organisation representing employees in a trade or industry, and any such condition in a contract of service entered into before or after the commencement of this Act has no effect.

PART 5 PROTECTION OF WAGES

23. Wage period and payment - (1) An employer is required to pay wages to his or her employees in accordance with the terms of the employee's contract of service.

(2) Subject to subsection (3), it is unlawful for an employer not to pay wages for any reason to an employee where a contract of service exists and has not been terminated under this Act.

(3) Despite subsection (2), an employer and an employee may agree in writing to other terms for remuneration of the employee not being a paid wage.

24. Time and place of payment of wages - (1) Wages earned by an employee under a contract of service must be paid to the employee before the expiration of the 7th day after the last day of the wage period in respect of which the wages are payable.

(2) All wages properly due to an employee on completion or termination of his or her contract of service or dismissal must be paid to the employee and in no case later than 7 days after the date of such completion or termination.

(3) Unless otherwise expressly consented to by an employee, all wages payable to the employee must be paid directly to the employee on a working day at his or her place of employment.

25. Mode of payment of wages - (1) Subject to subsection (3), the entire amount of wages payable to an employee is to be paid to the employee in Samoan currency when due.

(2) An employee may recover by action in Court any amount of remuneration due to the employee under the employee's contract of service.

(3) At the written request or consent of an employee, the wages or any part of the wages payable to the employee may be paid:

(a) by money order, by cheque, or by lodgement at a bank to the credit of an account standing in the name of the employee; or

(b) in any other currency not being Samoan tala.

(4) Subject to subsection (5), an employer must, when paying an employee, provide that employee with a written statement containing sufficient particulars or details of the payment made.

(5) Details of payment required under subsection (4) must be made in the prescribed form.

26. Part-time employee protection - (1) Subject to subsection (2), a part-time employee is entitled to receive conditions equivalent to those of a comparable full-time employee in relation to:

(a) maternity protection; and

(b) termination of employment; and

(c) paid annual leave and paid public holidays; and

(d) sick leave and other leave under this Act.

(2) Despite subsection (1), a part-time employee is to receive benefits and remuneration based on a *pro-rata* basis, depending on the length of time worked for his or her employer.

(3) In this section, “comparable full-time employee” means an employee who:

- (a) has the same type of employment relationship; and
- (b) is engaged in the same or a similar type of work or occupation; and
- (c) is employed in the same place of employment or when there is no comparable full-time employee in that place of employment, in the same enterprise or, when there is no comparable full-time employee in that enterprise, in the same branch of activity as the part-time employee concerned.

27. Authorised deductions - (1) Deductions from the wages of an employee are only to be made for the following:

- (a) periods of absence from work, not being a leave entitlement, calculated in proportion to the period for which he or she was required to work;
- (b) subject to subsection (2), damage to or loss of goods expressly entrusted to an employee to keep, or for loss of money for which an employee is required to account, where the damage or loss is directly attributed to his or her neglect or default;
- (c) the actual cost of meals supplied by the employer at the request of the employee;
- (d) subject to subsection (3), accommodation supplied by the employer;
- (e) subject to subsection (5), amenities or services supplied by the employer as the CEO may authorise;
- (f) recovery of advances or for adjustment of overpayments of wages;
- (g) income tax payable by the employee;
- (h) contributions payable by an employer on behalf of an employee under a provident fund or accident compensation legislation;
- (i) any other lawful purpose with the consent in writing or at the written request of the employee provided that such purpose is made known to the CEO prior to the deduction being made;
- (j) an order made by a Court or authority having similar and competent jurisdiction;
- (k) a matter lawfully permitted under any Act.

- (2) A deduction under subsection (1)(b) must not:
 - (a) exceed the amount of the damage or loss caused to the employer by the neglect or default of the employee; and
 - (b) except with permission of the CEO, exceed 25% of the employee's salary or an amount to be determined by the CEO whichever is the less; and
 - (c) be made until the employee has been given an opportunity of showing cause against the deduction.
- (3) A deduction under subsection (1)(d) must not:
 - (a) be made from the wages of an employee unless the house accommodation, amenity or service has been accepted by him or her as a term of employment; and
 - (b) exceed an amount equivalent to the value of the house accommodation, amenity, or service supplied.
- (4) In subsection (1)(e), "services" does not include the supply of tools and raw materials required for and during the process of employment.
- (5) A deduction under subsection (1)(e) must be subject to such conditions as the CEO may impose.
- (6) The total amount of all deductions other than deductions for absence from duty made by an employer in any one wage period must not exceed 35% of the wages payable to an employee in respect of such period.

28. Advances to employee - (1) An employer must not:

- (a) issue an employee an advance of unearned wages exceeding an amount equal to the wages earned by that employee during the preceding month; or
 - (b) in a case where the employee did not work in the preceding month, issue an advance of unearned wages exceeding the wages the employee is likely to earn during 1 month.
- (2) An employee is not liable for the amount of an advance made to the employee by the employer in contravention of subsection (1).
- (3) The recovery of an advance of money made to an employee begins from such time as the employee and employer may agree to.
- (4) The recovery must be made in respect of an advance for expenses of travelling to the employer's place of business.

