THE DEMOCRATIC REPUBLIC OF THE CONGO

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About Labour Act

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Consulting it must by no means be considered as the substitute of the one published in the Official Journal of the Democratic Republic of the Congo.

PRESENTATION OF MOTIVES

Promulgated on 9th August 1967, the Labour Act of the Democratic Republic of the Congo as modified and completed this day, proves largely far behind both as related to the economic and social progress of the country and to its accordance with the international Labour Standards.

Considering this situation, voices raised from everywhere to vividly claim for its being adapted to the new conditions, particularly from the whole of the Labour World.

An attempt to revise the Act occurred in 1986, the time of the 21st session of the Labour National Council during which the Council had passed an Act Draft that remained a dead letter. The National Labour Council is, in fact, the tripartite advisory organ placed near the Government as far as labour, employment and social welfare are concerned.

As the necessity to have an updated Labour Law was acutely felt, a tripartite preparatory committee of the National Labour Council 29th session had been set up on 2nd June 2001.

The works of this committee resulted among others to passing a Labour Act Draft revised by the National Labour Act Draft inspired namely:

- from the Act Draft revised by the National Labour Council during the afore mentioned it was in charge of examining.
- from the remarks and suggestions of Employers and workers' professional organizations ;
- from the conventions and recommendations of the International Labour Organization, I.L.O in short, and from the customs of the Labour World.

The Act text written by the Preparatory Committee had been submitted to the National Labour Council during its 29th session held from 15th January to 12th February 2002.

During this session, the National Labour Council had come up with amendments to some Labour Act provisions.

Among the most important innovations, the following provisions are worth mentioning:

- the enlargement of the Labour Act scope of application to small-scale businesses and to the informal sector average industries as well as to social, cultural, community and philanthropic organizations using salaried workers ;

- Prohibition of the Child Work Worse Forms and their immediate elimination action;

- the enhancement of the admission age to employment which is 14 to 16 ; of course it is however understood that a 15-year-old person cannot be appointed or kept at work unless express derogation of the Labour Inspector and parental or tutor's authority.

- The reinforcement of anti-discriminatory measures to women and disabled persons.

- The setting up of a National Employment Office with patrimony of its own in place of the National Employment Service that did not prosper satisfactorily;

- The rehabilitation of institution capacities in terms of training and vocational improvement through involvement of Employers' and workers' organizations.

- The setting up of appropriate structures in terms of health and safety at work in order to ensure the worker's optional protection against nuisance ;

- The reinforcement of coercing measures.

For assuring the full application of the provisions of the present
Act, a period of one year is allowed to take execution measures.

Pending their coming into force, the law provides that the institutions and procedures extant in application of the actual law and regulations and which are not contrary to the provisions of the said Act remain applicable.

The present Labour Act is worth considering as an instrument able to bring social quietness thanks to tightened professional relationships, to the re-establishment of the worker's and the undertaker's fundamental rights that are the right to employment and the freedom to undertake.

LAW

The Constitution and Legislative Assembly – Transitional Parliament has passed;
The President of the Republic promulgates the law of which essence follows:

TITLE 1: GENERAL PROVISIONS

CHAPTER ONE:
SCOPE OF APPLICATION

Article 1:

The present Act applies to all workers and to all the Employers including those of the State-owned companies carrying out their professional activities all over the Democratic Republic of the Congo, whatever their race, sex, marital status, religion, political stripe, national precedence, social origin and the parties' nationality, the kind of work, the wage amount or the place where the contract is concluded, provided the latter takes place within the Democratic Republic of the Congo.

It also applies to the workers of the State-owned public services appointed through a Labour Agreement.

It applies to sailors and ship-owners sailing locally only when their particular regulations remain silent or when these regulations refer to it purposely.

The following are excluded from the present Act scope of application:

1. The magistrates;
2. The State-owned public service career workers ruled by the general status;
3. The State-owned public service career functionaries and civil servants ruled by particular status;
4. The Congo Army Force elements, the National Congo Police and the National Service.

CHAPITER II:
THE RIGHT TO THE WORK

Article 2:

Labour is for each a right and a duty. It is moral obligation for all those who are not prevented by age or unfitness for work as declared by a doctor.

Forced or obligatory work is forbidden.

It is also forbidden to require any work or service from someone by threatening him/her to suffer any punishment and to which the said person is not willingly fully committed.

Article 3:

All the Child Worst Labour Forms are abolished;

The expression “Child Worst Labour Forms” namely includes:

a) any slavery form or similar practices, such as selling and dealing in children, servitude for debts and submission as well as forced or obligatory labour, including forced or obligatory recruitment of children for using them in armed conflicts;

b) the use, recruitment or offer a child for prostitutions purposes, production of pornographic material, pornographic performances and obscene dances.

c) the use, recruitment or offer of a child for illegal activities, namely for the production and traffic of drugs;

d) the works, seeing their nature or the conditions in which they are performed, are likely to harm health, safety, dignity or morality of the child.

Article 4:

It is set up a National Committee against the Child Worst Labour Forms.

The mission of this Committee is :

- to draw up the National Policy in order to eradicate the Child Worst Labour Forms;

- to follow up the Policy implementation and to assess the set forth measures application level.

Article 5:

An inter-ministerial decree, taken by the Ministers respectively in charge of Labour and Social Welfare as well as Social Affairs and Family, determines the organization and operation of the National Committee against the Child Worst Labour Forms.

CHAPTER III:
CAPACITY TO SIGN A CONTRACT

Article 6:

The capacity of a person to commit his services is governed by the law of the country to which s(he) belongs, or in default of known nationality, by the Congolese law.

In the sense of the present Act, the capacity to sign a contract is decided at the age of 16 under the reserve of the following provisions :

a) A person aged 15 cannot be appointed or kept to work unless an express derogation of the Labour Inspector and of the parental or tutor's authority;

b) However the opposition of the Labour Inspector and of the parental or tutor's authority to the derogation provided for at litera a. here above can be raised by the Tribunal when the circumstances or equity justifies it.

c) A person aged 15 can be appointed or kept to work only for implementing light and same woks provided for by a decree of the Minister in charge of Labour and Social Welfare, under clause 38 hereof;

d) any recruitment form is forbidden all over the national territory;

e) In default of birth certificate, the control of the worker set out in literas a. and b here above is carried out pursuant to the conditions set for by a decree of the Minister in charge of Labour and Social Welfare.

CHAPTER IV:
THE DEFINITIONS

Article 7:
In the sense of the present Act,

a. A worker
Is any physical person aged enough to sign a contract, whatever his sex, his marital status and his nationality, who has committed to place his/ her professional activity, for payment, under the supervision and the authority of an individual or legal entity, public or private, within the labour contract ties.
As for determining the worker's quality, no account will be taken of the judicial status of the Employer or the employee.

b. An Employer
Is any individual or legal entity, public or private, that uses the services of a worker or a lot of workers by virtue of a Labour Agreement.

c. Labour Agreement
Any oral or written convention whereby a person, the Worker, commits to offer to another person, the Employer, a manual or other work under the immediate or indirect supervision or authority of the latter and for payment.

d. A Business
Any economic, social, cultural, community, philanthropic organization with a determined judicial form, personal or common property, lucrative or non-profit that can include one or more establishments.

e. An establishment

An individualized activity centre in space having its own object in the technical point of view and using the services of one or more workers that carry out a task under a unique management.

A given establishment always stems from a Business.

A unique and independent establishment makes at the same time a Business and an establishment.

f. Recruitment

Any operation performed so as to ensure or provide to another the manpower of the persons not offering spontaneously their services.

g. Training contract

The contract whereby an individual or legal entity, the Training Master, obliges himself/herself to offer a methodical and complete vocational training to another person, the Apprentice, or to have him/her so trained and whereby the latter obliges himself/herself to abide by the instructions s(he) will receive and to carry out the works that s(he) will be entrusted with in view of his/her training.

h. Payment

The amount representing the whole of the earnings likely to be estimated cash and decided in agreement or by the legal and provisions which are due by virtue of a Labour Agreement, by an Employer to an Employee.

It namely consists of:

- The salary or treatment;
- The commissions
- The cost of life benefits
- The bonus
- The incomes' participation
- The bonus or extra month amounts
- Overtime

- The value of the benefits in kind
- The holiday allowances
- The amounts paid by the Employer during his sick-leave and during the period prior to and after confinement.

The following are not salary elements:
- Health care
- Accommodation allowances or housing
- Transport allowances
- The travel allowances as well as the benefits exclusively allotted so as to allow a worker for accomplishing his functions

i. Working day:
Each day of week, save weekly resting days and public holidays.

j. Service time
The total of the durations :
- of the services rendered to the former Employer and to the substitutes during the former Labour Agreement(s).
- of the holidays including maternity leave;
- of the unfitness for work, in case of hazard or illness until uninterrupted six months and without limitation in case of occupational hazard or professional illness;
- of the travels between two periods of services.

k. The worker's family
- The spouse
- The children as defined by the Family Act;
- The children adopted by the worker
- The children under the worker's tutor's responsibility or judicial paternity;
- The children to whom he owes food supplies pursuant to the provisions of the Family Act;

- A child is taken into account if he is single and;
- Until majority as a general rule;
- Until full 25 years if s(he) studies in a recognized establishment
- Without age limitation, when s(he) is unable to carry out a lucrative activity owing to his/ her physical or mental conditions and when s(he) depends on the worker.

A minor appointed within the Labour Agreement ties or for Training likely to make him/her normally earn a salary is not taken into account.

In all the legal and regulatory texts related to social security applying both to the public and private sectors, the word " child" must be construed in accordance with clause 7, litera k, hereof without prejudice to the most favourable provisions for the social benefit beneficiary.

TITLE II: THE VOCATIONAL TRAINING AND IMPROVEMENT

CHAPTER ONE:
VOCATIONAL TRAINING AND IMPROVEMENT

Article 8:

Any public or private Employer has the obligation to ensure the vocational training, improvement or adaptation of the workers s(he) employs.

For this purpose, s(he) can use all the means at his/her disposal all over the territory of the Democratic Republic of the Congo by the National Institute of Vocational Preparation.

Article 9:

A decree of the President of the Republic, taken upon the proposal of the Minister in charge of Labour and Social Welfare after the National Labour Committee notice, determines the Employment Vocational Training and Improvement and points out the functioning conditions of Vocational Training Centres.

Article 10:

The Minister in charge of Labour and Social Welfare ensures the Vocational Training and Refresher Policy Implementation. S(he) draws up, together with the National Institute of Vocational Preparation, vocational organizations, and, in case of need, the approved training centers, the Curriculum aiming at promoting and facilitating:

- The creation of employment;
- The improvement of production and the economic development;
- The youth professional insertion
- The reinsertion of the occupational injured.

CHAPTER II:
THE NATIONAL INSTITUTE OF VOCATIONAL PREPARATION

Article 11:

A legal entity, the National Institute of Vocational Preparation, INPP in short, has been instituted.

The Registered Office is in Kinshasa.

It is namely endowed with the capacity to acquire and to own movables and real Estate.

The State guarantees its commitments.

Article 12:

The Institute, through the association of the state Employers and workers' interests and

Responsibilities, is in charge of co-operating towards the promotions, the creation and to the implementation of the new means or extant, necessary for the vocational qualification of the national active population and of coordinating their functioning.

Its action is namely aimed at the improvement and the vocational promotion of the workers in the employment, at the swift training of freshmen in the employment, at vocationally preparing the beneficiaries of a basic general culture and at the vocational adaptation of those endowed with a school-type technical or vocational training.

Its action will also tend to facilitate the vocational qualification conversion of the workers who are due to change their profession or job and the vocational re-adaptation of the workers unfit for work.

Article 13:

Moreover the National Institute of Vocational Preparation is in charge of:

a) creating and maintaining co-operation among all the organizations having to do with vocational and technical training, namely by drawing up and distributing all the hints about every profession training potentials;
b) co-operating in the description of professions for which qualification standards are considered as being necessary or better to acquire, drawing up these and organizing the examinations aimed at sanctioning them;
c) co-operating with the public services and the professional organization that are interested in the drawing up of a professional classification and in determining professional qualifications for each new employment, each job or each profession;
d) bringing the fruit of its experience to the management of Employment and to the National Employment Office about the survey problems of the requirements of the different levels of professional classification and the workers' appointment;
e) promoting the relevant system of professional directing and selecting and participating to its functioning;
f) Co-operating with the Ministry of National Education and with all the Professional or Cultural Organizations interested in the vocational preparation activities.

Article 14:

The State technical tutelage over the National Institute of Vocational Preparation belongs to the Ministry of Labour and Social Welfare.

The Institute overall organization, administration and management are the proper of a tripartite Board associating the State representatives, employers and workers.

Article 15:

The resources of the National Institute of Vocational Preparation consist of:

a) The State annual subsidies;

The Employers' monthly contribution in proportion as the salary sums are paid by them to their staff during the previous quarter. This contribution rate is determined every 3 years by a joint decree from the Ministers in charge respectively of Labour and Social Welfare, Finance and Budget after the National Labour Council notice. In default of certified notice, the contribution rate is determined by the decree of the President of the Republic upon the proposal of the Ministers in charge of respectively Labour and Social Welfare, Finance and Budget;

b) The gifts, donations and heritage that it can receive;

c) The exceptional settlements for special services and namely for the supply of didactic material, conventionally determined by the Institute and the employers.

This contribution rate is determined every 3 years by a joint decree from the Ministers in charge respectively of Labour and Social Welfare, Finance and Budget after the National Labour Council notice. In default of certified notice, the contribution rate is determined by the decree of the President of the Republic upon the proposal of the Ministers in charge of respectively Labour and Social Welfare, Finance and Budget;

Article 16:

The statement of the sums due to the National Institute of Vocational Preparation as the contributions provided for in the previous clause, certified by the Minister of Labour and Social Welfare or his delegate, stands for the title allowing all the seizures provided for in the clauses 106 and the following ones of the Civil Procedure Act.

