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PART C - LEGAL NOTICES

161. The Regulation of Wages (Building and Construction Industry) Order, 2000 S1

PUBLISHED BY AUTHORITY

LEGAL NOTICE NO. 161 OF 2000

THE WAGES ACT, 1964
(Act No. 16 of 1964)

THE REGULATION OF WAGES (BUILDING AND CONSTRUCTION
INDUSTRY) ORDER, 2000
(Under section 11)

In exercise of the powers conferred on him by section 11 of the Wages Act, 1964, the Minister for Enterprise and Employment hereby makes the following Order:

Citation and Commencement.

1. This Order may be cited as the Regulation of Wages (Building and Construction Industry) Order 2000 and shall be deemed to have come into effect on the 1st January, 2001.

Interpretation.

2. In this Order, unless the context otherwise requires:

“clerk (without certificate)” means an employee who does not hold the Senior Certificate of Education or its equivalent and who is engaged in general clerical duties;

“clerk (with certificate)” means an employee who holds the Senior Certificate of Education and who is engaged in general clerical duties;

“cook” means an employee engaged in cooking and issuing of food to other employees;

“typist” means an employee mainly engaged in typing, checking figures and filing, and who is capable of typing a minimum of 30 words per minute;

“crane driver” (mobile) means an employee who operates a self propelled crane;

“crane driver (tower) means an employee who operates a tower crane;

“continuous service” means service in the employment of the employer interrupted only by the death, retirement, completion on discharge of the employee concerned and an employee who is re-engaged within two months of his discharge shall be deemed to be in the continuous service of that employer;

“driver” (light vehicle) means an employee whose duties, in addition to being in charge of a motor vehicle of under 5 tons laden weight, include handling of cargo to and from the tailboard and the daily maintenance and cleaning of such vehicle;

“driver” (heavy duty) means an employee in possession of a heavy duty driver’s licence and whose duties, in addition of being in charge of a vehicle of between 5 tons and 10 tons laden, weight include the handling of cargo to and from the tailboard and the daily maintenance and cleaning of such vehicle;

“driver” (extra heavy) means an employee in possession of a heavy duty driver’ licence and who is in charge of a vehicle in excess of 10 tons laden weight including articulated vehicles and is responsible for the safety of the load;

“family” means in relation to an employee, the wife and unmarried children under the age of eighteen.

“general labourer” means an employee who performs general unskilled work;

“general tradesman” means an employee who does not hold a trade test certificate but has recognized ability in one of the following trades -

- (a) block layer or plasterer;
- (b) brick layer or tiler;
- (c) joiner or cabinet maker;
- (d) shutter hand or carpenter;
- (e) painter or glazier;
- (f) plumber or drain layer;
- (g) welder;
- (h) reinforcement steel fixer;
- (i) electrician;
- (j) wire-man;
- (k) mechanic;
- (l) plant fitter;
- (m) structural steel erector;
- (n) boiler maker;
- (o) pipe fitter; and
- (p) scaffolding erector;

“induna” means an employee in charge of other employees;

“plant operator” means an employee who is placed in charge of operating either a mixer, dumper or tractor;

“earthmover operator” means an employee who operates an earthmoving machine;

“reinforcement fixer” means an employee who cuts, bands and fixes reinforcement;

“scaffolding erector” means an employee who is in charge of erecting scaffolding;

“storeman” means an employee who, apart from carrying out the duties of stores clerk, is responsible for ordering certain items on behalf of his employer;

“structure steel erector” means an employee who erects a steel structure;

“survey and soil assistant” means an employee who surveys the earth’s surfaces, natural topography and man-made structures, underground areas, and prepare maps and charts;

“tea maker” means an employee who is engaged to routinely clean offices and to prepare refreshments;

“normal working hours” means the hours of work specified in regulation 5;

“trade tested person or tradesman” means a person who holds a craft certificate indicating the degree of proficiency attained by the person as indicated by a trade test conducted by a trade testing officer duly appointed as such in the public service;

“watchman or security guard” means an employee who is engaged during the day or night to guard the premises or other property of his employer.