- (5) An advance:
- (a) may be recovered in instalments from wages for a period not exceeding 12 months; and
 - (b) must not exceed one-quarter of the wages of an employee for a wage period; and
 - (c) must not carry an interest, discount, or other premium.

29. Remuneration other than wages - (1) Subject to subsection (2), nothing in this Act renders illegal a term of a contract of service where an employee is given food, accommodation, or other allowances or privileges in addition to monetary wages as remuneration for his or her services.

(2) Where any food, accommodation, or other lawful allowances or privileges in addition to monetary wages are provided to an employee, such food, accommodation, or other lawful allowances or privileges must be:

- (a) adequate for the personal use and benefit of the employee; and
- (b) fair and reasonable.

30. Transfer of employees - (1) Where an employer requires an employee to be transferred away from his or her place of employment for a period exceeding 24 hours, the employer must provide that employee with reasonable remuneration during the period of the transfer.

(2) In this section, “reasonable remuneration” means sufficient funds or means in order to provide for the employee’s food, accommodation and living allowance during the transfer period.

31. Employer not to stipulate mode of spending wages - (1) An employer must not impose a requirement upon an employee as to the place or manner in which the employee is to spend his or her wages.

(2) An employer who contravenes subsection (1) commits an offence.

32. Minimum wages-(1) Subject to subsection (2), the Head of State, acting on the advice of Cabinet, may by Order prescribe the minimum wage to be paid in an industry, occupation or class of employees.

(2) An Order under subsection (1) must not be made unless a

recommendation by the Forum as to the minimum wage to be ordered is first considered.

(3) In making a recommendation required of it under subsection (2), the Forum must consult with such employers and employees as the Forum considers appropriate.

PART 6 CONTRACT OF SERVICE

33. Illegal terms of a contract of service - (1) Subject to subsection (2), a term of a contract of service which contravenes this Act is unlawful and has no effect.

(2) Despite subsection (1), a contract of service which is valid and in force on the date of commencement of this Act, continues in force and this Act applies to that contract.

34. Contract of service for wage periods longer than one month - (1) Subject to subsection (3), a contract of service for any of the following is not to be made without the prior written approval of the CEO:

- (a) a wage period of longer than 1 month;
- (b) for piece work the time for the completion of which exceeds or may exceed 1 month.

(2) Where the CEO provides his or her approval under subsection (1), the CEO may, as he or she deems fit, require that certain terms be included in that contract of service.

(3) Despite subsection (1), the Minister may, by notification in the Savali, allow the extension or enlargement of a wage period beyond 1 month to a certain class or classes of employees.

35. Written contract of service - (1) The Ministry must make available a copy of a pro-forma contract of service as shown in Schedule 1 to be used by an interested person as an example of a written contract of service.

(2) A written contract of service must be either in the Samoan language or the English language, at the option of the employee.

(3) Where a contract is made in writing, 3 original copies must be made and is to be kept as follows:

- (a) one copy is to be given and kept by the employer;
- (b) one copy is to be given and kept by the employee;
- (c) upon the CEO's request, 1 copy is to be given, by either

one of the parties to the agreement, to the CEO.

(4) The CEO must keep a register of all agreements requested to be given to him or her under subsection (3)(c).

36. Employees appointed on probation - (1) An employee duly selected by an employer to work for the employer is on probation for an initial period of 3 months.

(2) An employer must at any time during the probation, confirm or terminate the appointment of a probationer in writing.

(3) Where a probationer's appointment has not been confirmed before the end of the period of probation (including an extension of that period), the probationer's appointment is taken to have been confirmed at that time.

37. Contract of service involving person living with a disability - Where an employer employs a person living with a disability, the employer must engage the services of the person in accordance with terms and conditions as may be prescribed by regulations.

PART 7

TERMS AND CONDITIONS OF EMPLOYMENT

38. Work on Sunday - (1) An employer must not compel an employee to work on a Sunday unless the employee is engaged in work which is required to be carried on continuously as a succession of shifts.

(2) Subject to section 49, an employee who works at the request of his or her employer on a Sunday is to be paid not less than double his or her ordinary rate of pay, unless the employee and the employer have agreed that a whole day within 3 days immediately before or after that Sunday is to be substituted instead.

39. Public holidays - (1) Subject to subsection (2), an employee may be paid his or her ordinary rate of wages on a public holiday which falls during the time that he or she is normally required to provide his or her services to the employer.

(2) An employee may, in agreement with his or her employer, choose to work on a public holiday and not be paid for that work and instead substitute another working day to take his or her public holiday.

(3) An employee who works upon the request of his or her employer on a public holiday is entitled to double the ordinary rate of wages for such day's work.