Article 17:

All the provisions of the ordinance-law n°206 of 29th June 1964 about the creation of the National Institute of Vocational Preparation and the texts taken for its applications that are not contrary to the provisions of the present title remain in force.

TITLE III: THE APPRENTICESHIP CONTRACT

CHAPTER ONE:
GENERAL PROVISIONS

Article 18:

No one can receive minor apprentices if s(he) is not
- at least aged 18
- recognized as leading good life
- Qualified enough to ensure an appropriate training of the apprentices or have them trained by another person endowed with required qualities at his/her services.

No master, not living in a family or a community, can shelter apprentices who are minor young girls in his house.

CHAPTER II:
THE APPRENTICES CONTRACT FORM AND PROOF

Article 19:

Any apprenticeship contract must be noticed in writing and contain the notes enumerated in clause 20 hereof.

It is written in the official or national language known by the apprentice.
It is signed by the master, the apprentice and the parents, in default of the latter by the tutor or the person authorized by the parents or by the competent judge. It is exempted of any post stamp and registration.

Article 20:

The apprenticeship contract is established with the profession customs taken into account.
It must obligatorily mention:

1) The surnames, names, post-names (or family names), age, profession, nationality and home address of the master, the address and Business name or the Public Service that appoints the apprentice;
2) The surnames, names, family names, age, profession, nationality of the apprentice;
3) The surnames, names, family names, age, profession, nationality and home address of the apprentice's father and mother, of his/her tutor or in their default, of the person authorized by the parents or the competent judge.
4) The beginning date and the contract durations, the latter is determined pursuant to the profession customs, but it cannot exceed four years,

5) The cash benefits eventually consented;
6) The profession or job taught as well as the vocational subjects that the master commits to instill in the apprentice either within the establishment or without.

Article 21:

The apprenticeship contract is at least a quadruplicate and submitted to the National Employment Office visa as it is set forth in Title IX hereof.
As long as the contract has not been submitted for the visa or when the visa has been withdrawn, the apprenticeship services are presumed to have been done in execution of a Labour Contract respectively as at the contract conclusion date and the visa withdrawal.

Article 22:

The authority signing the contract must:

a) Require the master to produce a medical certificate, backdating at least three months, declaring the future apprentice fit for the chosen profession or job works and drawn up in the conditions determined by the decree provided for in clause 38 hereof;

b) Notice the apprentice age and the contract in accordance with the present Act provisions and the texts taken for its application;

c) Make sure that the apprentice is free from any previous commitment, that he has not studied or undergone a special preparation being presumption of apprenticeship exclusive vocational capacity.

d) Hand over after notice, a contract copy to each party and for the minor apprentice, to his/her representative, keep the third copy and send the fourth to the Labour Inspector of his area.

Article 23:

Should the visa miss or be refused, the apprenticeship contract is good for cancellation. In case of cancellation or doubt on the now written contract object, the apprentice services are presumed to have been done in execution of a Labour Contract.

When it appears to the Labour Inspector that the conditions set forth about the apprenticeship regulations are not met, the visa can be withdrawn by the National Employment Office upon the Labour Inspector motivating this.

In this case the contract stops being valid.

CHAPTER III:
THE MASTER AND THE APPRENTICE'S OBLIGATIONS

SECTION I: THE OBLIGATIONS OF THE APPRENTICESHIP'S MASTER

Article 24:

Apprenticeship essentially bears for the master the following obligations toward the apprentice:

1) to teach him/her or have him/her taught methodically, progressively and completely the job or profession that is the contract object, and to put at his/her disposal the necessary tools and material for this teaching;

2) to treat him/her with all required considerations, to have conveniences and good manners respected during the contract execution, and to care for his/her safety and health, considering the work circumstances and nature;

3) to inform forthwith his/her parents or tutor in case of illness, absence or serious fault or to take ell steps to motivate their intervention;

4) to grand him/her, upon expiry of an effective service year a holiday of a duration in accordance with the one provided for by clause 141 of the present Act to pay him , in case of need, the contractual benefit.

5) to assure him/her all along the contract, should he/she be ill or victim of an occupational injury, all the benefits due to the workers by virtue of the present Act, except the ones due to the worker's family and the benefits related to the salary;

6) to issue him/her, upon completion of apprenticeship, a certificate of apprenticeship in accordance with the model determined by the Labour and Social Welfare Minister's decree.

Article 25:

The master has the obligation to pay the apprentice in the terms of the Labour and Social Welfare Minister, determined after the National Labour Council notice.

This payment takes the form of a benefit that will have to be increased in proportion as the apprenticeship years go.

All the obligations and guaranties provided for hereof in terms of salary pertain to this payment.

SECTION II: THE APPRENTICE'S OBLIGATIONS

Article 26:

Apprenticeship essentially bears for the apprentice the following obligations:

1. to abide by the orders of the apprenticeship master or his/her delegate;
2. to implement the work s(he) is entrusted with in the set up conditions and, in general, to assist the apprenticeship master or his/her delegate as far as her/his skills and forces allow him/her to;
3. to abide by the respect of conveniences and good character during the contract execution;
4. to hand back in good condition the implements, goods, products and any object s(he) is entrusted with by the apprenticeship master, save depreciation owing to the normal wear and tear of the thing or fortuitous loss;
5. to refrain from anything that could harm the apprenticeship master's interests, his/her own safety or that of his/her companions and to keep the secret of manufacture or business he/she is aware of on occasion of apprenticeship;
6. to submit to the medical examinations imposed by the apprenticeship master as well as to the assessment texts with a view to controlling his/her vocational training.

Article 27:

The apprenticeship contract can also provide for this that the apprentice, upon completion of his/her apprenticeship, commits to perform his/her professional activity for the benefit of his/her former master during a period not exceeding two years.

Failure to abide by this commitment by one the parties results, under the reserve of damages, in issuing a notice or else in paying a notice compensatory benefit computed pursuant to the provisions of clause 63 hereof.

CHAPITRE IV:
SUSPENDING AND TERMINATING THE APPRENTICESHIP CONTRACT

Article 28:

The apprenticeship contract is suspended during the apprentice's unfitness for work owing to illness or occupational injury.

The apprenticeship master can however terminate the contract when unfitness has lasted six months or when the illness or the occupational injury causes to presume that the apprentice cannot perform his duties during a six months' uninterrupted period save in case of occupational injury or industrial diseases.

Article 29:

The apprenticeship contract rightfully ends earlier:

a) Upon the death of the master or the apprentice;

b) Upon the master or apprenticeship being called or recalled to serve in the army

c) Upon the master's being sentenced to imprisonment for a period exceeding tree months.

d) Concerning the minor girl apprentices dwelling in the master's house, should the latter divorce, should his spouse or any family woman in charge of running the house the time of the contract conclusion, die.

Article 30:

Any apprenticeship contract can be terminated upon the parties' request for the following causes:

a) should one of the parties fail to abide by the contract provisions;

b) for serious or usual offence against the provisions of clauses 24 and 26 hereof or other legal or regulatory provisions about the apprentices' working conditions;
c) when the master chooses a residence out of the administrative entity within which he used to live or to perform his activity upon the contract conclusion;
d) when the master or the apprentice is sentenced to imprisonment for more than two months;
e) the apprentice's marriage or eventually acquisition of the capacity of family chief owing to his/her father's death. In this case, the contract cannot be terminated unless the apprentice him/herself requests for it.

Article 31:

When the apprentice is minor, and without prejudice to his/her parents or tutor authority, any initiative of the apprenticeship master to terminate the contract should be submitted to the approval of the Labour Inspector of his area. The approval request is sent to the Labour Inspector in writing or by means of a transmission book.

The Labour Inspector should notify his decision during the month dated from the day the master made him know about the measure he had figured out, or else, he is supposed to approve of it.

The Labour Inspector's decision is subjected to hierarchical or judicial appeal as determined by the Labour and Social Welfare Minister, made upon the notice of the National Labour Council.

Article 32:

The request for terminating a contract based on the literas a, b and d of clause 30 here above are receivable by the Labour Inspector only in the forms and time of clause 72 hereof.

The request about literas c and e of the same clause are receivable only within three months.

CHAPTER V:
CONTROL MEASURES

Article 33:

The local Labour Inspector is in charge of controlling the apprenticeship contract execution; he can be assisted by a technician to control the teaching in favour of the apprentice in the establishment;

Any ending of an apprenticeship contract must be reported to the Labour Inspector and the National Employment Office.

CHAPTER VI:
MISCELLANEOUS PROVISIONS

Article 34:

The apprentices are considered as workers and they benefit all the other provisions hereof that are not contrary to particular provision of the present title.

Article 35:

The decrees of the Labour and social Welfare Minister, taken upon notice of the National Labour Council, can determine the Business categories within which a maximum rate of apprentices is imposed as compared to the worker’s number.

The decrees of the Labour and social welfare can limit the apprentice number or the right to train apprentices within the establishments with insufficient vocational training.

TITLE IV: THE LABOUR AGREEMENT

CHAPTER ONE:
GENERAL PROVISIONS

Article 36:

Labour agreements are freely passed under the reserve of the provisions hereof.

The contract date to come in force and duration, the worker's prestations' kind and object, the place(s) where they must be accomplished, the wages, the additional benefits, the refundable fees and all the other conditions stem from the contract, within the framework of legal provisions and under the reserve of abiding by the Collective Labour Agreements, the company regulations and the local customs.

The contract can mention the most favourable conditions for the worker.

Article 37:

The Labour Agreements cannot derogate the public provisions defined by the law and regulations in force.

Any contract clause granting the worker minor benefits as compared to those provided for by the present Act is null.

Article 38:

The Labour Agreement execution is subordinated to the worker's being fit for work.

Fitness for work is notified by a medical certificate issued by a works doctor.

In the latter's absence, a provisional certificate is issued by a nurse, under the reserve of submitting the worker to a medical examination within the three months following the beginning of work prestation.

A person medically unfit for the work assigned to him/her cannot be appointed or kept at work.

A decree of the Labour and Social Welfare Minister determines the present article scope of application, as well as the derogations that can be admitted about light and sane works authorized for the persons aged 15 to less than 16 years.

CHAPTER II:
THE CONTRACT DURATION AND THE TRIAL CLAUSE

Article 39:

Any Labour Agreement is of limited or unlimited duration.

Article 40:

A contract is of limited duration when it is concluded either for a limited time or for a determined work, or for taking over an unavailable worker's duties temporarily.
However in case of an appointment day after day, if the worker has already accomplished twenty-two working days over a two months' period, the new concluded appointment, prior to the two months' expiry, is deemed concluded for an unlimited period, otherwise sanctions will occur.

Article 41:

The contract of limited duration cannot exceed two years. This duration cannot exceed one year should the worker be married and away from his family or should he be a widower, separated or divorced and far from his children he must care for.

No worker can conclude with the same Employer or with the same Business more than two contracts of limited duration nor can he renew more than once a contract of limited duration, save in the case of seasonal works, of well defined works and other works determined by the Labour and Social Welfare Minister, taken after notice of the National Labour Council.

The execution of any contract concluded in violation of the present Act provisions or the continuation of service out of the cases provided for in the previous paragraph are rightfully the execution of a contract of unlimited duration.

Article 42:

When the worker is appointed to be vested with a permanent job within the Business or the establishment, the contract must be concluded for an unlimited period.

Any concluded contract of a limited duration in violation of the present article is deemed concluded for an unlimited period.

Article 43:

Any Labour Agreement can be assorted with a trial clause. This trial clause must be notified in writing.

The trial duration cannot be superior to a necessary time to try the appointed staff, considering the profession technique and habits.

At any rate, the trial duration cannot exceed one month for the unskilled labourer without specialty nor six months for the other workers. If the trial clause provides for a longer period, it is rightfully reduced to one month or to six months depending upon each case.

The service prolongation beyond this maximum duration automatically results in confirming the Labour Agreement.

The time spent for appointment or travelling is not included in the trial maximum duration.

The rights to the worker’s return travel, appointed for trial purposes, are governed by the clauses 147 to 156 hereof.

CHAPTER III:
THE LABOUR AGREEMENT FORM AND PROOF

Article 44:

The Labour Agreement must be notified in writing and in the form convenient to parties all the more so as it contains the provisions mentioned in clause 212 hereof.

In default of a written form, the contract is presumed, until further notice, to have been concluded for unlimited duration.

The present article does not apply in the case of appointment day after day. A decree of the Labour and Social Welfare Minister determines the present article application ways.

Article 45:

The contract notified in writing that does not purposely mention it has been concluded either for limited duration, or for a determined work, or for taking over the duties of a temporarily unavailable worker, or that does not indicate, in this last case, the causes and the particular conditions of interim, is deemed to have been concluded for unlimited duration.

Article 46:

The Employer must hand over to the worker, at least two working days prior to signing the Agreement, a contract draft copy and put at his/her disposal all the essential documents it refers to. Should the Employer fail to meet this obligation, the worker can terminate the contract within the thirty days following the conclusion without notice nor benefit.

Article 47:

The Employer must submit any written Agreement to the visa of the National Employment Office, pursuant to the provisions of the Labour and Social welfare Minister.

In default of the employer to fulfill this formality entitles the worker to terminate the Labour Agreement any time, without notice and s(he) can claim, if possible, damages.

The Labour Agreement to which the National Employment Office refused to grant a visa rightfully ends.

Article 48:

The tribunals can order to communicate the contract copy kept by the authority that has approved of it.

Article 49:

In the absence of a written contract, the worker can, even though the written form is required, establish by all legal ways, the contract existence and essence, as well as all the further amendments.

CHAPITRE IV:
THE WORKER AND EMPLOYER'S OBLIGATIONS

SECTION I: THE WORKER'S OBLIGATIONS

Article 50:

The worker has the obligation of personally implementing his work at convened conditions, time and place.