Application.

3. (1) Subject to sub-regulation (2), this Order shall apply to employees specified in the First Schedule who are employed in any undertaking or part of an undertaking which carries on for gain in one or more of the following activities -

- (a) the construction, structural alteration, maintenance, of any railway line, siding, public or private road, thoroughfare, airfield, tunnel, bridge, viaduct, waterworks, lattice work, or other structure designed solely for the support of electric lines; or
- (b) the construction, structural alteration, maintenance repair or demolition of any building, fencing and preparing or laying the foundation of a building or an intended building.
- (c) the construction, structural alteration, maintenance, repair or demotion of any electrical work, plumbing, fire protection, sewerage reticulation and purification, or other services related to structures.

(2) This Order shall not apply to persons employed in any undertaking or part thereof operated by :-

- (a) the Government;
- (b) a local authority; or
- (c) such charitable or religious organization, educational or medical institution as may be specified in writing by the Minister.

(3) This Order is subject to the Employment Act, 1980 and Part V of that Act is, for purposes of easy reference, found in the Third Schedule of this Order.

Basic minimum wage (First Schedule).

4. The employees specified in the First Schedule shall be paid a basic minimum wage calculated at a rate not less than that specified in that Schedule.

Normal working hours.

5. (1) The normal working week (other than for a watchman or security guard) shall be from Monday to Friday and shall consist of forty-five hours.

(2) The normal working week for a watchman or security guard shall be seventy-two hours spread over six shifts, each of twelve hours, inclusive of meal breaks.

(3) No employee, other than a watchman or security guard shall be required to work for more than five hours without a break of not less than thirty minutes.

Public holidays.

6. (1) The following shall be public holidays with full pay -

- (a) Independence (Somhlolo) Day;
- (b) Good Friday;
- (c) Christmas Day;
- (d) Umhlanga (Reed Dance) Day;
- (e) King's Mswati III Birthday;
- (f) Incwala Day;
- (g) Easter Monday; and
- (h) Workers Day (1st May)

(2) Where a public holiday, specified in sub-regulation (1) falls on a Sunday, the following day shall be deemed to be a public holiday.

(3) An employee who is absent without leave on the working day before or the working day after a public holiday, shall not be entitled to any payment in respect of that public holiday in terms of this regulation.

Payment of Overtime.

7. (1) An employee, other than a watchman or security guard, shall be paid for overtime worked at the following rates -

- (a) during the normal working week for overtime worked, before midnight in excess of the normal working hours, at one and one third times the normal hourly rate of wages;
- (b) during the normal working week for overtime worked after midnight in continuation of normal working hours or other overtime worked, at twice his employee's normal hourly rate of wages;
- (c) for any time worked on Saturday before 1.00 p.m. at one and half times his normal hourly rate of wages;
- (d) for any time worked on a public holiday specified in regulation 6 (1), Sunday or after 1.00 p.m. on Saturday at twice his normal hourly rate of wages;
- (e) overtime in respect of any employee other than a watchman or security guard shall be payable on the completion of the basic forty five working hours being completed during the week unless a doctor's note has been issued for sick leave or prior agreement with the employer for leave has been arranged.

(2) Overtime in respect of a watchman or security guard shall be calculated at twice the normal hourly rate for all time worked on a public holiday specified in regulation 6 or any time worked in excess of twelve hours on any working day, and that any watchman or security guard who has been absent from work during any week without reasonable cause shall not be entitled to overtime in that week until the watchman or security guard has completed seventy-two hours of work.

Annual Leave.

8. (1) After three months' of continuous service, an employee shall be entitled to one day's leave on full pay in respect of each month's continuous service and such leave which is in addition to the Public Holidays specified in regulation 6 and any other days which are not normal working days shall be taken during the industry's annual three weeks shut down in December and January of each year.