(4) An employee who travels on official business overseas during a public holiday:

(a) is entitled to elect a day for the public holiday to be taken on his or her return to Samoa; and

(b) must consult his or her employer before taking his or her holiday under paragraph (a).

40. Annual leave - (1) Subject to this section, an employee is entitled to at least 10 days' paid annual leave to be taken on days mutually agreed between the employer and the employee.

(2) An employee is not entitled to leave under subsection (1) unless he or she first works for the employer for a consecutive period of at least 12 months which is to include the employee's probationary period.

(3) Where annual leave is taken by an employee, the employer must permit the employee to take the annual leave in 1 unbroken period or, at the request of the employee, in 2 or more periods, one of which must be a continuous period of 1 week.

(4) Subject to section 41, an employee must take their annual leave before the next annual leave is due to him or her.

(5) An employee who fails to take annual leave within the 1 year period in which the employee is entitled to take annual leave forfeits the leave entitlement.

(6) The employer must inform the employee of his or her entitlement under subsection (1) upon confirming the employment of the employee.

(7) An employer who contravenes subsection (6) commits an offence, and upon conviction, is liable to a fine not exceeding 10 penalty units.

41. Payment in lieu of annual leave - (1) Despite section 40(4), but subject to subsection (2), instead of taking annual leave, the employee may, with the approval of the employer choose to have the annual leave entitlement paid to him or her.

(2) An employer must not issue payment in lieu of an employee's right to take annual leave unless the employer first seeks the consent of the CEO.

42. Sick leave - (1) Subject to subsection (3), an employee is entitled to at least 10 days' sick leave in each year.

(2) Where an employee is absent from work due to illness for at least 3 days, the employee must produce a medical certificate by a qualified medical practitioner in order for his or her sick leave to be approved.

(3) An employee is not entitled to leave under subsection (1) unless he or she first works for the employer for a consecutive period of at least 12 months which is to include the employee's probationary period.

(4) Subject to subsection (5), an employee may carry forward his or her unused sick leave entitlement.

(5) Sick leave carried forward must not exceed 20 days in a given year.

(6) An employer must pay to the employee at his or her normal rate of pay for each day that the employee is absent on approved sick leave.

43. Maternity leave - (1) Subject to subsection (4), an employee is entitled to a period of and payment of maternity leave in accordance with options provided under section 44.

(2) Maternity leave may commence from a time that the employee requests during or after her pregnancy.

(3) Maternity leave is to be granted where:

(a) the employee provides a medical certificate proving that she is pregnant; and

(b) employment records required to be kept by the employer show that the female employee has worked continuously for a period of at least 12 months with the employer.

(4) An employee who has a miscarriage during the third trimester of pregnancy or who gives birth to a stillborn child is entitled to claim leave under this section and protection under section 45.

(5) An employee must notify her employer in writing of the date on which she intends to start maternity leave and the date on which she expects to return to work after her maternity leave.

44. Options for payment of maternity leave - After consulting the female employee on the following options before she takes maternity leave, the employer must grant maternity leave

to the female employee:

- (a) for a consecutive period of at least 4 weeks with full pay and 2 weeks without pay; or
- (b) for a consecutive period of at least 6 weeks on two-thirds pay of the female employee's normal salary at the time that she takes leave.

45. Maternity protection - (1) It is unlawful for an employer to terminate the service or employment of a female employee during her pregnancy or after her pregnancy except on a ground unrelated to the pregnancy or birth of the child.

(2) The burden of proving that the reasons for termination under subsection (1) are unrelated to pregnancy, childbirth, or nursing is on the employer.

(3) A female employee who takes maternity leave is guaranteed the right to return to the same position or an equivalent position paid at the same rate as when she first took her maternity leave.

(4) A female employee who returns to work after taking her maternity leave must be provided with the right to 1 or more daily breaks or a daily reduction of hours of work to breastfeed or provide milk for her child.

46. Paternity leave - (1) Subject to subsection (2), a male employee is entitled to a minimum of 5 days paid paternity leave.

(2) Paternity leave is to be granted:

- (a) on the production of a medical certificate stating the presumed date of child birth; and
- (b) upon a written request by a male employee's wife or spouse; and
- (c) where the male employee has worked continuously for not less than 12 months for the employer.

(3) In this section, "spouse" means a female who is not the legally registered wife of a male employee and has co-habited with the male employee in a *de facto* relationship for at least 9 months.