S(he) must act in accordance with the orders the Employer gives him/her or his/her delegate, with a view to executing the contract. S(he) must observe the laid down regulations for the establishments, the workshop or the place at which s(he) must perform his/her work.

Article 51:

The worker must refrain from anything that could harm his/her own safety or that of his/her companions or outsiders.

S(he) must respect the conveniences and a good character during the contract execution and treat with equity his/her underlings.

Article 52:

The worker has the obligation of giving back in good condition to the Employer the goods, products, cash, and generally speaking, all that s(he) has been entrusted with.

S(he) must keep the secret of manufacturing or businesses of the companies and refrain from coming into any disloyal competition, even after the contract expiry.

Article 53:

The clause forbidding the worker, after expiry, to exploit a personal business, to join in with a view to exploiting a business or to commit with other employers, is rightfully null.

Nevertheless, when the contract has been terminated owing to a serious offence of the worker or when the latter terminated it without the employer's serious offence, the clause comes into force all the more so as the worker is so aware of his/her employer's customers or business secrets that s(he) may seriously harm him/her, that the probation relates to the activities that the worker used to carry out at his Employer's, that its duration does not exceed one year dating from the end of the contract.

The non-competition clause can provide for a conventional sanction against the worker who violates prohibition. Upon his/her request, the relevant tribunal will reduce to an equitable amount the excessive conventional fine.

Article 54:

Within the framework of the Labour Agreement execution, considering the seriousness of the offence, the worker is liable to the following disciplinary sanctions:

- Blame
- Reprimand

- Suspension within the limitations and conditions determined in point 5 of clause 57 hereof.
- Dismissal with notice
- Dismissal without notice within the cases and conditions laid down in clauses 72 and 74 hereof.

The disciplinary sanction will be decided taking into account namely the seriousness, repetition of the offence or his/her willful intentions to harm.

SECTION III: THE EMPLOYER'S OBLIGATIONS

Article 55:

The employer must give to the worker the agreed job and this, within the conditions, the time and the agreed place; s(he) is responsible for the execution of the Labour Agreement with any person acting on his/her behalf.

S(he) must direct the worker and make sure that the work is carried out within convenient conditions, as far as both safety and health as well as the worker's dignity are concerned.

S(he) must grant to the worker, appointed as assessor of the works tribunal, dignity and necessary time for his/her mission accomplishment.

This time is considered and paid for as working time.

S(he) must put at the disposal of the workers' representatives a copy of the present act for consultation under clause 255.

Article 56:

The Employer is in charge of the cost resulting from the workers transport from their residence to their work places and vice versa.

A decree of the Labour and Social welfare Minister determines the distance from which this obligation stems and the present article application ways.

CHAPTER V:
SUSPENSION OF CONTRACT

Article 57:

The following can cause the Labour Agreement to be suspended

1) Unfitness for work owing to illness or occupational injury, pregnancy or confinement and its consequences;
2) To be called or recalled to serve the army or voluntary commitment in time of war in the Congolese Armed Forces or of an allied State;
3) The services rendered in execution to the military requisition measures or of public interest taken by the Government;
4) Carrying out public service or civil obligations;
5) Until twice 15 days a year, the suspension disciplinary measure when this measure is provided for either by the Labour Agreement or by the Collective Labour Agreement or by the company regulations.
6) The strike or back-out, if they are launched within the respect of the procedure of setting down Labour collective conflicts as defined in clauses 303 to 315 hereof or of the procedure defined by the applicable Collective Labour Agreement.
7) Imprisonment of the worker
8) Force Majeure, when its effects are to temporarily prevent one of the parties to fulfill his duties.

There is Force Majeure when the occurred event is unpredictable, inevitable, not originating from one or the other party and makes it absolutely impossible to fulfill contract duties.

The Force Majeure is notified by the Labour Inspector.

Article 58:

A decree of the Labour and Social Welfare Minister taken after notice of the National Labour Office, determines the rights and obligations of the parties in each of suspension cases provided for in the previous clause, points 2 to 7.

Article 59:

Out of the obligation provided for in clauses 105, 106, 146 to 156 and 178 hereof, and out of those stemming from the provisions of the decree provided for in the previous clause, the parties are free from any obligation one another all along the contract suspension.

Article 60:

No suspended contract can be terminated, under the following reserves:

a) In case of illness or injury, except the case of occupational injury or industrial illness, the Employer can notify a worker to terminate a contract after the latter's uninterrupted months' unfitness

The contract ends the day following the termination certification.

In this case, the Employer has the obligation to get redundancy payments ready corresponding to the due notice should the contract be of unlimited duration;

b) in case of public service or civil duties, the Employers can terminate the contract against the payment of the benefits provided for by the contract or the Collective Labour Agreement, after a twelve months' suspension;

c) in case of Force Majeure, the interested party can terminate the contract without any benefit, after a two months' suspension;

d) should the worker be in prison, the Employer can terminate the contract without any benefit after a three months' suspensions or if the worker has been sentenced to imprisonment exceeding two months.

CHAPITRE VI:
TERMINATING THE CONTRACT AND SERVICE CERTIFICATE

SECTION I: TERMINATING THE CONTRACT

Article 61:

Any Labour Agreement can be terminated either on the Employer or the worker's initiative.

Article 62:

The contract of unlimited duration can be terminated on the Employer initiative only for a justified cause related to the worker's skills or conduct in the work place during prestation or based on the necessity of the Business, the Establishment or the service operation.

Hereafter are not the justified causes of dismissal:

- Affiliation to a Trade-Union, non-affiliation to a Trade-Union, or taking part to Union activities out of working hours or, with the Employer's consent during working hours;
- to solicit, to carry out or to have carried out the workers' representation term;
- to have lodged a complaint or taken part to the procedures taken against an employer seeing alleged law violation, or having lodged an appeal before the competent administrative authorities;
- race, colour, sex, the marital status, the family responsibilities, pregnancy, confinement and its consequences, political opinion, national ascent or social origin, the ethnic group;
- absence owing to maternity leave.

Any Employer's initiative to terminate a contract of unlimited duration, based on the Business, the establishments or the service operation necessities, is submitted to the conditions that will be defined by the Minister in charge Labour and Social Welfare.

Article 63:

A contract of unlimited duration unjustly terminated entitles the worker re-insertion. In default of this, the worker has a right to damages determined by the Labour Tribunal and calculated considering namely the kind of incurred services, the worker's seniority within the Business, his age and all the acquired rights.

However the amount of these damages can not be superior to his last remuneration.

The breach of a contract of unlimited duration without notice or without the notice having been completely observed bears the obligation, for the responsible party, to pay to the other party a benefit of which amount corresponds to the remuneration and the benefits in kind the worker would have earned during the notice period which was not effectively respected.

Article 64:

Save for a longer period determined by the parties or by the Collective Labour Agreement, the duration of the dismissal notice cannot be inferior to fourteen working days dated from the day following notification, when the notice is from the Employer. Seven working days are added to this period for every entire continued service year, counted from date to date. The duration of the dismissal period from the worker equals half of the one the Employer would have given, had he been the dismissal decision maker. It can by no means exceed this limit.

In default of the collective Labour Agreement, the notice duration and conditions stem from the Labour and Social Welfare Minister's decree, after the notice of the National Labour Office.

Article 65:

During the notice duration, the Employer and the worker have the obligation to observe their mutual duties.

With a view to applying for another employment, the worker will be free one day of the week, during the notice period, chosen at will, totally or by half days, and the salary is fully paid.

The party for which these duties would not be respected cannot be imposed a notice period, without prejudice to the damages he/she would find fit to ask for at a relevant tribunal.

Article 66:

The worker receiving a notice can stop working upon expiry of half of the notice period the Employer is obliged to grant him/her.

The Employer must pay the remuneration and the family allowances during the remaining period.

The amounts of commissions, bonus, and income participation taken into account in the determination of the remuneration are calculated on the average of these elements paid for the previous twelve months.

Article 67:

The worker with a notice and who declares to have found a new job can leave his/her employer within a shorter notice, jointly determined, without it being superior to seven days dated from the day of his new appointment.

In this case, he is no longer entitled the remuneration or family allowances of the remaining notice period.

Article 68:

Save the cases provided for in clause 60, the notice cannot be notified during the holidays or during the contract suspension.

Article 69:

The contract of limited duration ends upon expiry of the term of the parties. The clause inserted in such a contract predicting the right to terminate it with notice is rightfully null.

Article 70:

Any end of a contract of unlimited duration decided in violation of article 69 entitles damages.

Should the Employer irregularly terminates it, these damages correspond to the salaries and benefits of any kind the salaried person would have earned during the remaining period until; his/her contract ends.

Article 71:

In the case of the clause assorted with a trial clause, each of the parties can, for a justified cause linked to skills or the other's conduct, terminate a contract against a three working days' notice in force the day following the notification.

Nevertheless, during the first three trial days, the contract can be terminated without notice with the remuneration total due for any day begun.

Article 72:

Any Labour Agreement can be immediately terminated without notice, for any serious offence.

A party is deemed to have made a serious offence when the good will rules do not allow for requiring the other to continue executing the contract. The party that proposes to terminate the contract owing to serious offence has the obligation to notify in writing to the other party at the latest after having been aware of the facts he/she invokes.

For investigation purposes, the Employer is free to nptify the worker within the two working days after being aware of the facts, the suspension in his/her functions.

The suspension in the functions for investigation reasons is a conservatory measure that cannot be confused for the Labour Agreement suspension provided for in clause 57.

The suspension duration cannot exceed fifteen days, and an extra fifteen days is granted to the Employer whose registered office is not in the place of contract execution.

The written suspension can be sent either by recommended letter through the post-office or handed over to the interested person against acknowledgment of receipt or, in case of refusal, in the presence of two literate witnesses.

The suspension period in the worker's functions for investigation reasons is considered as working time.

Article 73:

The Employer makes a serious offence that allows the worker for terminating the contract when he/she seriously fails his contractual duties, namely in the following cases:

a) The Employer or his/her delegate is guilty towards him/her of an act of improbity, moral or sexual harassment, assault and battery, serious insults or tolerates the other workers to act the same way;
b) the Employer or his/her delegates willfully causes him/her a material prejudice during or on occasion of the contract execution;
c) during the contract execution, the worker's safety or health is exposed to serious dangers s(he) could not prevent the moment the contract was concluded or when his/her morality is in peril;
d) the Employer or his delegate unduly reduces or deducts from the worker's remuneration;
e) the Employer persists in not applying the legal or regular provisions in force about Labour.

Article 74:

The worker makes a serious offence that allows the Employer for terminating the contract when he/she seriously fails to meet his/her contractual duties and namely if s(he):

a) Is guilty of an act of improbity, moral or sexual harassment, intimidation, assault and battery or serious insults to the Employer or his staff;
b) Willfully causes to the Employer a material prejudice during or on occasion of the contract execution;

c) Is guilty of immoral facts during the contract execution;
d) Jeopardizes, owing to his/her carelessness the safety of the business or the establishment, the work or the staff.

Article 75:

Should the contract be terminated by virtue of the provisions of clause 73 here above, the employer is liable to pay the worker damages that would be determined according to the appreciation way provided for in clause 63.

If the contract is terminated by virtue of one of the provisions of the clause 74 here above, the Employer can claim from the worker the directly caused prejudice repair owing to the worker's serious offence.

Article 76:

Any contract termination must be notified in writing by the party initiating it to the other. When it stems from the Employer, the notification letter must purposely indicate the motive about it.

Article 77:

The voucher to balance any account, issued to the worker the moment the contract is terminated, does not imply any of his/her right renunciation.

Article 78:

Save eventual derogations that are determined by a decree of the Labour and Social Welfare Minister, widespread lay- offs are forbidden.

The Employer who figures out to lay off one or more members of his/her staff for economic reasons, namely the establishment activity decrease and internal re-organization, must respect the established lay-off order by taking into account the professional qualification, seniority in the establishment and the worker's dependents.

In order to collect their suggestions, the Employer must inform in writing, at least fifteen days in advance, the Business worker's representatives, about the measures that s(he) intends to take.

Will be first laid off the workers with the least professional skills for the jobs maintained and, in case of professional skill equality, the junior workers, seniority being added with a year for the married worker and with a year for each dependent under clause 7 hereof.

The worker so redundant keeps during one year the priority to be retaken-on in the same job category.

After this period, s(he) keeps on benefiting the same priority during the second year, but his/her appointment can be subordinated to a professional trial or to a probation training not exceeding the one of the trial period provided for in the collective Labour Agreement or in default of this, by the provisions of clause 43 hereof.

The worker with priority to retaken-on has the obligation to communicate to the Employer any change in the address occurring after him/her leaving the Business.

In case of a vacancy, the Employer sends a notice to the interested worker by means of a recommended letter with acknowledgment of receipt, to the last known worker's address. The worker must appear at the Business or the Establishment within a maximum fifteen day period following the letter reception date.

The Factory Inspector, prior to implementing lays-off, makes sure the prescribed procedure and the standard criteria are observed by the Employer.

Should the procedure or the standard criteria not be respected, the Factory Inspector notifies it in writing to the Employer. The latter must answer before carrying out lays-off.

Any redundancy for economic reasons carried out in violation of the provisions of the present Act is considered abusive.

The Factory Inspector or the workers' representatives failure is not an obstacle to pursuing the procedure.

SECTION II: THE SERVICE CERTIFICATE

Article 79:

When the contract ends for any cause, the employer has the obligation to issue the worker a certificate testifying the nature and the duration on the services rendered,

the beginning date and the prostrations end as well as his/her registration number at the national institute of social security. No other indication can be added to it.

This certificate must be handed over two working days at the latest after the contract and. It is right fully exempted of staring or registration

CHAPTER VII:
THE EMPLOYER'S SUBSTUTION AND TRANSFER

Article 80:

When an employer is substituted, namely by cession, succession, merger, friend transformation, setting up a company, all the current labour agreements the day of substitution subsist between the new employer and the staff.