(2) Any employee with eleven months of continuous service will be granted two days leave on full pay during the twelfth month of employment, which leave together with the Public holiday of Christmas Day will provide full leave pay for the industry shut down (that is 14 working days).

(3) Where the employment of an employee is terminated after a period exceeding three months but not amounting to one year from the date of its commencement the employer shall pay to the employee a sum not less than one day's wages for each completed month of such period.

Sick Leave.

9. (1) After twelve consecutive months of continuous service with an employer and subject to the production of a medical certificate signed by a Medical Practitioner, registered under the Medical and Dental Practitioners Act, 1970, an employee shall be entitled to sick leave up to a maximum of fourteen days on full wages and thereafter to a maximum of fourteen days on half wages in that period of twelve months continuous service.

(2) Notwithstanding sub-regulation (1);

- (a) An employee shall not be entitled to the benefits specified in sub-regulation (1) if the sickness or accident causing his absence was caused by his own negligence or misconduct;
- (b) A certificate issued by registered nurse shall be accepted in place of a medical certificate if a Medical Practitioner is not available.

Written particulars to be provided.

10. An employer shall within six weeks of engagement of an employee, give such employee a completed copy of the form found in the Second Schedule of this Order.

Continuous service.

11. Where, following upon a change of ownership of an establishment or undertaking an employee enters the service of the new owner without interruption, his service shall be deemed to be continuous service in the employment of the new owner unless otherwise agreed in writing by all the parties.

Travelling and Subsistence Allowances.

12. (1) Where an employee is temporarily employed at a place which is separated from his normal place of work by a distance of more than five kilometres by road his employer shall provide him with free transport to and from his normal place of work and the place of temporary employment.

(2) An employee required to travel on duty, other than in the circumstances set out in sub-regulation (1), shall be provided either with free transport or be paid by his employer the cost of travel by public transport.

(3) An employee who is absent on duty away from his normal place of employment for a longer period than twelve hours, and who returns to his normal place of residence without staying overnight shall be paid a subsistence allowance of E10.00 for each period of twelve hours or part thereof of such absence.

(4) An employee who is absent on duty overnight away from his normal place of employment, shall, in respect of each night's absence, be provided by his employer with;

- (a) free food and accommodation or a nightly allowance of E24.00 in lieu thereof;
- (b) free accommodation and an allowance of E12.00 in lieu of food; or
- (c) free food and an allowance of E12.00 in lieu of accommodation.

(5) An entitlement to free food, accommodation or allowances under sub-regulation shall not cease until the employee is back to his normal place of employment.

(6) An employee entitled to subsistence allowance under sub-regulation (4), shall not be entitled to subsistence allowance under sub-regulation (3) in respect of the same period of absence.

(7) Where an employee is transferred for duration of the project contract by his employer to a new place of employment, he shall be paid in addition to any other entitlement due to him under this regulation, a transfer allowance of E50.00.

(8) An employee, who is provided by his employer with accommodation at his place of permanent employment in which his family is residing with the consent of the employer, shall if so required by his employer to transfer to another place of employment other than for the purpose of seasonal employment, be moved at the expense of that employer.

Lay-off.

13. (1) Where an employer is unable to provide work for any employee due to:

- (a) unavailability of working materials; or
- (b) temporary cessation of work;

the employer may, subject to that employer giving the employee not less than twenty four hours notice, lay-off the employee without pay for a maximum period of thirty working days in the circumstances mentioned in sub-regulations (a) and (b).

(2) At the expiry of thirty working days the employer shall either provide work for the employee, or terminate his employment under the provisions of the Employment Act;

(3) An employee who is engaged for the duration of a specific project or in connection with a specific project shall, upon commencement of work be notified of the date upon which it estimated the project shall terminate and the notification of such date of termination, shall constitute an adequate notice by the employer to the employee of the date of notice of termination of such contract of service.