47. Hours of work - (1) Subject to sections 48, 49 and 50 and subsections (2) and (3), an employee must not be required to work:

- (a) for more than 40 hours (excluding meal times) in any 1 week; or
- (b) for more than 8 hours (excluding meal times) on any

- one (1) day; or
 - (c) for more than 4 and one-quarter hours continuously without an interval of 1 hour for a meal.
- (2) Despite subsection (1), the period of work under subsection (1)(c) may be extended to at least 5 hours in cases where the employer allows a rest interval of at least 15 minutes in any working period of at least 3 hours.
- (3) Despite subsection (1):
- (a) an employee who is engaged in work which must be carried on continuously may be required to work for 8 consecutive hours inclusive of a period of at least 45 minutes in the aggregate during which he or she has an opportunity to have a meal; and
 - (b) where, by agreement under a contract of service between the employee and the employer, the number of hours of work on 1 or more days of the week is less than eight (8), the limit of 8 hours may be exceeded on the remaining days of the week, but so that no employee is required to work for more than 9 hours in one day or 40 hours in 1 week.
- (4) Despite sections 48, 49 and 50:
- (a) an employee must have at least 36 consecutive hours of rest from work within any 7 days;
 - (b) an employer must not require an employee to work for a period of 12 consecutive hours in any day or adjoining days and must allow a period of rest for the employee of at least 8 hours for each day or adjoining days of work.

48. Overtime for extra work - (1) An employee must be paid for work at the rate of at least one and a half times his or her ordinary rate of pay where:

- (a) the work carried out exceeds 8 hours in any day; and
- (b) his or her employer requested the extra work.

(2) An employee must be paid for work at the rate of at least one (1) and a half times his or her ordinary rate of pay where:

- (a) the work carried out exceeds 40 hours in any 1 week; and

- (b) the employer requested the extra work,

except that the employee has not already been paid for the extra work under subsection (1).

49. Shift work-(1) Despite section 47, an employee who is engaged under a contract of service in regular shift work may be required by the employer to work:

- (a) more than 6 consecutive hours in 1 day; or
- (b) more than 8 hours in 1 day; or
- (c) more than 40 hours in 1 week; or
- (d) at least 12 hours in 1 day under any circumstances,

but the average number of hours worked over a period of 3 weeks must not exceed 40 hours in a week.

(2) Despite section 38, a shift employee scheduled to work in a regular shift on a Sunday is considered to work on a normal working day and paid at the ordinary rate of pay.

(3) Section 48 does not apply to an employee who is engaged under a contract of service in regular shift work, but the employee who works for and at the request of his or her employer more than the average of 40 hours a week over a period of 3 weeks is to be paid for the extra work under section 48.

(4) Section 39 applies to an employee who is engaged under his or her contract of service in regular shift work.

50. Piece work - (1) Nothing contained in this Part prevents an employer from agreeing with an employee to work in a piece work arrangement.

(2) Where an employee is employed under a piece work arrangement, the employee is entitled to be paid wages by his or her employer in proportion to the amount of piece work which he or she has performed.

51. Employment of children - (1) A person must not employ a child under the age of 15 years of age in a place of employment except in safe and light work suited to his or her capacity, and subject to such conditions as may be determined by the CEO.

(2) A person must not employ a child under the age of 18 years on dangerous machinery or in any occupation or in any place under working conditions injurious or likely to be injurious to the physical or moral health of such child.

(3) A person must not employ a child under the age of 15 years as an employee upon a vessel unless such vessel is under the personal charge of the parent or guardian of the child.

PART 8
TERMINATION OF CONTRACT OF SERVICE

52. Termination of a contract of service - (1) A contract of service may be terminated in accordance with the provisions of this Part.

(2) Despite anything in this Act, an employer must not terminate the services of an employee during a period where the employee:

(a) is absent from work on account of his or her being sick;
or

(b) is on paternity or maternity leave.

(3) Despite subsection (2), an employer may terminate an employee's services during the employee's sick leave if the employer is satisfied, upon being provided a medical report by the employee relating to the employee's sickness, that the employee will be unable to continue to provide the services at that time and in future as a result of the sickness.

53. Termination of a contract of service for a specific period or task - (1) Subject to subsection (2), a contract of service for a specific work or for a specific period of time is terminated:

(a) when the work specified in the contract is completed; or

(b) when the period of time for which the contract was made has expired.

(2) Despite subsection (1), a contract of service for a specific work or for a specific period of time may be terminated under section 57.

54. Termination of a contract of service for an unspecified period - (1) A contract of service for an unspecified period of time is a continuous contract, which may be terminated by either party, under section 57 or by giving notice under subsection (2).

(2) Where either party to a contract of service wishes to terminate a contract of service, the notice period must be made in accordance with the length of time of service set out in Schedule 2.

(3) Subject to section 57(2) and (3), an employer may retain and refuse to pay to the employee any earned wages owing to an employee where that employee fails to provide notice under subsection (2).

55. Payment to be made in lieu of notice - (1) Where an employer wishes to terminate a contract of continuous service, he or she may pay an employee instead of giving a notice period.

(2) The amount paid to the employee must equal or exceed the total amount (the full rate of pay) the employee would receive at the end of the minimum period of notice as set out under Schedule 2.

(3) The employee's full rate of pay (other than a piecework employee) is the rate of pay payable to the employee and includes:

- (a) incentive-based payments and bonuses; or
- (b) monetary allowances; or
- (c) overtime worked; or
- (d) any other entitlement allowance as may be specified in the employee's contract.