Save in the case of abiding by the rules or an establishment the employer from abiding by the rules provides for in terms of contract termination.

Bankruptcy and legal winding up are not considered Force majeure.

Article 81:

Is null and void the clause stipulating that the worker has the obligation to pass in the course of the service contract to another employer.

This clause is however valid if it describes the employer or the employers at whose service the worker will have to be transferred or if the transfer is provided for in favour of the persons to whom the first employer would cede, all or part, of the business within which worker used to render his/her services.

In case of transfer, the new employer is subrogated to the previous employer.

CHAPTER VIII:
THE SUB-BUSINESS

Article 82:

The sub-contractor is the physical person or the legal entity that passes with an undertaker a written or tacit contract for carrying out an amount of work or to render some services for a lump sum.

S(he) appoints him/herself the necessary manpower.

Article 83:

When the works are carried out in a place other than the undertaker's workshops, warehouses or sites, the undertaker is responsible for the salaries due to the workers should the sub-contractor prove insolvent.

The worker victim of the burdensome contract will have, in this case, to sue directly the undertaker.

Article 84:

The sub-contractor has the obligation indicate his/her qualification, the name and address of the undertaker, by way of a bill stuck permanently in each of the workshops, warehouses and sites used.

The undertaker must update the list of the sub-contractors with whom he has passed the contract.

Article 85:

A decree of the Labour and Social Welfare Minister, taken after the National Labour Council notice, determines the need and the application ways of the present Act.

TITLE V: THE SALARY

CHAPTER ONE:
DETERMINING THE SALARY

Article 86:

To equal Labour conditions, professional qualification and output, the salary is equal for the workers whatever their origin, sex and age.

The Labour piece wages must be calculated in such a way that they provide the worker of average capacity and working normally, a salary at least equal to the one of the salaried worker and carrying out a similar job.

No salary is owed in case of absence, out of the cases provided for by law or regulations and except agreement between the interested parties.

Article 87:

A decree of the President of the Republic, taken upon the proposal of the Minister in charge of Labour and Social Welfare , after the National Labour Council notice , fixes the Guaranteed Minimum Wages as well as the minimum family wages, and in default of Collective Labour Agreement or should they remain silent , the minimum wages by professional category.

Article 88:

The remuneration is fixed by the individual contract concluded freely between the workers and the employers or by way of Collective Labour Agreement.

Is rightfully null any individual contract or any collective one fixing the remuneration inferior to the guaranteed minimum wages determined in accordance with clause 87 hereof.

Article 89:

The remuneration must be stipulated in the legal currency of the Democratic Republic of the Congo

Its amount is determined by the hour, by the day, by the week, by the month, by the piece.

Article 90:

The employer has the obligation to apply a classification containing all the line, the foreman up to the Supervisory Personnel. By the Supervisory Personnel job, it is meant the one carried out by the worker who has not the power to make autonomously the decision likely to influence considerably the Business functioning.

Article 91:

It is decided in the Democratic Republic of the Congo a GMW unique zone (Guaranteed Minimum Wage unique zone) without prejudice to the provisions of the previous paragraph, a decree the President of the Republic taken upon proposal of the Labour and Social welfare Minister, after the National Labour Council, fixes, when necessary, the specific provisions that can alleviate the difficulties of the livestock and industrial agricultural sector.

Article 92:

In default of an agreed remuneration, the employer owes the remuneration determined by the Collective Labour Agreement or, in default of this, or should they remain silent, by the decree provided for in clause 87 hereof, or by the place's customs where the contract must be executed, taking into account namely the labour kind , the professional qualification and the worker's seniority in the business.

Article 93:

The remuneration is due for the time when the worker has effectively rendered his service: it is also due when the Employer made it impossible for the worker to do his job and during public holidays, except the lock-out case launched in accordance with legal provision.

The right to sales commissions is acquired as soon as the orders are carried out by the employer.

Article 94:

The minimum wages will be fixed taking into account a salary tension according to a unique salary scale of which fixing and application and methods will be determined by a decree from the Labour and Social Welfare Minister, taken after the National Labour Council notice.

Article 95:

The minimum wage of the first professional category is fixed following the essential requirement of the worker's family including the father, the mother and the dependents whose number is determined by the decree provided for in clause here above.

The essential family requirements and the clauses taken into account to calculate this minimum wage of the first category are determined after the periodic investigation in each province and within the City of Kinshasa according to the methods fixed by the decree of the Minister in charge of Labour and Social Welfare.

Article 96:

A decree of the President of the Republic, taken upon proposal of the Labour and Social Welfare Minister after the National Labour Council notice, determines the methods of the Guaranteed Minimum wage, the family allowances and the accommodation allowance.

Article 97:

The minimum wages are adjusted the following the consumer price ratio progress.

The decree provided for in clause 96 here above will determine their methods.

Article 98:

The remuneration must be paid cash, after eventually deducting the value of the benefits handed over in kind.

The payment must occur during working hours, at the agreed place and time.

The payment of the remuneration cannot occur in a drinking place or in a selling shop, save for the workers employed in these establishments.

The Employer is forbidden to restrain in any way the worker's freedom to have his remuneration at will.

Article 99:

The remuneration payment must be done at regular intervals not exceeding one month.

The payment must occur within the six days at the latest following the period to which it is related.

The commissions acquired during a quarter can be paid within the three months following the quarter end.

The participations to the income achieved during a trade must be paid within the nine following months.

Article 100:

Any sum due in execution of a Labour Agreement, when the effective services end for good, must be paid to the worker, in case of need, to the rightful owners of the latter, within the two working days, at the latest, following the date of the end of service.

Article 101:

Under the reserve of the provisions of clauses 138 and 139 hereof, the payment of all or part of the remuneration in kind is forbidden.

Article 102:

The Employer duly hands over to the minor his/her job remuneration. Nonetheless, the person who is the minor's parent or tutor can oppose to paying the minor his/her job remuneration.

The competent Tribunal can waive this opposition should the circumstances or equity justify it.

Article 103:

The Employer has the obligation to hand over to the worker at the time of payment and according to the methods fixed by a decree of the Labour and Social Welfare Minister, a written statement of the paid remuneration.

Failure for the Employer to have met this duty, his/her allegations about the paid salary statement are rejected unless s(he) proves that it was not possible for him/her to hand over the statement owing to the worker's fault or that there is no written proof or written proof beginning or confession of the worker.

Article 104:

The worker's accepting without any protest or reserve a paid salary statement, his signing it as well as the presence of any account balance on the remuneration statement or any equivalent presence subscribed by him/her, cannot value renunciation from him/her of all or part of the rights s(he) has from legal, regular or contractual provisions. It can neither value the counting enacted and governed under clause 317 hereof.

CHAPTER III:
PAYMENT IN CASE OF ILLNESS OR INJURY

Article 105:

When the worker is unfit for work owing to illness or injury, s(he) keeps the right, all along the contract suspension, to the two third of the remuneration cash and to the total family allowances.

The right to contractual benefits in kind subsists during unfitness for work unless the worker asks for the cash equivalent. Accommodation cannot be replaced by cash.

Article 106:

If the illness or injury is deemed industrial disease or injury in the terms of the social security regulations, the worker keeps the right within the first six months of the contract suspension to the two thirds of cash remuneration and to the family allowance total.

The Employer is authorized to deduct on a monthly basis the sums paid to the worker by the National Institute of Social Security, by handing over the evidences that must be accepted after this institute investigations.

During the same period, the right to benefits in kind subsists unless the worker asks for the cash equivalent.

Accommodation cannot however be replaced by cash.

Article 107:

No sum or benefit is due it if it has been established that the illness or injury aggravation results from a special risk to which the worker willfully exposed him/herself while being aware of the danger, without good reason; neglects
To use the medical or re-adaptation services at his/her disposal, or does not abide by the prescribed rules for checking on the existence of damage or for conducting the prestation beneficiaries.

Article 108:

1. There is special risk, in the sense of clause 107, when the illness or injury, or the previous illness or injury aggravation results;
2. from an illness or injury provoked by an infringement made by the worker and that have resulted in his/her definite condemnation;
3. from a hazard occurred on occasion of a dangerous sport, a violent exercise performed during or in view of a competition or an exhibition, except when they are organized by the employer;
4. from an illness or injury occurred owing to indulging in drinks or drugs;
5. from an illness or injury provoked by the person’s intentional fault;

6. from an illness or injury occurred owing to prestations on account of an outsider;
7. from war, unrest or demonstrations, except if the illness or injury, in accordance with the definition given to it by the social security regulations, occurs on working occasion.

CHAPTER IV:
THE PRIVILEGES AND GUARANTEES OF THE SALARY CREDIT

Article 109:

The sums due to the employers cannot be seized or opposed to the prejudice of the workers to whom salaries are due.

Article 110:

In case of bankruptcy or judicial winding up of a Business or an establishment, the workers are privileged creditors over all the other creditors including the Public Treasure, notwithstanding any provision contrary to the previous law, for the salaries due to them for the services rendered prior to bankruptcy or winding up.

This privilege is exerted on the employer's movables and real Estate.

The salaries must be completely paid before the other creditors claim for their share as soon as the relevant funds are gathered.

Article 111:

Is null any stipulation granting the employer the right to have fines paid.

Article 112:

Is rightful null any stipulation granting the employer the right to have reductions on remunerations done as damages. However, the following deductions are authorized:

a) fiscal taxes, professional taxes
b) contributions due to the National Institute of Social Security
c) advances deductions

d) deductions as compensatory benefits in case the worker violates his/her obligation under clause 52;
e) deductions in view of making a sum to guarantee the worker's execution of the obligation provided for in clause 52;

The deductions by virtue of this litera e are, their destination to be mentioned, placed as a deposit on behalf of the worker and yield an interest in his/her favour. The deposit is done within a month dating from the deduction, in a Bank or an establishment approved by the decree of the Minister in charge of Labour and Social Welfare.

The employer has the obligation to communicate to the worker the account number and the establishment where the deposit has been put.

By the only deposit fact, the employer acquires the privilege on the cautionary sum for any credit resulting from total or partial non execution of the worker's obligation provided for in clause 52.

In the case where there is no cautionary sum, the deductions provided for at litera d of the present can be done only within the limitations provided for in clause 114 here above. Deductions as loans Seizures.

Article 113:

The cautionary sum can be re-paid to the worker nor to the employer only upon them agreeing or upon production of a copy of the award made to be in force of the thing judged or rendered executorial notwithstanding opposition or appeal.

The employer must agree to the liberation of the cautionary sum within the thirty days following the end of the contract, unless he has introduced, prior to this period expiry, a request in justice to exert a privilege on the said cautionary sum. However the competent tribunal President can authorize, upon the employer's justified request, the maintenance of this sum beyond this period, by determining the sum against which it has been maintained.

This authority comes into force only on condition to be followed by a request in justice within the time fixed by the ordinance that grants it.

CHAPTER VI:
SEIZURE AND CESSIONS

Article 114:

The worker's remuneration is to be ceded and seized only at the fifth of the part not exceeding five times the monthly minimum wage of his category and a third on the extra one.

It can be ceded and seized at the two fifths when the credit is based on allowance for board.

The seizure and cession authorized for any credit and those authorized for allowance for board can be done by successive additions.

The calculation of the parts to be ceded and seized is done after deduction of the fiscal, social charges and the accommodation lump sum assessment as it is defined in clause 139 hereof.

CHAPTER VII:
FOOD AND FIRST CONNODITY TAG-SHOPS

Article 115:

Is considered as such any organization where the employer performs directly, the sales or cession of foodstuff and first commodities, exclusively to the workers, for their personal and normal requirements.

Article 116:

Such tag-shops are admitted under the triple conditions that:

a) the workers are not obliged to be supplied from them;
b) the goods sales is performed at reasonable prices set forth by the employer, after the Trade-Union notice, for the interest of the workers and upon exclusion of any lucrative aim;

c) the accounting is entirely autonomous.

Article 117:

The prices of the commodities and goods sold must be legibly stuck and communicated to the Local Labour Inspector.

Selling and consuming alcoholic drinks, spirits, tobacco and any form of drug are forbidden in the tag-shops as well as on the worker's work places.

Article 118:

The opening of tag-shop is subordinated to the authority of the Labour and Social Welfare Minister or his local representative, issued after the local Labour Inspector's notice.

This opening can be prescribed in any Business by Minister in charge of Labour and Social Welfare or his/her local representative upon the proposal of the local Labour Inspector.

Should abuse be noticed, the Minister of Labour and Social Welfare or his/her representative can, in the same conditions, order the provisional or definite closure of the tag-shop.

TITLE VI: THE LABOUR GENERAL CONDITIONS

CHAPTER ONE:
THE WORK DURATION

Article 119:

In all the public or private establishments, whether they are educational or philanthropic one, the work legal time of the employees or laborers of both sexes, whatever the way in which the work is carried out, cannot exceed forty-five hours a week and nine hours a day.

It must be calculated from the moment when the worker occupies the work place at the employer's disposal until the prestations cease, in accordance with the set forth schedule from the employer and reproduced in the Business regulations.

It does not include the necessary time for the worker to go and from his work place, save if it is related to work.

The hours beyond the legal working time are considered overtime and entitle a salary increment.

Article 120:

The decrees of the Labour and Social Welfare Minister, taken after the National Office notice, determine for each economic activity branch and reach professional category, if necessarily;

a) the present clause application methods;
b) the extra hour numbers that can be authorized beyond the legal working time;
c) the temporary or permanent derogations that can be allowed for some worker categories, for some work categories and the conditions in which to use these derogations;
d) the minimum limit reductions fixed in clause 119 here above; the extra remuneration methods.

CHAPTER II:
THE WEEKLY REST AND THE PUBLIC HOLLIDAY

Article 121:

Every worker must enjoy, during each seven day period, a rest including a minimum consecutive 48 hours.