Lay-off due to weather.

14. (1) An employee who reports for work at his place of employment at the normal time but who is unable to start work due to inclement weather the employer shall be entitled to a minimum of one and one half hours pay for that day.

(2) Where the employer, on consideration of inclement weather, orders an employee not to report for duty for a specific number of days shall reduce such order into writing and the employee shall be entitled to pay as specified under subsection (1).

(3) An employee who on any day commences work and who, in the opinion of his employer is unable to continue work due to inclement weather, shall be paid for the hours he has worked plus an additional one-and half hours wages.

(4) The employer shall determine whether to start or stop work within the one-and half hours.

Clothing, equipment and protective clothing.

15. (1) If it is necessary to protect an employee from physical or chemical injury which may arise from the work he is required to do, the employer shall supply that employee with adequate protective clothing and such employee shall use the protective clothing as instructed.

(2) The employer of a watchman or security guard shall provide him, free of charge, with boots or shoes, a police whistle, a club and a torch, and where the watchman or security guard is required to work in inclement weather, the employer shall, in addition, provide him with a hat, overcoat or rain coat.

(3) An employee other than a watchman or security guard, who is required to work in direct contact with mass concrete or similar matter which is likely to cause injury to his feet, shall be provided by his employer, without charge, with a pair of gumboots.

(4) An employee other than a watchman who is required to work outdoors in inclement weather shall be provided by his employer, free of charge with a waterproof coat and cap or similar garment.

(5) The clothing and equipment supplied to an employee under this regulation shall be of reasonable quality and shall remain the property of the employer.

(6) Where protective clothing, supplied to an employee under this regulation, is damaged or lost through the negligence of the employee, the employer may deduct the cost thereof, after due consideration of wear and tear, from wages due to the employee.

(7) Each employee who works on a section of a project which is a double storey or more shall be issued with a hard-hat when the work proceeds into the section of the double storey.

(8) An employer shall, after the completion of a probationary period by the employee, issue such employee a pair of overalls and a pair of safety boots at half the cost price at least once in a twelve month period.

Revocation of Legal Notice No. 96 of 1999.

16. The Regulation of Wages (Building and Construction Industry) Order, 1999 is hereby revoked.

FIRST SCHEDULE
(REGULATION 3 AND 4)

Clerk (without a certificate)	E3.43 p/h
Clerk (with certificate)	E3.55 p/h
Cook	E3.43 p/h
Crane driver (mobile)	E7.08 p/h
Crane driver (tower)	E6.11 p/h
Driver (light vehicle)	E3.74 p/h
Driver (heavy duty)	E4.61 p/h
Driver (extra heavy)	E5.05 p/h
Earthmover operator	E6.62 p/h
Reinforcement Fixer	E3.54 p/h
General Labourer	E3.43 p/h
General Tradesman	E3.54 p/h
Grade III Trade Tested	E3.55 p/h
Grade II Trade Tested	E5.03 p/h
Grade I Trade Tested	E7.50 p/h
Induna	E3.80 p/h
Plant Operator	E3.80 p/h
Storeman	E3.58 p/h
Tea Maker	E2.15 p/h
Typist	E3.54 p/h
Watchman/Security Guard	E30.21 per shift
Survey and Soil Assistant	E3.54 p/h
Structure Steel erector	E6.25 p/h
Scaffolding erector	E3.54 p/h

SECOND SCHEDULE

WRITTEN PARTICULARS OF EMPLOYMENT FORM

- 1. Name of Employer
- 2. Name of Employee
- 3. Date of Employment began
- 4. Wage and method of calculation
- 5. Interval at which wages are paid
- 6. Normal hours of work
- 7. Short description of employee's work
.....
- 8. Probation Period
- 9. Annual Holiday Entitlement
- 10. Paid Public Holiday
- 11. Payment during sickness
- 12. Maternity Leave (if employee female)
- 13. Notice employee entitled to receive
- 14. Notice employee required to give
- 15. Pension Scheme (if any, other than N. P. F Scheme)
- 16. Any other matter either party wishes to include

Notes : (a) An Industry Union is recognized by this undertaking any employee is free to join it. The address of the Industry Union is:

.....
.....