(4) An employee who has completed a period of service of more than 3 months, and whose employment is terminated, is entitled to annual leave with pay proportionate to the length of service for which he or she has not received such annual leave or compensation in lieu thereof.

(5) Payment under this section is payable directly to the employee before the expiration of the 7th day after the last day of the wage period in respect of which the wages are payable.

56. Notice period not required in certain cases - Notice under section 54 is not required where a person, being an employee, is:

- (a) a part-time employee; or
- (b) a seasonal employee engaged for a specific season or short time period; or
- (c) an employee whose employment is terminated because of theft, fraud or other misconduct or abuse under section 57; or
- (d) an employee (other than an apprentice) to whom a training arrangement applies and whose employment is terminated at the duration of the training agreement; or
- (e) an employee engaged for a specific period or task; or
- (f) a daily hire employee working in—
 - (i) the building and construction industry; or
 - (ii) the meat industry, where the work involved is specifically for the slaughter of livestock.

57. Misconduct and abuse - (1) An employer may terminate the services of an employee without notice nor payment instead of notice where the employee:

- (a) wilfully breaches his or her terms and conditions of employment; or
- (b) wilfully disobeys a lawful instruction given by the employer or the managerial personnel within the place of employment; or
- (c) continuously under performs with respect to his or her duties; or
- (d) wilfully misleads the employer in relation to his or her qualifications or work experience; or
- (e) is absent from the place of employment, without reasonable excuse made known to the employer, for at least 3 consecutive days.

(2) An employee may cease his or her service to an employer without notice, where an employee is subjected to physical, mental or verbal abuse or harassment by the employer at any time or place.

(3) Where an employee ceases to work for an employer under subsection (2), the employer must not retain nor refuse to pay any earned wages pertaining to that employee.

PART 9

FOREIGN EMPLOYEES' EMPLOYMENT PERMIT

58. Employment permit required - (1) A person who is not a citizen of Samoa must not undertake employment in Samoa, unless an employment permit has been granted to that person under this Part.

(2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding 50 penalty units.

59. Application for employment permit - (1) A person, not being a citizen of Samoa, or his or her representative, may apply in writing to the Minister for an employment permit.

(2) An application under subsection (1) must be accompanied by the application fee as prescribed.

60. Granting of employment permit - (1) Subject to

subsection (2), the Minister may grant an employment permit to a person who is a non-citizen where the Minister considers it appropriate to do so in the circumstances.

(2) The Minister must, before granting an employment permit, consider the following:

- (a) the qualifications and training of the applicant;
 - (b) any work references related to the proposed vacant position;
 - (c) the development of the relevant industry;
 - (d) the number of Samoan citizen employees employed in that industry;
 - (e) employment requirements under the Foreign Investment Act 2000.
- (3) A permit granted under this section:
- (a) may be subject to such conditions as the Minister considers appropriate; and
 - (b) is only valid for 2 years.

61. Revocation of employment permit - (1) Subject to subsection (2), the Minister may revoke an employment permit where the Minister is satisfied that:

- (a) the employment permit holder has breached any conditions imposed upon him or her; or
- (b) the employment permit holder has breached any condition of his or her terms of employment with an employer who is a Samoan citizen; or
- (c) the employment permit holder had provided misleading or false information for the purpose of obtaining his or her employment permit;
- (d) it is appropriate to do so in the circumstances in the public interest.

(2) Before revoking an employment permit, the Minister must first consider a report or recommendation made to him or her by the CEO relating to the applicable employment permit holder.

62. Register of employment permit - (1) The CEO must keep and maintain a register of employment permits granted under this Part.

(2) The register required to be kept under subsection (1) is open for public inspection upon payment of an inspection fee as prescribed.

PART 10
CONCILIATION OF INDUSTRIAL DISPUTES

63. CEO may conciliate - (1) Subject to section 64, the CEO may conciliate in whatever manner he or she thinks fit when requested to do so by either party to an industrial dispute.

(2) If a settlement is arrived at by the parties to the industrial dispute as a result of a conciliation process under subsection (1), the terms of settlement is to be embodied in an agreement prepared by the parties, and given to and kept by the CEO.

64. Conciliation committee - (1) Upon the joint request of the parties in an industrial dispute, the CEO may, where he or she thinks proper in the circumstances and after consulting the Forum, refer an industrial dispute to a conciliation committee.

(2) A conciliation committee under subsection (1) consists of the following members:

- (a) a Chairperson to be appointed by the CEO from the panel of chairpersons under section 67;
- (b) one (1) member nominated by the employers involved in the dispute to be selected from the employers' panel of assessors appointed under section 65;
- (c) one (1) member nominated by the employees involved in the dispute to be selected from the employees' panel of assessors appointed under section 66.

(3) A person appointed under subsection (2)(a) must:

- (a) not be an employer related to the dispute; and
- (b) not be an employee related to the dispute; and
- (c) not be an officer or employee of the Public Service; and
- (d) appear to be independent and have no conflict of interest in a given dispute between employees and employers.