Their rest must be granted as much as possible, at the same time to all the staff.

It takes place on Saturday and Sunday as a principle.

The Labour and Social Welfare Minister determines by way of a decree, after the National Labour Council notice, the application methods of the previous paragraphs, namely the professions for which the conditions in which the rest can, exceptionally and for the clearly set forth reasons, either be given for shift purposes or collectively a day different from Saturday or Sunday, or be suspended over a period longer than the week.

Article 122:

When the weekly rest is collectively allowed to all the staff, the employer must stick in advance at the places so prepared for communication to the staff, the collective resting hours and days.

When the rest does not concern all the staff, the employer must stick in advance at the places so prepared, the workers' names concerned with the particular regime and indication of this regime.

Article 123:

The President of the Republic fixes by way of a decree, taken upon the proposal of the Minister in charge of Labour and Social Welfare, after the National Labour Council notice, the list of public days.

The Labour and Social Welfare Minister determines, by way of a decree, after the National Labour Council notice, the public days' regime.

CHAPTER III:
WORK AT NIGHT

Article 124:

Work at night is the one carried out between 19 hours and 5 hours.

It must be paid with an increment, without prejudice to the provisions related to overtime.

The present clause application methods are determined by a decree from the Labour and Social Welfare Minister, taken after the National Labour Council notice.

Article 125:

Women, children aged under 18 and disabled workers cannot work at night in the public or private industrial establishments. The word night set forth in the previous paragraph means the period going from 19 hours to 7 hours.

Article 126:

The daily rest for children and the disabled between two periods must last in the minimum twelve consecutive hours.

Article 127:

The derogation that can be granted to the provisions of here above clauses 125 and 126, considering exceptional circumstances, the profession particular character or for apprenticeship or training and professional refresher course, are determined by the decrees provided for in clauses 38 and 128 hereof, related to the work of children and the disabled.

The derogations provided for in the previous paragraph do not apply to the Businesses where only the members of the same family are employed.

CHAPTER IV:
THE WORK OF WOMEN, CHILDREN AND THE DISABLED

Article 128:

The decrees of the Labour and Social Welfare Minister, taken after the National Labour Council notice, fix the working conditions of women, children and the disabled and define namely the kind of the jobs that are forbidden for them.

Maternity cannot be a source of employment discrimination. It is particularly forbidden to require a woman applying for a job to submit to pregnancy test or to produce a certificate of pregnancy or not, save for the jobs that are totally or partially forbidden for pregnant women or breast feeding ones or bearing a recognized or significant risk for the woman and child health.

Article 129:

Any pregnant woman, whose state has been medically stated, can terminate her contract without notice and without accordingly having to pay a benefit for terminating the contract. .

She is granted the similar right eight weeks after confinement.

Article 130:

On occasion of confinement, and without this service interruption being considered a cause of terminating the contract, any woman has the right to suspend her work during consecutive fourteen weeks, including a maximum eight weeks after confinement and six weeks before.

During this period, whether the child lives or not, the salaried woman is entitled the two thirds of her remuneration as well as maintaining the contractual benefits in kind.

During the same period, the employer cannot terminate the Labour Contract. The benefit of the provisions of clause 129 hereof is acquired by any salaried woman since the provisions apply to her, whether she is married or not, whether the child lives or not.

Article 131:

Any convention contrary to the provision of clauses 129 and 130 here above is rightfully null.

Article 132:

When the woman breast feeds her child, she is entitled, in all the cases, two half hour rests a day to allow her for breast feeding. These resting periods are remunerated as working time.

Article 133:

Children cannot be employed in a business even like apprentices, before the age of 15 save purpose derogation of the local Factory Inspector or the parent or tutor's authority.

Article 134:

Is considered disabled worker any person whose chances to find and keep a convenient employment and to progress professionally are remarkably reduced owing to his/her duly recognized impairment.

Article 135:

The handicap would not be a hindrance for a person access to carrying out a job related to his/ her intellectual, sensory or physical skills in the public, semi-public or private sector all the more so as the handicap nature does not cause any prejudice or disturb the business functioning.

Article 136:

The disabled are entitled in the same conditions as the other workers a vocational training.

Article 137:

The Factory Inspector can require the examination of children ,women and the disabled from a doctor to verify if the job they are entrusted with does not exceed their forces. This requirement requested by the people concerned is a right.

The child women or disabled cannot be kept in a job so recognized beyond his forces and must be assigned to a convenient job. If this is impossible, the contract must be terminated by the employer with payment of the benefit with notice.

CHAPTER V:
ACCOMMODATION AND ALIMONY

Article 138:

In case of transfer or appointment out of the work place, the employer has the obligation to give a decent housing to the worker and his/her family or, in default of this, a consequential benefit.

In the other cases, the employer is obliged to pay a housing allowance determined by the parties, either in the Labour Agreement, in the Collective Labour Agreements or in the Business regulations.

The woman is entitled housing or housing allowances.

In the case when the worker cannot by his/her own means secure for him/her or his/her family regular supply of first commodities, the employer is obliged to get it for him/her.

Article 139:

A decree of the Ministry in charge of Labour and Social Welfare, taken after the National Labour Counsel notice, fixes:

a) the cases in which accommodation must be granted, its maximum repaying value and the conditions in which it must be, namely concerning hygiene and assuring the protection of the women and young girls who do not live in the family;

b) the regions and the categories of the workers to whom it is obligatory to supply daily foodstuff, its maximum repaying value, the detail of nature and weight of the first commodities composing it and the conditions to supply it.

CHAPTER VI:
HOLIDAYS

Article 140:

The employer is obliged to allow an annual holiday to the worker.

The worker cannot deny this holiday.

The right to a holiday stems from the expiry of the first year of services counted date after date and accomplished with the same employer or a substitute.

The holiday date is commonly agreed upon, without however the effective holiday of six months the beginning date provided for.

The worker can eventually cumulate only half of the holidays during a period of two years.

During the holiday, the worker and his/her family are entitled health care.

Should the holiday be spent out of the Democratic Republic of the Congo or out of the work place, the employer, after the medical advisor's notice, repays all or part of the health care costs.

Article 141:

The holiday duration is at least one working day for an entire service month for the worker aged more than eighteen. It is at least one or a half working day an entire working day for the worker aged less than fifteen. It grows with a working day for every five years of seniority with the same employer or his/her substitute.

The services taken into account for the calculation of a holiday period include the working days, the weekly rest, the holiday allowance and the public days as well as the suspension periods owing to work incapacitation until a maximum six months per year of service considered separately, without this limitation being applicable to incapacitation resulting from occupational injury and industrial disease.

The travel period is not included in the holiday.

The sickness days included in the holiday are not considered.

Article 142:

During the holiday, the is entitled an allowance equal to the remuneration he earns upon taking his/her holiday, with the benefits eventually paid in kind during working times by virtue of contractual stipulations, upon the worker's request, paid cash legally, except for housing.

The eventual amounts of commissions, bonus, overtime and participation to the income are taken into account for determining the holiday allowance, and are calculated on the average of the benefits paid for the twelve months prior to the holiday.

Family allowances are due all along the holiday.

Article 143:

The worker must refrain from carrying out a lucrative profession during the holiday.

Article 144:

In case the contract is terminated, whatever the moment this occurs, the holiday is replaced by a compensatory benefit calculated pursuant to clause 142 above.

Out of this case, is null and void any convention providing for a compensatory benefit instead of the holiday.

Article 145:

The holiday allowance payment must be done the time of taking the holiday and on the last working day at the latest before going on leave.

The compensatory benefit payment must be carried out within the last two working days following the end of the contract.

Article 146:

The worker is entitled the following occasional leaves:

- Marriage of the worker: 2 working days;
- Spouse confinement: 2 working days;

- Death of spouse, or a first degree parent: 4 working days;
- Marriage of the child : 1 working day;
- Death of a parent or second degree member: 2 working days.

These days are not to be reduced in the minimum legal holiday.

These occasional leaves are not to be portioned.

Health cares are due all along the occasional leaves.

The employer is obliged to pay occasional leaves only until fifteen working days a year.

CHAPTER VII:
TRAVELS AND TRANSPORTS

Article 147:

The single travel is covering, upon appointment, retaking-on or on occasion of beginning of the service period, the distance between the place of appointment consent or promise to the place the employment is carried out.

The return travel is covering, upon the contract expiry or the service period, the distance from the work execution place to the one of appointment consent or promise.

The travels are done on the date, in the conditions and following the ways, schedules and means contractually set forth under the reserve of the provisions herein.

Article 148:

The employer pays the single travelling allowances to the worker and his/her family. However, this obligation stems, for the family, only after the probation period.

Furthermore, when a contract suspension occurs before the travel, it leads to the suspension of the said obligation.

The employer is not obliged to pay the travelling allowances to the persons about whom the worker did false declarations. When s(he) has paid the allowances not owed, s(he) can offset them by way of deductions, in accordance with the provisions of clause 141 hereof.

Article 149:

In general, the right to the return travel of the his/her family comes, without restriction, after each period of two years of service, counted date after date.

This right is also acquired:

a) by the worker during probation, even when the contract is terminated owing to the worker's serious offense;
b) by the worker and his/her family, prior to expiry of the second year of service, when the contract ends owing to the employer;
c) by the worker and his/her family, upon expiry of any contract concluded for a period inferior to two years;
d) by the worker's family when the worker deceases before the end of the contract;

The employer pays the return travelling allowances only in proportion as the prestations are accomplished:

1. When the contract is terminated owing to the worker's serious offense;
2. When the worker put an end to the contract of unlimited duration after having accomplished twelve service months from his/her last single travel and without any employer's serious offense;
3. When the parties terminate the contract jointly after twelve service months.

The employer owes the return travelling allowances only if this travel has really been done.

Article 150:

The children limitation age is not taken into account when they reach it at the end of the service.

Article 151:

The return travel right expires:

- If the worker explicitly denies it in writing after the contract expiry;
- If the worker did not require its accomplishment within the two years after the opening of the right to go the day the contract ends.

To be spared from paying the return travelling allowances, the employer must have the Labour Inspector's notice:

- In the case provided for in the litera a herein, that the worker's renunciation is real and that the later has been established to dwell on the work place or near this place, upon his/her consent.
- In the case provided for the litera b, that the worker willingly refrained from using the right to the return travel.

Article 152:

The employer will ensure the return travel within the shortest times dating from the end of the services.

Moreover, s(he) must pay the worker a benefit equal to the monthly remuneration until the effective travel, save if the departure is delayed:

- Owing to the worker's negligence
- Owing to the worker's refusal to abide by the employer's instructions;
- Owing to Force Majeure.

When the employer does not meet his/her duties related to the return travel, the local Labour Inspector urges him/her to execute him/herself within six days. After this time, the above mentioned authority, acting on behalf of the worker, obligatorily sues the employer at the Labour Tribunal without prejudice of the sanctions provided for in the Title XV hereof.

Article 153:

If any contract concluded for at most one year with a worker living abroad, the employer can stipulate et the appointment time that s(he) does not pay the single return travel of the family.

Article 154:

All along the travel, but only within the necessary limit to accomplish the said travel in the conditions provided for in clause 155 paragraph 1 hereafter, the worker is entitled, at the worker's expenses, an equal benefit of the remuneration he would have earned if s(he) had continued to work.

Article 155:

The travels and transports are done with the average means left to the employer's choice.

The worker using one or transport means that are more costly than those chosen by the employer is served only until the allowances incurred by the way or the means regularly chosen by the employer, save contrary medical prescription.

If s(he) uses one way or the most economic transport means of transport than those regularly chosen by the employer, can only claim consequently the longer road periods than those provided for by the normal way and means.

Article 156:

The passenger class and the luggage weight are determined taking into account the worker's position in the company following the provisions of the Collective Labour Agreement or, in default of this, in accordance with the rules from the decree of the Minister in charge of Labour and Social Welfare, taken after the National Labour Council notice.

In all the cases, the family dependents are taken into account in the calculation of the luggage weight.

CHAPTER VIII:
THE COMPANY REGULATIONS

Article 157:

Company regulations are drawn up by the employer within any private or public establishment, even educational or philanthropic one.

Their content essentially concerns the regulations related to the Labour technical organization, discipline, prescriptions about the necessary hygiene and safety for the company, establishment or service progress and to the remuneration payment methods.

All the other clauses that would be figured out in it, namely the ones providing for fines to be paid by the workers are considered rightfully null.

Before implementing them, the Business or establishment Head shall communicate the Business or establishment regulations for the workers' representatives' notice, as it is defined in Title XII hereof, and to the Labour Inspector who can require the withdrawal or the amendment of the provisions contrary to law and to the regulations in force.

Article 158:

The content, the communication, storage and sticking methods of the Business regulations are fixed by a decree of the Minister in charge of Labour and Social Welfare, taken after the National Labour Council.

TITLE VII: HEALTH AND SAFETY AT WORK

CHAPTER ONE:
THE OBJECTIVES

Article 159:

The conditions of health and safety at work are assured for:

1. Preventing occupational injuries;
2. Fighting industrial diseases;
3. Creating sane working conditions;
4. Offsetting excessive professional fatigue;
5. Adapting work to man;
6. Managing and fighting against the great endemics of community health in the place of work.

CHAPTER II:
HEALTH AT WORK

Article 160:

The Business or establishments of any kind are to obtain the assistance of health care services at work.

Article 161:

The health care services at work are ensured by Factory doctor. Their main role is essentially preventive and their mission is to ensure

- The workers' medical management and the sanitary management of the places of work;

- The immediate first-aid and emergency health care to victims of hazard or incapacitation

Article 162:

A decree of the Ministry in charge of Labour and Social welfare, taken after the notice of the National Labour Council determines and fixes the present chapter execution methods.

CHAPTER III:
SAFETY AT WORK

Article 163:

Any business or establishment is obliged to organize a special Health, Hygiene and Place of Work Embellishment Service.