(b) The grievance procedure in this undertaking requires that a grievance should be first referred to:

.....
.....

(c) When any heading is inapplicable enter nil

Signed Employer
 Employee
 Witness
 Date

THIRD SCHEDULE

APPLICATION OF PART V OF THE EMPLOYMENT ACT, 1980.

(Note: Sections 31 to 44 of the Act are the corresponding section 1 to 14 of this Order)

Application.

1. This Part of the Act shall apply to every contract of employment made in Swaziland and to be performed wholly within Swaziland.

Probationary period.

2. (1) During period of probationary employment as stipulated either in the form to be given to an employee under section 22 of the Employment Act, 1980 or in a collective agreement governing his terms and conditions of employment, either party may terminate the contract of employment between them without notice.

(2) No probationary period shall, except in the case of employee engaged on supervisory technical or confidential work, extend beyond three months.

(3) In case of employees engaged on supervisory, technical or confidential work, the probationary period shall be fixed in writing, between the employer and employee at the time of engagement.

Periods of notice by employer and employee.

3. (1) Subject to regulation 9, the minimum notice of termination of employment an employer may give an employee who has completed his probationary period of employment, and who has been continuously employed by that employer for more than one month shall be :-

- (a) if the period of continuous employment is three months or less, one week;
- (b) if the period of continuous employment is more than three months but less than twelve months, two weeks, or two days for each completed month of continuous employment up to and including the twelfth month, whichever is greater;
- (c) if the period of continuous employment is more than twelve months, one month and an additional four days for each completed year of continuous employment after first year of such employment. (Amendment Act 4/1995).

(2) Notwithstanding any other provision of this section, 3, where an employee has completed his probationary period of employment and is employed on a contract of employment which provides for an employee wages at monthly or fortnightly intervals, the minimum period of notice of termination of employment to be given to that employee shall not be less than one month or a fortnight as the case may be.

(3) The minimum period of notice to be given by an employee who has been continuously employed by the same employer for a period of three months or more shall be two week, or such longer period as may be specified in the form at the Second Schedule to be given to the employee under section 22 of the Employment Act, 1980 or in a collective agreement covering the terms and conditions of employment of the employee.

(4) The period of notice to be given under sub-regulation (2) or (3) shall begin on the working day following that on which it is served by either party.

(5) Nothing in this section shall prevent either party terminating a contract of employment by paying to the other party, in lieu of notice, an amount equal to the basic wages which would have been earned by the employee during the period of notice.

(6) During the period of notice served by an employer on an employee under this scaffolding rector, the employee shall be entitled, without reduction in wages, to be absent from work for the purpose of seeking other employment for twelve hours each week, the timing of which shall be agreed between the employer and employee and which, in pursuance of such agreement, may be taken in one or more complete days during the period of notice.

(7) Nothing in this scaffolding section shall prejudice the right of the employer to dismiss an employee summarily for a just cause and any employee who is dismissed for a just cause shall be paid the wages due to him up to and including the date of such dismissal.

(8) An employee shall not be dismissed without notice unless the reasons for the dismissal are such as to warrant the immediate cessation of the employer and employee relationship and where the employer cannot be expected to take any other course.

Severance Allowance.

4. (1) Subject to sub sections (2) and (3) if the services of an employee are terminated by the employer other than under the provisions of section 36 of the Employment Act, 1980, or regulation 13 the employee shall be paid, as part of the benefits accruing under his contract of service, a severance allowance amounting to ten working days' wages for each completed year in excess of the one year that he has been continuously employed by that employer.

(2) In calculating the amount of the severance allowance to which the employee is entitled under subsection (1) any employment by an employee with the employer concerned prior to the 1st January 1968 shall be discharged.