(4) The functions of a conciliation committee are:

- (a) to endeavour to bring about a settlement of the dispute; and
- (b) to carefully inquire into the dispute and all matters affecting the merits and the proper settlement of the dispute; and
- (c) to seek, where necessary, the assistance or advice of the Forum.

65. Employers' panel of assessors - (1) Subject to subsection (2), the Minister, upon the recommendation of the Forum, must appoint 3 persons to form an employers' panel of assessors to represent employers.

(2) A person appointed under subsection (1) must:

- (a) be a Samoan citizen; and
- (b) be aged over 30; and
- (c) be fluent in both Samoan and English; and
- (d) be of sound mind; and
- (e) be neither an employer nor employee in a manner involved with the case to be conciliated or arbitrated.

(3) A person appointed under subsection (1) holds office for 3 years beginning from the date of appointment.

(4) The Minister may renew an appointment under subsection (1) for a further period of 2 years if the Minister is satisfied that the member of the panel continues to comply with the requirement of subsection (2).

66. Employees' panel of assessors - (1) Subject to subsection (2), the Minister must, upon the recommendation of the Forum, appoint 3 persons to form an employees' panel of assessors to represent employees.

(2) A person appointed under subsection (1) must:

- (a) be a Samoan citizen; and
- (b) be over 30 years of age; and
- (c) be fluent in both Samoan and English; and
- (d) be of sound mind; and
- (e) be neither employers nor employees in a manner involved with the case to be conciliated.

(3) A person appointed under subsection (1) holds his or her post for a period of 3 years from their appointment.

(4) The Minister may renew an appointment under subsection (1) for a further period of 2 years if the Minister is satisfied that the member of the panel continues to comply with the requirements of subsection (2).

67. Panel of chairpersons - (1) Subject to subsection (2), the Minister must appoint a panel of 3 persons to form a panel of chairpersons.

(2) A person appointed by the Minister under subsection (1)

must:

- (a) be a Samoan citizen; and
- (b) be a person of good repute; and
- (c) be over 40 years of age; and
- (d) be fluent in both Samoan and English; and
- (e) be of sound mind and a fit and proper person; and
- (f) be neither employers nor employees in a manner involved with the case to be conciliated or arbitrated.

(3) A person appointed under subsection (1) holds his or her post for a period of 3 years from their appointment.

(4) The Minister may renew an appointment under subsection (1) for a further period of 3 years if the Minister is satisfied that the person continues to comply with the requirements of subsection (2).

68. Publication of panels - The CEO must cause the name of each person on the panels appointed under sections 65, 66 and 67 to be published in the Savali newspaper.

69. Vacancies in panels- Where a member of a panel:

- (a) resigns; or
- (b) vacates his or her position as an assessor for any other reason; or
- (c) dies,

the Minister may fill the vacancy under section 65 for the employers' panel, section 66 for the employees' panel and section 67 for the panel of chairpersons.

70. Procedure and remuneration of a conciliation committee - (1) The procedure to be followed by a conciliation committee is to be decided by the chairperson in consultation with the panel members prior to the conciliation committee meeting taking place.

(2) The chairperson may select a time and place for holding a conciliation committee meeting after consulting the members from the employees' and employers' assessor panels.

(3) Members of the conciliation committee are entitled to fees and allowances approved by Cabinet.

71. Conciliation committee meetings to be private - (1)

Subject to subsection (2), all proceedings of a conciliation committee are private and are not to be made public in any manner.

(2) Despite subsection (1), where the parties to the meeting and the conciliation committee unanimously agree to do so, the final agreement reached by the parties and duly signed by the parties, may be read by the chairperson in public.

(3) A record or information of proceedings of a conciliation committee required to be kept private under subsection (1) maybe disclosed only if the parties to the meeting agree to in writing to be shown on the record.

72. Agreements to be registered - (1) An agreement reached at a conciliation meeting must be made in writing and signed by the parties and the members of the conciliation committee.

(2) An agreement made under subsection (1) must be:

(a) lodged at the Ministry by the parties to the agreement;
and

(b) accompanied with a registration fee as prescribed.

(3) Upon the receipt of an agreement under this section, the CEO must cause the agreement to be registered.

73. Registered agreements - (1) An agreement registered under section 72 has the same effect as an order of the Court.

(2) A person who wilfully breaches the provisions of a registered agreement commits an offence and is liable upon conviction to a fine not exceeding 200 penalty units.

74. CEO to keep register of agreements - The CEO must keep:

(a) a register for the recording of all agreements arrived at in a conciliation committee meeting; and

(b) a register for the recording of all conciliation meetings for which an agreement was not reached by the parties.

75. Inspection of agreements - A person may inspect the contents of a registered agreement upon the payment of an inspection fee as prescribed.

76. Jurisdiction and powers of Supreme Court - (1) If a conciliation process under section 63 or 64 has been unsuccessful

in settling a dispute, upon the application of any of the parties to the dispute, the Minister may refer the industrial dispute to a Judge of the Supreme Court, sitting with 2 assessors to consider the issues arising from the dispute.