Article 164:

The special Safety, Hygiene and Work Place Embellishment Service has the mission of ensuring.

- The workers' technical management and the sanitary management of the place of work;
- The workers' sensitization and general training.

Article 165:

The special Safety, Hygiene and Work Place Embellishment Service are ensured by an executive called Safety, Hygiene and Work Place Department Head.

Article 166:

A decree of the Minister in charge of Labour and Social Welfare, taken after the National Labour Council notice, determines and fixes the present article execution methods.

CHAPTER IV:
THE COMMITTEE OF SAFETY, HYGIENE AND WORK PLACE EMBELLISHMENT

Article 167:

Any Business or establishment of any kind occupying the works is to set up a committee of Safety, Hygiene and Work Place Embellishment.

Article 168:

The Committee of Safety, Hygiene and Work Place Embellishment has the mission of:

- designing, correcting and implementing the prevention policy of occupational injuries and industrial diseases;
- stimulating and controlling the good operation of the services of Health and health at work

Article 169:

A decree of the Labour and Social Welfare Minister, after the advice of the National Labour Council, determines the composition, the competence and the operation rules of the Committee of Safety, Hygiene and Work Place Embellishment.

CHAPTER V:
THE FIGHT AGAINST NUISANCES

Article 170:

Any Business or Establishment must be kept in a constant state of tidiness and present the necessary safety and health conditions for the staff health.

Article 171:

The conditions of hygiene and safety on the work places are governed by the decrees of the Labour and Social Welfare Minister. These decrees precise in which cases and conditions the local Factory Inspector will have to resort to the injunction procedure and the appeal methods.

Article 172:

The injunction must be done by the local Factory Inspector either in writing on the spot or handed over to the Employer, or by recommended letter with acknowledgment of receipt.

It is dated and signed. It details the infringements or dangers noticed and fix the times within which they must have vanished. These times will not have to be inferior to four full days save in case of extreme emergency.

Article 173:

It is forbidden to dispose of, to hire, to exhibit or to cede in any way the machines of which elements are rid of appropriate protection devices.

A decree of the Labour and Social Welfare Minister, taken after the National Labour Council notice, will fix the present clause application methods.

Article 174:

The visits, the receptions, the tests, the contracts and examinations carried out by the organizations provided for in execution of the law and regulation provisions related to hygiene and safety at work as well as the checking in the electrical facilities in the businesses and establishments that use electric current must be obligatorily executed by the persons or organizations approved of by the Minister in charge of Labour and Social Welfare.

When these persons or organizations belong to a public service or controlled by the State, the appointment decree is taken upon the proposal of the Minister managing the technician or appointed organization.

Any infringement to the provisions of the decrees set forth in clause 171 can be immediately noticed by way of a report.

When the facts revealed are a serious and immediate danger for the worker's safety or health, the local Factory Inspector can exceptionally order or have ordered the switching off of the incriminated machine or the stoppage of the incriminated piece of work.

Article 175:

When there exists dangerous working conditions for the worker's safety or health and not set forth by the decrees provided for in clause 171 above, the Employer is ordered by the Factory Inspector to see to it in the forms and conditions provided for in the previous clause.

However, in this case, the Employer can, before expiry of the formal notice send a claim by recommended letter or by bearer with acknowledgment of receipt to the Labour and Social Welfare Minister.

This claim is suspends the Inspector's formal notice.

The Minister's decision is notified to the Employer in the administrative form through the medium of the local Factory Inspector within a month dating from the claim acknowledgment of receipt.

The silence of the Minister means he agrees to the claim.

Article 176:

The Employer is to advise the National Institute of Social Security as well as the local Factory Inspector in the conditions, forms and time provided for by law and the regulations of social security, occupational injuries or industrial diseases duly noticed.

TITLE VIII: THE BUSINESS MEDICAL SERVICE

Article 177:

Any Business or establishment must provide medical service to the workers.

The decrees of the Labour and Social Welfare Minister, taken upon the National Labour Council notice, determine these duty application methods.

These decrees namely include:

a) the grid, qualification and functions of the medical staff to employ considering the local conditions and the number of the workers occupied in the Business or establishment
b) the conditions in which the employers can have their medical service implemented, or in a medical institution out of the company or the establishment, or by the Business or establishment own medical unit, or by a common service to a lot of businesses;
c) the conditions in which the employers are to set up and supply the rooms used as nursery or hospital or first-aid kits.

Article 178:

In case illness, injury, pregnancy or confinement, and even in case the contract is suspended or on account of Force Majeure, the employer is to provide to the worker and his/her family, until the contract ends:

1. Medical, dental, surgical care, pharmacy allowances and hospitalizations;
2. The necessary travelling allowances, when the worker or his/her family is unable to move physically;
3. The lenses, orthopedic and prop implements, dental props except, according to medical prescription and to the rates drawn up by the Minister in charge of Public Health.

When, by the contract or law fact, the worker is repatriated at the employer's expenses, the health care obligation does not faint before the day when the worker's health conditions allow for his/her return. This is decided upon the doctor's advice. In

case of protest, the worker can lodge an appeal before a medical committee of which composition is fixed by the Provincial Governor, following the forms and methods determined by the decree of the Minister in charge of Labour and Social Welfare, taken after the National Labour Council notice.

Save the case of serious offence made by the worker, the employer who terminates a contract of unlimited duration by sparing it the notice benefit must provide him/her with health care until the date when the contract would normally end if the notice time had been respected.

The employer is however free from any obligation by the time that the worker is committed with another employer or perform a substantial lucrative activity.

Article 179:

If the illness or injury proves industrial disease or occupational injury in the terms of the Social Security regulations, the employer's duties provided for in clause 178 are limited to the period not covered by the benefits of the National Institute of Social Security.

Article 180:

Health care is not at the employer's expenses:

1. If the illness or injury or aggravation of a previous disease or injury result in a special risk, according to the present Act clause 107;
2. If the beneficiary withdraws without good reasons, either from a medical treatment, even a preventive one, or from preventive hygienic rules, or from a medical check-up proposed by the employer;
3. In case of misrepresentation or dissimulation by the persons concerned.

Article 181:

The employer must through the necessary motions of providing the health care provided for in the present Title in the conditions fixed by the decrees provided for in clause 177 hereof.

Article 182:

In case of injury or illness likely to incur the responsibility of an outsider, taking legal action against the latter does not spare the employer from fulfilling his/her duties.

Article 183:

The cost to repay the fees supported by the worker and his/her family for health care abroad is fixed by the Labour and Social Welfare Minister after notice by the Minister in charge of Public Health.

Article 184:

The worker's family members do not benefit the provisions of the present chapter only if they are the worker's dependents, if they live with him/her and if they do not carry out lucrative profession.

Are considered as living effectively with the worker:

- The children going to a school located in the Democratic Republic of the Congo;
- The family members when parting results from the work nature, Force Majeure, from the employer or the custom.

TITLE IX: WORK ADMINISTRATION

CHAPTER ONE:
GENERAL PROVISIONS

Article 185:

Work administration is in charge of, under the Minister of Labour and Social welfare, assuring in the area of work, employment, training and social welfare a designing and advisory role, a coordinating and controlling one.

It namely bears the mission of:

1. Drawing up all law or regulation text drafts concerning the workers' condition, the professional reports, employment and the workers' appointment, training and professional refresher courses and social welfare;
2. Advice, coordinate and monitor services or agencies involved in the implementation of legislation and regulation of Labour and Social Welfare;
3. Collecting and updating the statistic data related to the employment and working condition and to social welfare operations,
4. Following the relation ship with the other state and international organization as for a labour employment, promotion and social welfare issue the concerned;
5) To care for law and regulation application concerning the subjects set forth in paragraph 1 hereof.
6) To illuminate the employers and the workers with his advice and recommendations;
7) To achieve in co-operation with other interested authorities and organizations the best possible organization o f the employment market as an entire part of the national program tending to ensure and maintain full employment as well as to use fully the production resources;
8) To cause any employer, individual or legal entity, public or private, of national or foreign nationality, to abide by the formal prohibition to have in their staff more than 15% of persons of foreign nationality.

Article 186:
Labour administration includes:

- Central services with the Labour and Social Welfare Minister
- Local and provincial services.

The organization and functioning of the central services and the local and provincial ones are fixed by a decree of the president of the Republic taken upon proposal of the Ministry in charge of Labour and Social Welfare.

CHAPTER II:
WORK INSPECTION

Article 187:

The mission of the Factory Inspection is:

1. To assure the application of legal provisions related to working conditions and the workers protections within their profession, such as the provisions related to work duration, salaries, safety, hygiene and welfare, employment of women, children and the disabled, to collective conflicts, working individual litigations, to the application of collective Labour Agreements, the personnel representation and others;
2. To provide technical information and advice to the employers and the workers on the most efficient means to abide by the legal provisions;
3. To give notice about issues related to the establishment or the change in the business and organization installations submitted to administrative authority;
4. To draw the competent authority's attention on the deficiencies or the abuses that would arise from the application of legal provisions and that are not covered by it.

Article 188:

The Labour Inspector's missions are the exclusive competence of the Labour General Inspection all over the national territory.

The Labour general Inspection includes:

a) the General Inspection Management at the central service
b) the local and provincial inspections

Article 189:

The Management of the Labour General Inspection directs, co-ordinates and controls the whole of the activities implied by the Labour inspection missions.

It submits to the Minister all the proposals related to the Labour General Inspection Personnel.

Article 190:

The tasks assigned to the Labour General Inspection are assured by the Inspectors assisted by controllers of Labour and the Personnel necessary for the good service operations.

The President of the Republic fixes, as an application of the status of the State Public Service career Personnel the special provisions governing the Labour General Inspection clerks and executives.

Article 191:

The precedence of the Labour Inspector attached to the Labour General Inspection spreads all over the national territory.

The precedence of the Labour Inspector attached to the province or Kinshasa City is limited to the attached administrative jurisdiction.

Article 192:

Without prejudice of the competences recognized to the local Labour Inspector, the Labour Inspector attached to the Labour General Inspection is competent for:

a) knowing any Labour litigation related to his mission as it is defined in clause 187, namely :

- The Labour individual litigations for which one of the parties will find it materially possible to initiate or to pursue until the end the conciliation procedure before the local Labour Inspector;
- the Labour collective conflicts affecting many an establishment under the same Business or affecting a lot of Businesses of one or a lot of activity sectors under the precedence of more than a local Labour Inspector.

b) carrying out Inspection special visits in the area of technical safety , health at work, manpower, the welfare institution, that is mutual organizations and

insurances, negotiation of the national Collective Labour Agreements and counter-investigations.

Article 193:

The Labour and Social Welfare Minister determines by way of a decree, taken after the National Labour Council notice, the name, the head office, the competence and the territorial resort of the Labour Inspection services.

Article 194:

Before their going into service, the Labour Inspector and controllers take the following oath:" I swear, before God and the Nation, faithfulness and obedience to the Constitution and to the Laws of the Democratic Republic of the Congo, to faithfully fulfill my duty and not to reveal, even after having gone out of service, the secrets of manufacturing or trade or the operation procedures that I should be aware of during my functions".

This oath is done in writing before the Court of Appeal, and a copy is for the worker's administrative file.

Article 195:

To assure the inspection mission necessitating specific technical competences, the Labour Inspector can request for the co-operation of experts and technicians or public or private organizations, earlier on approved by the Ministry in charge of Labour and Social Welfare.

This technical competition is done under the control of the Labour Inspection.

The fees resulting from this competition are at the expenses of the Minister in charge of Labour and Social Welfare.

Article 196:

The Labour Inspector and Controllers, with proofs of identity as far as their functions are concerned, are authorized to:

a. freely penetrating, without first warning at any hour of the day and the night, any establishment subjected to the inspection control;
b. penetrating at day time all the premises they suppose to be subjected to the inspection control.;
c. performing all the examinations, controls or investigations the judge necessary for making sure that the legal provisions are effectively observed and namely:

1. To interrogate, either alone or in presence of the witnesses, the employer or the staff of the Business or the establishments about all the matters related to legal provisions applications;
2. to request that they are handed over, either on the work places, or in their office, all the books, registers and documents of which the keeping is under provisions and make a copy of them or to draw up their statements;
3. to require the notice sticking provided for the legal provisions;
4. to pick and take with them, for the purpose of analyzing the raw material samples and the substances used or manipulated, on condition that the employer or his representative are aware that the material or substance were picked and taken away to this end;
5. on occasion of the inspection visit, the Labour Inspector or Controller must inform the Employer or his/her representative unless he/she estimates that such a notice risks prejudicing the control efficiency.

Article 197:

During the accomplishment of their functions, the Labour Inspectors and controllers have the power of:

a) Requesting, in case of need, the co-operation and assistance of any public authority so as to fulfill their mission;
b) Requesting the employer to provide them with their data and statistics about the workers and their working conditions;
c) Noticing the violation of legal provisions on reports, having faith until further notice, that they are sent to competent hierarchical authority;

d) Saying out observations and giving advice both to the employer or his/her representative and to the workers;
e) Giving injunction to the employer or his/her representative to care for the legal provisions observance;
f) Ordering or having an order given that the measures immediately executorial be made when they have a reasonable justification to consider that there is imminent and serious danger for the workers' health or security.

While applying the provisions of litera f), the report twofold is sent to the Employer or his/her representative and to the competent hierarchical authority within eight maximum days from the infringement noticed.

The Employer or his/her representative, to appeal against this decision, sends within fifteen working days from reception, by way of a recommended letter or by bearer with acknowledgment of receipt, a request to the Labour and Social Welfare Minister against executorial measures taken by virtue of litera f) hereof.

Article 198:

The Labour Inspectors and Controllers have no right to have a direct or indirect interest whatever within the Business or establishments placed under their control.