(3) If an employer operates or participates in, and makes any contribution to any gratuity pension or provident fund (other than the Swaziland National Provident Fund established by the Swaziland National Provident Fund Order, 1974) which is operated for the benefit of his employees, the employer on termination of employment of an employee, shall be entitled to repayment from the gratuity, pension or provident fund equal to the employer's total contribution to that gratuity, pension or provident fund in respect of the employee to whom a severance allowance is to be paid under this section.

(4) The amount of the repayment under subsection (3) shall not exceed the total amount of the severance allowance paid by the employer under section subsection (1).

(5) For the purpose of this section, the term "wage" shall mean the wages payable to the employee at the time his services were terminated.

Employee's services not to be unfairly terminated.

5. (1) This section shall not apply to -

- (a) an employee who has not completed the period of probationary employment provided for in section 32 of the Employment Act, 1980;
- (b) an employee whose contract of employment requires him to work less than twenty-one hours each week;
- (c) an employee who is a member of the immediate family of the employer;
- (d) an employee engaged for a fixed term and whose term of engagement has expired.

(2) No employer shall terminate the services of an employee unfairly.

(3) The termination of an employee's services shall be deemed to be unfair if it takes place for any one or more of the following reasons -

- (a) the employee's membership of an organisation or participation in an organisation's activities outside working hours or with the consent of the employer, within hours;
- (b) because the employee is seeking office as, or is acting or has acted in the capacity of an employee's representative;
- (c) the filling in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of any law or the breach of the terms and conditions of employment under which the employee is employed;
- (d) the race, colour, religious, marital status, sex, national origin, tribal, or clan extraction, political affiliation or social status of the employee;
- (e) where the employee is certified by a medical practitioner as being incapable of carrying out normal duties because of medical condition brought about by work carried out by the employee for his present employer except where the employer proves that he has no suitable alternative employment to offer that employee;
- (f) because of the employee's absence from duty due to sickness certified by a medical practitioner for a period not exceeding six months, or to accident or injury arising out of his employment, except where the employer proves that, in all the circumstances of the case, it was necessary for the employer permanently to replace the employee at the time his service are terminated.

Fair reasons for the termination of an employee's service.

6. It shall be fair for an employer to terminate the services of an employee for any of the following reasons -

- (a) because the conduct or work performance of the employee has, after written, been such that the employer cannot reasonably be expected to continue to employ the employee;

- (b) because the employee is guilty of a dishonest act, violence, threats or ill treatment towards his employer, or towards any member of the employer's family or any other employee of the undertaking in which the employee is employed;
- (c) because the employee willfully causes damage to the buildings, machinery, tools, raw materials or other objects connected with the undertaking in which the employee is employed;
- (d) because of the employee, either by imprudence or carelessness, endangers the safety of the undertaking or any person employed or resident therein;
- (e) because of the employee has willfully revealed manufacturing secrets or matters of a confidential nature to another person which is, or is likely to be detrimental to the employer;
- (f) because the employee has absented himself from work for more than a total of three working days in any period of thirty days without either the permission of the employer or a certificate signed by a medical practitioner certifying that the employee was unfit for work on those occasions;
- (g) because the employee refuses either to adopt safety measures or follow instructions of his employer in regard to the prevention of accidents or disease;
- (h) because the employer has been committed to prison and thus prevented fulfilling his obligations under his contract of employment;
- (i) because the employee is unable to continue in employment without contravening this regulation or any other law;
- (j) for any other reason which entails for the employer or the undertaking similar and detrimental consequences to those set out in this section. (Amended Act 11/1981, Act 4/1985).

Certificate of employment.

7. Any employee whose services are terminated shall be entitled to receive on request, at the time of such termination, a certificate from his employer specifying the dates of his engagement and termination and the nature of the work on which he has been employed.

Suspension from employment.

8. (1) An employer may suspend an employee from employment without pay where the employee is remanded in custody.