(2) Assessors assisting the Supreme Court under subsection (1) are to be appointed as follows:

- (a) one to be appointed by the employer from the panel appointed under section 65; and
- (b) one to be appointed by the employee from the panel appointed under section 66.

(3) The Court may dismiss a matter before it which it thinks frivolous, trivial, or vexatious.

(4) A person being:

- (a) an employer in the same class of industry or related industry; or
- (b) an employee in the same class of industry or related industry,

may make submissions to the Court where it appears to the Court that the submissions will be relevant to settling or clarifying the issues surrounding the dispute.

(5) The decision of a majority of the Judge and Assessors is the decision of the Court.

(6) The decision must specify in clear terms the following:

- (a) each party on whom the decision is binding;
- (b) the industry or employment to which the decision applies;
- (c) the locality to which the decision relates;
- (d) the time period in which the decision is to take effect;
- (e) any other relevant matter which ought to be included in the decision, not being inconsistent with this Act or with any other Act.

PART 11 MISCELLANEOUS

77. Civil proceedings - This Act does not prevent an employer or employee from seeking remedies for a breach or non-performance of a contract of service.

78. Offences and penalties - (1) An employer who enters into a contract of service contrary to this Act commits an offence, and on conviction is liable to a fine not exceeding 50 penalty units.

(2) A person who assaults or wilfully hinders or obstructs or provides false or misleading information to the Minister or the CEO, or any Labour Inspector or officer or employee of the Ministry in the exercise of his or her lawful functions under this Act commits an offence, and on conviction is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 12 months, or both.

(3) A person who fails to comply with any of the other provisions of this Act for which no specific penalty is provided commits an offence and on conviction is liable to a fine not exceeding 20 penalty units, and in addition to the fine the Court may order that an employee be paid an amount equal to the amount to which the employee is entitled to under this Act.

79. Repealed

80. Forms - The Minister may, by Notice published in the Savali approve, amend, or replace the form for an application, permit, notice, agreement or any other document required under this Act.

81. Protection from liability - (1) No action lies against the Government, the Minister, the Ministry, the CEO or a Labour Inspector, officer, employee or agent of the Ministry or a person acting under an authority conferred by the Ministry or the CEO, in respect of an act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act.

(2) The legal costs of defending an action instituted against the Minister, the CEO or an inspector, officer, employee, or agent of the Ministry or a person acting under an authority conferred by the Ministry or the CEO, as the case may be, may be borne by the Ministry.

82. Offences relating to Labour Inspectors - (1) A Labour Inspector commits an offence if the Inspector does any of the following:

- (a) use any of the Inspector's powers under this Act knowing that he or she has an interest, whether directly or indirectly, in the undertakings under his or her supervision;

- (b) reveal, at any time, any manufacturing or commercial secrets or working processes which may come to his or her knowledge in the course of his or her duties;
 - (c) reveal to an employer or the employer's representative, the source of a complaint who has brought to his or her notice a defect or breach of this Act.
- (2) A Labour Inspector who is convicted of an offence under subsection (1) is liable to a fine not exceeding 50 penalty units.

83. Regulations - (1) The Head of State, upon the advice of Cabinet, may make regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1), regulations may be made under this section for all or any of the following purposes:

- (a) the keeping by employers of records or information concerning persons employed in their employment arrangement or agreement, and the form and contents of such records or information;
- (b) determining what is unhealthy, dangerous, or onerous work, and minimum ages of entry into employment in such work;
- (c) providing for matters relating to the appointment and dismissal of members of the conciliation committee and their remuneration;
- (d) providing for the protection, health, and safety of women and children;
- (e) obtaining information or particulars that may be required for the effective performance of the functions of the Ministry;
- (f) the keeping of an agreement or document required to be kept under this Act;
- (g) providing for terms and conditions of contracts of services for employees who are required to live with their employers;
- (h) providing for terms and conditions of contracts of services for a person living with a disability;
- (i) providing for the types and amount of any other leave which employees may be entitled to under this Act;

- (j) providing for the nomination of members and terms of appointment of the Forum;
 - (k) providing for the conduct of meetings, remuneration, duties and functions, appointment of agents and powers of the Forum;
 - (l) providing for the process and criteria and all matters incidental to the issuing of a foreign employee's permit;
 - (m) regulating the activities and licensing of employment agencies;
 - (n) prescribing for particulars or details to be included in the statement for wages or pay of an employee required to be issued by an employer under this Act;
 - (o) providing for a code of behaviour for Labour Inspectors and forms for corrective measures to be issued by the Labour Inspectors;
 - (p) further defining the functions of the Ministry;
 - (q) further providing the effective exercise of the right to collective bargaining, including, but not limited to matters relating to good faith bargaining, recognition of representative organisations and regulation of collective agreements;
 - (r) providing for all matters necessary or incidental to the issuing of employment permits for non-citizens;
 - (s) the establishment and procedures relating to employment service centres;
 - (t) providing for procedures relating to the investigation of industrial grievances;
 - (u) imposing fines not exceeding 200 penalty units for offences against regulations made under this Act;
 - (v) prescribing fees for the purposes of this Act.
- (3) The amount of a fee prescribed under subsection (1):
- (a) shall be proposed by the Ministry;
 - (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

84. Repeal - The following Acts and regulations are repealed:

- (a) Labour and Employment Act 1972;
- (b) Part 8 of the Immigration Act 2004;
- (c) Labour and Employment Regulations 1973.