They must treat as absolutely confidential the source of any claim informing them about a default in the installation or an infringement to legal provisions and must refrain from revealing to the Employer or his/her representative that an inspection visit took place owing to a complaint.

The means are put at their disposal by the Labour and Social Welfare Minister.

Article 199:

In the application of clauses 187, 196 and 197 hereof, the terms 'legal and regulatory provisions' include, in addition to laws and regulations, the Collective Labour Agreements of which control and application the Labour Inspector cares for.

Article 200:

The Factory Inspector permanently has means in Personnel, material, transport, offices and premises appropriately arranged for service requirements and accessible to all the persons interested.

CHAPTER III:
THE EMPLOYMENT

Article 201:

Employment is any non illicit activity that can provide an individual with the necessary revenue to meet his/her essential needs.

Article 202:

The Minister of Labour and Social Welfare applies the Employment national policy through the medium of the Employment Management Office and the Employment National Office.

SECTION 1: THE EMPLOYMENT MANAGEMENT OFFICE

Article 203:

The Employment Management Office has the essential mission of contributing to the designing, the definition and implementation of employment.

It is namely in charge of:

- doing the periodic synthesis on the employment situation and on its progress;
- preparing the texts regulating employment, appointment and professional direction;
- preparing the technical agreements with foreign countries;
- assuring the control of the employment of nationals and foreigners;
- Knowing and regulating the employment of the rural and urban sector that is not structured.

SECTION 2: THE NATIONAL EMPLOYMENT OFFICE

Article 204:

It is set up a Public Technical and Social Establishment or a legal entity named : the National Employment Office.

Article 205:

The National Employment Office's essential mission is to promote employment and to achieve, together with the public or private interested organizations, the best organization of the employment market.

Article 206:

A decree of the President of the Republic fixes the status, the organization and the functioning of the National Employment Office.

Article 207:

A decree of the Labour and Social Welfare Minister, taken notice of the National Labour Council notice, fixes the opening and appointment private service functioning methods.

CHAPTER IV:

THE NATIONAL COMMITTEE OF THE FOREIGNERS' EMPLOYMENT

Article 208:

It is set up next to the Ministry of Labour and Social Welfare "a National Committee of Foreigners' Employment".

Article 209:

The National Committee of Foreigners' Employment has a general mission of examining the issuing of foreigners' work permits.

For this purpose, it examines the request of commitment and the renewal of work permits for the foreigners and advises the Labour and Social Welfare Minister on the measures likely to improve the law protecting the national manpower against foreign competition.

Article 210:

The Minister of Labour and Social Welfare fixes by way of a decree taken after the National Labour Council notice, the functioning methods of the National Committee of the Foreigners' employment.

Article 211:

A tax is levied on the operation related to granting a work permit to the foreigners. The rate as well as the paying methods of this tax are from a decree jointly signed the Ministers in charge respectively of Labour and Social Welfare and Finance and Budget.

TITLE X: CONTROL MEANS

CHAPTER ONE:
THE DOCUMENTS

Article 212:

The Labour Agreement notified in writing must, in the minimum, bear the terms hereafter:

1. The employer's or business name;
2. The employer's registration number at the National Institute of Social Security;
3. The name, surnames and the post-name(s) and the worker's sex;
4. The worker's affiliation numbers the National Institute of Social Security; and eventually the order number the employer has given him/her;

5. The worker's birth date or in default, the hint of the presumed year of the latter;
6. The worker's birth place and his/her nationality;
7. The worker's family dependents:

- name, surnames or post-names of the spouse;
- name, surnames or post names and birthdates of each dependant

8. The nature and methods of the job to perform
9. The remuneration amount and the other agreed benefits;
10. The contract execution place(s);
11. The appointment duration;
12. The dismissal notice duration;
13. The date for the contract to come into force;
14. The place and the date of the contract conclusion;
15. Work fitness duly notified by a doctor.

Article 213:

Any employer, other than the one exclusively occupying the locally engaged staff must keep a wage book in one of the Business operations office, for the workers, whatever the nature or duration of their appointment.

The wage book must bear, at each payment, any sum given as remuneration.

Article 214:

The wage Book consists of numbered leaves in a continuous way, each of them having at least two detachable duplicates of which destination is fixed by the ministerial decree in accordance with clause 103 hereof.

Article 215:

The Wage Book must be certified the model fixed by a decree of the Labour and Social Welfare Minister.

In the Businesses or establishments where accountancy is kept by a carbon copy method or automated management, the Labour Inspector can authorize the replacement of the

wage Book by any other document, all the more so as the essential notes are in accordance with those in the decree provided for at the first paragraph hereof.
The employers who usually occupy less than twenty-five workers can use a wage Book inspired from the fixed model.

Article 216:

Any individual or legal entity, public or private, that proposes him/herself to carry out any activity, permanent or seasonal, requiring the employment of the workers, in the sense defined in clause 7 hereof, is obliged to declare it to the Factory Inspector and to the National Employment Office within the fortnight prior to the Business or establishment opening.

Article 217:

On occasion of his/her appointment, any worker must, within forty-eight hours, be declared by the Employer and sent by the latter the Factory Inspector's office and the National Employment Office.
Any worker leaving the employer, for any cause, must be declared in the same conditions, and the date when he leaves, the company must be mentioned namely.

Article 218:

Any Business or establishment must send, at least once a year, to the Factory Inspector's Office and to the National Employment Office, a declaration teaching the national and foreign manpower s(he) employs.

In addition, s(he) must provide each year for the Business or establishment social balance-sheet.

Article 219:

The Ministry in charge of Labour and Social Welfare determines by way of decrees, the methods of the declarations, provided for in clauses 217, 218 above, as well as the derogations that must be authorized concerning some business or workers' categories.

CHAPTER II:
SOCIAL SECRETARIATES

Article 220:

Social secretariats can be set up so as to fulfill, in their capacity as their affiliates' mandated places, the formalities imposed to the employers by the first chapter of the present title as well as by the social security law, the regulation of the professional tax on the remunerations and more generally Labour law.

Article 221:

The opening of a social secretariat is subordinated to the payment of a cautionary sum and authority of the Labour and Social Welfare Minister issued upon notice of the local Factory Inspector.

In case of shutdown, the cautionary sum will be repaid.

Article 222:

A decree of the Labour and Social Welfare Minister, taken after notice of the National Labour Council, fixes the application methods of the present chapter provisions.

TITLE XI: THE NATIONAL LABOUR COUNCIL

Article 223:

It is set up next to the Ministry in charge of Labour and Social Welfare an advisory organ called "the National Labour Council". It can be inserted in the larger organizations in charge of surveying the economic, financial and social issues.

The National Labour Council is presided over by the Minister in charge of Labour and Social Welfare or his/her representative.

It consists of an equal number of the representatives of the State, the workers and the employers.

Its secretariat is assured by the Labour and Social Welfare Ministry.

Article 224:

The seats granted to the representatives of each of the groups cited in the previous clause are determined by a decree from the Labour and Social Welfare Minister.

The State representatives come from the following ministries:

- Ministry of Labour and Social Welfare
- Ministry of finance and Budget
- Ministry of National Economy
- Ministry of Public function
- Ministry of National Education
- Ministry of Plan
- Ministry of Justice
- Ministry of Social Affairs and Family
- Ministry of Public Health
- Ministry of Youth, Sports and Leisure
- Ministry of Human Rights
- Ministry of Agriculture, Fishing and Breeding

The workers and employers' representatives are appointed by the most represented professional organizations recognized at the national level by the Minister in charge of Labour and Social Welfare.

The state representatives coming from the ministries as well as the workers' and employers' representatives are vested by a decree of the Minister in charge of Labour and Social Welfare.

The representation character of a workers' professional organization is determined by the number of the voices collected at the workers' representatives ballot within the company provided as such in clauses 255 and 266 hereof.

The representation character of a workers' professional organization is determined by the number of the workers occupied in the companies that are their members.

In default of the workers' or employers' professional organizations that can be considered as the most represented, the seats granted to the workers and employers are directly determined by the Minister of Labour and Social Welfare.

Article 225:

In addition to the cases provided for hereof, the advice of the National Labour Council is required on all the drafts of laws, decrees and ministerial decrees when they aim at modifying or creating the obligations or the rights for the workers and the employers in terms of Labour and Social Security.

The National Labour Council has also the general mission of:

a) surveying all issues concerning Labour, manpower and social welfare;
b) surveying the elements that can serve as the determination basis of the Guaranteed Minimum Wage and its economic incidences;
c) issue advice and formulate the proposals and resolutions on the regulations to use in these matters.

Article 226:

Upon the request of the Chairman or the employers and workers' professional organizations, the National Labour Council can summon, as an adviser, the qualified functionaries and invite in the same capacity the competent personalities in the items on the agenda.

These functionaries and personalities express their advice, but they do not take part to the ballot.

In the same conditions, the Council requests from the competent administrations, through the medium of their chairman, all the useful documents or pieces of information to accomplish.

Article 227:

When the National Labour Council is aware of the issues concerning the workers' health or safety, the summons or invitation of doctors, technicians or experts is rightful.

Article 228:

The National Labour Council conditions stem from a decree of the Labour and Social Welfare Minister.

Article 229:

The term of a member at the National Labour Council is free of charge.
Nevertheless, an inter-ministerial decree jointly taken by the Ministers in charge of respectively Labour and Social Welfare, Finance and Budget, can also allot benefit for the meeting to the Council members, the Technical Task-force and the Secretariat.
Should a member have to move from his usual residential place to the meeting venue, the single and return trip is at the State expenses.
The term duration is two years renewable.
The Employer of a member of the National Labour Council should allow him/her the time necessary to attend the meetings. This time is considered as working time for the calculation of seniority and the holiday allowances.

TITLE XII: PROFESSIONAL RELATIONSHIPS

CHAPTER ONE:
THE PROFESSIONAL ORGANIZATIONS

Article 230:

The workers and the employers such as defined in clause 7 hereof have the right to set up organizations with the exclusive objective of survey, defense and development of their professional interests as well as the social, economic and moral progress of their members.

Article 231:

On condition to fulfill the formalities provided for herein, no previous authority is required to set up a professional organization.

Article 232:

The workers and employers organizations have the right to draw up their by-laws and administrative regulations, to elect their representatives, freely, to organize their management and their activity and to say their action program, under the reserve of the provisions herein.

Article 233:

The worker or employer, without any distinction, has the right to affiliate him/herself to a professional organization, of his choice or to withdraw.

At any time, any professional organization member can withdraw from it, notwithstanding any clause contrary to the by-laws.

Any person withdrawn from a professional organization keeps the right of being a member of the mutuality or pension societies where (s)he contributed with money.

Article 234:

The workers enjoy an appropriate protection against all the discrimination deeds tending to bring prejudice to the liberty of the Trade-Union as far as employment is concerned.

Any employer is forbidden to:

a) Subordinate the employment of a worker to his/her being or not affiliated to any professional organization or a determined one;
b) Dismiss a worker or bring him/her prejudice through all the other ways, because of his/her affiliation to a professional organization and his/her participation to Trade-Unions activities.

Article 235:

The workers or employers organization must refrain from interference into one another's business in their training, functioning and administration.

Article 236:

A decree of the Labour and Social Welfare taken after the National Labour Council, defines interference cases concerned in the foregoing clause.

Article 237:

A Trade-Union is any set up professional organization in view of the objective defined in clause 230 here above.

Article 238:

The Trade –Unions have to be registered at the Ministry of Labour and Social Welfare where the register of workers and employers' Trade –unions as permanently kept.

Article 239:

Any request for registration is sent to the Labour and Social Welfare Ministry.

The request includes the complete identity of the members in charge of the Trade-Union administration and management. It is signed by each of them.
The by-laws copies of the organization in need are attached to it and the copy number is fixed by the Minister in charge of Labour and Social Welfare.

Article 240:

The by-laws the new Trade-Union must include:

1. The name and registered office;
2. Its objective;
3. The conditions of affiliation, resignation and exclusion of members;
4. The method of nomination, the powers and the term duration of the members in charge of the Union administration and management;
5. The rules related to the Union financial management and namely, the method and periodicity of accounts, the fund storage and the use of funds in case of the Union winding up;
6. The account checking method; and the powers of the members in order to allow them to control the Union property management;
7. The time of the general assembly and the decision making;
8. The sanction in case of the by-laws is not abided by;
9. The procedure to modify the by-laws and the Union winding up;
10. The procedure of settling internal conflicts between the leaders of the same Union

Article 241:

The person in charge of a Union administration and management must be Congolese and at least 21 years old.

Are not entitled to be appointed as a new Union administration and management members:

a) the persons who were sentenced to an imprisonment of three months within the last three months, except for political striped press, union, philosophic or scientific infringements;
b) the persons admitted in hospitals owing to mental alienation;
c) the persons who are condemned because of bankruptcy;
d) the detainees serving definite imprisonment sentence;
e) the persons sentence for common law infringement, except for political striped press infringement, those sentenced to three or more years and who were non rehabilitated.

Article 242:

Prior to registration, the Labour and Social Welfare Minister checks the by-laws accordance with:

1. the objective for which the Union has been set up;
2. laws and regulations in force;
3. the conditions required by the present Act and its application texts.

When the by-laws of a Union do not meet the requirements of the previous paragraph and when the persons in charge of a Union administration and management do not meet the conditions of the first paragraph of clause 241 above or when they are concerned by the provisions of the second paragraph of the same clause, the Labour and Social Welfare Minister refuses the registration and requires the necessary amendments.
Before refusing a Union registration, the Minister notifies it about the causes.

Article 243:

The Union receiving such a notification has one month to come up with observations. After this time, the Labour and Social Welfare Minister can deny registration of any Union that failed to produce observations or that is in default of bringing the proof that it was not worth denying its registration.
The Minister’s justified decision is immediately sent the organization concerned. It is susceptible of an appeal in justice.