(2) Where an employee is subsequently acquitted of the charge for which he was placed in custody, the suspension shall be lifted, and subject to sub section 3, the employer shall not be obliged to pay any wages to the employee for the period he was in custody.

(3) Where the employee is remanded in custody as a result of a charge laid by employer and is subsequently acquitted of that charge, the employer shall pay to the employee an amount equal to the remuneration he would have been paid for the period spent in custody had he not been in custody.

Employee to give notice of redundancies.

9. (1) For the purpose of this regulation the term "employee" shall be not to include any employee-

- (a) engaged on a seasonal contract;
- (b) who is a casual employee

(2) Where an employer contemplates terminating the contracts of employment of five or more employees for reason of redundancy, he shall give not less than one month's notice thereof in writing to the will which is a party to a collective agreement and information -

- (a) the number of employee likely to become redundant;
- (b) the occupations and remuneration of the employees affected;
- (c) the reasons for the redundancies; and
- (d) the date when the redundancies are likely to take effect

Remedies against unfair termination of services.

11. (1) Where an employee alleges that his services have been unfairly terminated, or that the conduct of the employer towards him has been such that the employee can no longer be expected to continue in his employment, the employee may file a complaint with the Labour Commissioner, whereupon the Labour Commissioner, using the powers accorded to him Part II of the Employment Act, 1980 shall seek to settle the complaint by such means as may appear to be suitable to the circumstances of the case.

(2) Where the Commissioner of Labour succeeds in achieving a settlement of the complaint, the terms of the settlement shall be recorded in writing, signed by the employer and by employee and witnessed by the Commissioner of Labour one copy of the settlement shall be given to the employer, one copy shall be given to the employee and the original shall be retained by the Commissioner of Labour.

(3) If the Commissioner of Labour is unable to achieve a settlement of the complaint within twenty-one days of it being filed with him, the complaint shall be treated as an unresolved dispute and the Commissioner of Labour shall forthwith submit a full report thereon to the Industrial Court which will then proceed to deal with the matter in accordance with the Industrial Relations Act.

Burden of proof.

12. (1) In the presentation of any complaint under Part V of the Employment Act, 1980 the employee shall be required to prove that at the time services were terminated that the employee was an employee to whom section 12 applied.

(2) The services of an employee shall not be considered as having been fairly terminated unless the employer proved -

- (a) that the reason for the termination was one permitted by section 13 and
- (b) that, taking into account all the circumstances of the case, it was reasonable to terminate the services of the employee.

Repatriation of employees.

13. (1) Where an employee has been brought to the place of the employment by the employer, or by a person acting on his behalf, and the employee's contract of employment is terminated by the employer for any cause, the employer shall be liable for the expenses of repatriating the employee by reasonable means to the place from which the employee was brought.

(2) The expenses of repatriation shall include -

- (a) the cost of travelling and subsistence expenses for the journey
- (b) subsistence expenses during the period, if any, between the date of the termination of the contract and date of repatriation.

Offences under this Part.

14. Any employee who -

- (a) except where section 33 (8) of the Employment Act, 1980 (section 3 of this Schedule) applies, fails or refuses to give an employee whose services are being terminated the minimum period of notices required by that section;
- (b) fails or refuses to an employee whose services are being terminated to be absent from work for the purposes of seeking other employment as required by section 34 (6) section 4 of this Schedule;
- (c) terminates the contracts of employment of five or more of his employees for reasons of redundancy without giving prior notice thereof as required by section 40 (section 10 of this Schedule); or
- (d) fails to pay the expenses of repatriating an employee as required by section 43 (section 12 of this Schedule);
- (e) fails to pay severance allowance as required by regulation 11 shall be guilty of an offence and liable on conviction therefore to a fine of two hundred and fifty Emalangeni or imprisonment for three months.

M. E. VILAKATI
Principal Secretary
Ministry of Enterprise and Employment