85. Savings and transitional - (1) Every document and act of authority so far as they are subsisting or in force at the time of the repeal of the Labour and Employment Act 1972 continues and has effect under the corresponding provisions of this Act until such time as they are altered or amended or cancelled, as the case may require, under the provisions of this Act.

(2) Despite the provisions of this Act, all applications, prosecutions and other matters arising out of or under the Labour and Employment Act 1972 which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act is to be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine.

(3) Despite the provisions of this Act, all applications and other matters arising out of or under Part 8 of the Immigration Act 2004, which are not determined or otherwise dealt with under such provisions of this Act at the date of the commencement of this Act, are to be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine in writing.

(4) The Head of State, acting on the advice of Cabinet, may within 12 months of the commencement of this Act, make regulations to deal with any other transitional matter for the purposes of this Act.

**SCHEDULE 1
PRO-FORMA WRITTEN
CONTRACT OF SERVICE
(Section 35(1))**

Each contract must be signed in triplicate as follows: 1 copy is to remain with the employer, 1 copy (the original) must be given to the employee and, where the CEO requests it, 1 copy must be forwarded to the CEO.

1. Name and address of employer
2. Name and address of employee
3. Occupation.....
4. Parties to the contract - This contract of service is entered into by..... (hereinafter called the employer) AND.....

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-(hereinafter called the employee).
- 5. Location of place of work.....
- 6. Duration of contract - This contract takes effect from the date of its signature by the parties and terminates on.....
- 7. Length of notice of termination of contract.
- 8. Wages or salary - The employee is to be paid \$..... per (hour, day, week or month) wage period.
- 9. If piece work - The employee is to be paid \$..... per (so many pieces - details).
- 10. Increments - The following increments is to be paid after every 12 months from the date of this contract and throughout its performance.
- 11. Hours of work - the employee must work for the following hours:.....
- 12. Shift work:
- 13. Holidays with pay - The employee is entitled to be paid for every public holiday.
- 14. Overtime - Should the employee be requested to work overtime, he or she must be paid for such overtime at \$..... for each hour of work.
- 15. Annual leave - The employee is entitled to a minimum of 10 days' paid annual leave to be taken on such days mutually agreed between the employer and the employee.
- 16. Sick leave - After 12 months' service, the employee is entitled to a minimum of 10 days' sick leave in each year on production of a medical certificate (of not more than 3 days after contracting the illness) by a medical practitioner.
- 17. Duties of employee - Under the terms of this contract the duties of the employee are as follows:.....
- 18. (Any other matter):
- 19. Remarks:

SIGNED:

SIGNED:

.....

.....

Full Name of the Employer

Full Name of the Employee

Date:

Date:

Witnessed by:

Witness: Samoan Citizen / CEO / Company General Manager / Senior SOE Official / Member of Parliament/ Minister of a Religion / Registrar of Court / Lawyer / CPA / Medical Doctor (please circle where applicable)

Full Name of the Witness:

Signature:

Date:

SCHEDULE 2
(Section 54(2) and 55(2))

Length of Service	Notice Period for Termination
Between 3 months and 1 year	1 week
Between 1 year and 4 years	2 weeks
Between 4 years and 7 years	3 weeks
Between 7 years and 10 years	4 weeks
Between 10 years and 13 years	5 weeks
Between 13 years and 16 years	6 weeks
Between 16 years and 19 years	7 weeks
More than 19 years	8 weeks

REVISION NOTES 2013 - 2018

This is the official version of this Act as at 31 December 2018.

This Act has been revised by the Legislative Drafting Division in 2013 to 2018 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

Commencement date inserted.

The following general revisions have been made:

- (a) Amendments have been made to conform modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an”
 - (ii) Removal/replacement of obsolete and archaic terms with plain language

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- “pursuant to” changed to “under”
- (iii) Numbers in words changed to figures
- (iv) “pursuant to” changed to “under”
- (v) “in accordance with” changed to “under”
- (vi) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate
- (vii) Part numbers changed to decimal

This Act has been amended by the *Fees and Charges (Miscellaneous Amendments) Act 2017*, No 13 to reflect that fees charged under the Act must be prescribed by regulations. Amendments have been made to sections:

- 2, 59, 62, 72, 75, 79 and 83.

*This Act is administered by
the Ministry of Commerce, Industry and Labour.*