Article 244:

When the registration is allowed, the Labour and Social Welfare Minister sends immediately to the new union the registration decision.

Article 245:

The register of Unions, kept at the Ministry of Labour and Social Welfare, must contain for each Union, the following data:

1. the Union name and registered office;
2. their objective;
3. the names, pos names or surnames and addresses of the persons in charge of the Union administration and management;
4. the order number and the registration date

The register can be consulted at the Ministry of Labour and Social Welfare.

Article 246:

Any amendment in the by-laws and any charge in the members of a Union management and administration must be immediately reported to the Minister of Labour Social Welfare.

Any amendment in the by-laws and any change in the members of a Union management and administration must be reported to the Minister of Labour and Social Welfare.

Any by-laws amendment is submitted to the same registration provisions as the by-laws themselves.

Within 45 days from this amendment reception, the Minister notifies the Union about the accordance of this amendment with law.

In default of a response within the time, the request is supposed to be accepted.

Article 247:

A Union can be erased from the register by a decree of the Labour and Social Welfare Minister in case of voluntary winding up decided in accordance with the rules provided for by their by-laws or in case of winding up proclaimed by justice.

The Union must inform the Minister about it within 30 days.

Article 248:

The Labour and Social Welfare Minister is in charge of informing outsiders by means of published “gazette” about:

a) A Union registration
b) The registration erasure
c) Any change in a Union

This publication is done free of charge for the Union.

Article 249:

Any registered Union has civil status. They are entitled acquisition, in accordance with common law, free of charge or for payment, movables or necessary real estate good for their members interest promotion and defense.

Cannot be seized, the building and their accessories, furniture, books and didactic material, necessary to meetings, libraries and training courses of the members of a registered Union.

Article 250:

The registered Union in accordance with the present Act provisions can freely meet to promote and defend the workers and the employers’ interest.

They can set up a Union, a confederation or a federation. The latters duly registered have the same rights and are bound by the same obligations as the Unions composing them.

The present clause provisions are applicable to Unions, confederation and federations.

Their by-laws must determine the rules according to which the Union, confederation or federation Union members are represented in general assemblies.

Article 251:

Any Trade – Union can be wound up rightfully:

1. If the objective for which it was set up is of no avail;

2. If the two thirds of the members at the general assembly vote for winding up.

Article 252:

The workers and employers organization are not subject to winding up or suspensions through administrative channels.

Article 253:

In case of winding up, the union properties are treated in accordance with by-laws.

At any rate, the assets of a Union can be transferred, as donation, only to another Union, legally set up or to assistance or welfare organizations.

In no case the properties of a Union can be shared among adherents

Article 254:

A decree of the Labour and Social Welfare Minister fixes, in case of need, the present chapter application methods.

CHAPTER II:
THE REPRESENTATION OF THE WORKERS WITHIN THE BUSINESS

Article 255:

The workers representation in the companies or establishments of any kind is assured by an elected Trade-Union.

The Trade-Union members are entertained, trained and followed in their Union activities, by their respective professional organization. Within the limitation of time and in their conditions from the present act, the Collective Labour Agreement, the

company regulations and the Union internal regulations. A decree of the Labour and Social Welfare, taken after the National Labour Council notice, fixes:

The workers number from which the Business or Establishment categories in which a trade-union is set up is obligatory.

The Union officials' number and their assignment professionally speaking;

The electorate and eligibility conditions of the workers and the methods of the poll that takes directly or in secret from lists, with two rounds,

The means at the disposal of the Union officials;

The conditions in which the Trade-Union is received by the employer or his/her representative;

The Trade-Union office members.

Article 256:

Should there be protest against the electorate, illegibility and the poll regularity, the appeal procedure is organized by a decree, taken after the National Labour Council notice, of the Labour and Social Welfare Minister.

Article 257:

The Trade-Union officials term is three years renewable.

The Union official ceases being so:

a) If s(he) stops filling the eligibility conditions
b) If s(he) resigns or loses his/her job
c) If s(he) makes him/herself be disavowed by the Business members of his/her Union for a serious offence made during his/her union official term or if s(he) is object of a disciplinary measure duly said by his/her Union statutory organs.

In these cases, the Union informs the employer who takes it for granted and the local Labour Inspector.

However, a Union official term lost becomes effective only after notice by the Factory Inspector of the accordance of the measure with internal regulations on the one hand and with the Union by-laws on the other hand.

The Factory Inspector notifies his decision to the Union concerned within thirty days upon reception of the latter's request.

After this time, s(he) is supposed to approve of the measure.

When the partial or total vacancy particularly concerns the representative Union, the Union concerned proceeds to co-optation following the list presented at the polls. He signs a report with the employer who sent it to the local Factory Inspector for perusal.

In case of the term vacancy before the term expiry, through resignation, death or for any other cause, the deputy finishes the term of the one s(he) has replaced.

The deputy replaces the official when the latter is absent or impeached.

In case of partial or total vacancy before the term expiry, the Union concerned proceeds to the co-optation following the list presented at the polls.

The Trade-Union official term cannot result in vexatious measures, special prejudices, and special benefits for the one who fulfils it. The Union officials are normally promoted and advanced within the workers category to which they belong.

A decree of the Labour and Social Welfare Minister, taken after the National Labour Council notice, will fix the present clause point c application methods.

Article 258:

Any dismissal of a Trade-Union official or his/her deputy figured out by the employer or his/her representative as well as any transfer causing the loss of union official quality are submitted to the suspending condition of approval by the local Labour Inspector.

If the motive invoked by the employer is a serious offence, s(he) can decide the job suspension of the worker concerned within the conditions provided for in clause 72 hereof. In all the cases, lay-off becomes effective only after the Labour Inspector's decision.

The measure taken or figured out by the employer must be reported to the Factory Inspector by way of a letter's bearer or recommended letter with acknowledgment of receipt. The Labour Inspector notifies his decision within the month from the employer's letter reception.

After this time, s(he) is supposed to approve of it.

The Factory Inspector's decision is susceptible of a judicial appeal in the condition fixed by the decree of the Labour and Social Welfare Minister, taken after the National Labour Council notice.

Save serious offence, the notice period to observe in case a Trade-Union official or his/her deputy dismissal is twofold the period applicable by virtue of the provisions of clause 64 hereof, without being inferior to three months.

Save serious offence, the candidates for the workers representation cannot be laid-off from the date the electoral lists were handed over to the release of the poll outcomes. The non elected or non re-elected candidates' benefits within a period of six months after the elections the notice rules provided for herein.

Article 259:

The Trade-Union competence extends to all the labour conditions within the company or the establishment.

The employer is to consult the Trade-Union on:

- The working schedules;
- The general criteria in terms of appointment, dismissal and transfer of the workers;
- The remuneration and bonus systems implemented in the business or establishment within the framework of legal and regular provisions or the Collective Labour Agreements in force;
- The business regulations drawing up and amendments and, in case of need, the workshop regulations.

Article 260:

The Trade-Union participates to the settlement of the problems arising from maintaining discipline at work and can propose all the necessary measures that fit when its omission risks troubling seriously the progress of the Business or the Business.

Article 261:

The Trade–Union participates to the management of the social actions created by the employer in favour of his/her staff and namely the tag-shops provided for in clauses 115 to 118.

It is associated in the drawing up and implementation of the vocational training collective programs.

Article 262:

The Trade-Union deals with the measures that can assure technical, safety, hygiene and sanity on the workplaces as well as safeguard the health of any person in the business or establishment.

In this capacity, it can namely:

- Propose all the measures that can assure application on the work places of legal and regular provisions concerning Labour safety and sanity;
- Propose all the necessary measures fit for eradicating the danger or insanity causes noticed or reported;
- Give the workers necessary pieces of advice for applying the hygiene and safety measures;
- Promote the development of the workers, prevention spirit against occupational injuries and industrial diseases.

Article 263:

The employer has the obligation to inform at least every six months the Trade-Union about the data concerning the progress and the business or establishment economic and social situation, namely about the turn over or an equivalent piece of information, the general production ratio, the global profit, the evolution of the level of the sales price, the development program outline, the future prospects.

In default of the Collective Labour Agreement, an understanding between the employer and the Trade-Union can determine, considering the business or establishment particular contingencies:

- The previous paragraph application methods;

- The data enumeration that the employer must refrain from communicating;
- The piece of information that can be delivered to the staff.

In all the cases, the Union officials cannot divulge the confidential pieces of information that they would be aware of during their functions.

Article 264:

Each Trade-Union official is moreover recognized, out of meetings, the competence of:

- Presenting to the employer all the individual claims that would not have been directly satisfied concerning the working conditions and the protection of workers, the application of Collective Labour Agreements and the professional classification;
- Watching the application of the prescription related to the workers hygiene and safety and proposing all the hints about it;
- Watching discipline at work;
- Reporting to the factory inspector any complaint or claim concerning the legal and regular prescription that it is in charge of assuring application and that the union could not settle.

The Union officials can be received by the Labour Inspector whenever s(he) visits the business or establishment for inspection purposes.

Article 265:

The minimum hour number at the disposal of the workers representatives to accomplish their functions is fixed fifteen per month. These hours are considered and remunerated as working hours.

The conditions in which they are granted are determined by the decree provided for in clause 255 hereof.

Article 266:

Notwithstanding the above provisions, the worker has the faculty of presenting him/herself the claims or suggestions to the employer or his/her representation or to the Factory Inspector.

However, in the companies where the Trade-Union does not exist, the worker has the faculty of presenting him/herself his claims to the employer or his/her representative or to the Factory Inspector. S(he) can, in case of need, be assisted by the union to which he is affiliated and in presence of the Labour Inspector.

CHAPTER III:
LABOUR EDUCATION

Article 267:

Any duly registered Union organization can organize on the Republic territory, in favour of its members and its Personnel Union officials and their deputies, training sessions exclusively consecrated to Labour education.

In this case, the organization responsible for the training session must inform the Labour and Social Welfare or his/her representative about it and to communicate the opening and closing dates of the laid down program as well as the names and qualification of the persons in charge of courses.

Article 268:

The members and union officials or their deputies, concerned with the training sessions provided for in clause 267 are entitled a twelve day Labour education leave a year, regardless the travel time.

This leave is not to be deducted from the annual leave mentioned in chapter VI of title VI hereof.

Article 269:

The Labour education leave is taken once or twice.

Without prejudice to the provisions of clause 271, it is paid by the employer on the same bases as the legal annual leave, however, the travelling and stay allowances are not at the employer's expenses.

Article 270:

The union organization responsible for the training session issues a certificate testifying each participant assiduity and the subject taught at the end of the course.

Each member and union official must hand over the said certificate to their employer two days after resuming work. Failure to abide by this obligation, the leave granted will not be remunerated.

CHAPTER IV:
THE COLLECTIVE LABOUR AGREEMENTS

Article 272:

The Collective Labour Agreement is a written understanding related to the Labour conditions and relations concluded on the one hand by one or more workers' professional organizations.

Article 273:

The Trade-Union must be set up and registered in accordance with the present act first chapter provisions.

Their representatives must, before the opening of the negotiations, account for their power to contract on behalf of the Union or professional organization they represent.

Article 274:

The agreement can mention the more favourable provisions for the worker than those from law and regulations in force but it cannot derogate to the public provisions.

Article 275:

The Collective Labour Agreement determines its professional and territorial scope of application.

Article 276:

The Collective Labour Agreement is concluded for a limited or unlimited duration. In default of fixing the agreement duration, the latter is deemed unlimited.

Article 277:

The agreement of unlimited duration cannot be denounced prior to its term expiry. In default of contrary provisions. The Collective Agreement of unlimited duration that expires is tacitly re-conducted, it is, from this moment on, save denunciation, deemed of unlimited duration.

Article 278:

The Collective Labour Agreement of unlimited duration or deemed as such can be entirely or partially renounced by the will of one the contracting party against a written notice. The denunciation conditions and forms as well as the notice ones must be determined in the Labour Agreement in default of stipulating the notice duration, it can be fixed at three months.

Article 279:

Any Collective Labour Agreement must be written in the official language. It obligatorily includes:

- The conclusion place and date;
- The names and qualifications of the contracting parties and their signatures;
- Its territorial and professional application scope;
- Its objective;
- Its date to come into force;
- The conciliation and arbitration procedure to be observed for the settlement of collective conflicts between the agreement-linked employers and workers;

- The rules to apply in case of temporary and involuntary incapacitation of the employer to provide the worker with normal conditions owing namely to the finished product supply or evacuation;
- The methods by which the workers pay the union fees to the professional organization concerned:

It can include, without this enumeration being limited, the provisions concerning:

- The freedom to exercise the union right;
- The salaries applicable by professional categories;
- The workers appointment and dismissal conditions;
- The probation and notice duration;
- The holiday allowances;
- The methods to execute overtime and its rate;
- The travelling allowances;
- The seniority and assiduity benefits;
- The output remuneration general conditions, when such a remuneration method is contemplated;
- The salary increments for toils, dangerous or insalubrious works;
- The organization and operating the vocational learning and training within the framework of the considered activity branch.

Article 280:

The agreement is drawn up in as many original copies as there are parties and signed by all.

Six extra original copies are submitted to the visa of the local Labour Inspector who can request for the amendment of the clauses contrary to law or regulations.

The Labour Inspector hands over, free of charge and if the text is certified, a copy of the Labour and Social Welfare Minister at least a copy of the agreement is to be published in the “gazette”. This publication is free of charge.

Article 281:

In any business to which the convention applies, the employer must, as soon as it comes into force, stick the agreement and in case of need, have it translated in the region usual language in a place only for it, quite visible and easily accessible to the workers.
The employer; prior to appointing a worker in his/her business, makes him/her be aware of the Collective Labour Agreement and eventually its translation in the usual language of the region.
Any professional organization having concluded a Collective Labour Agreement must have its members concerned by the agreement, informed as soon as possible about its text and the explanation note attached to the agreement, if the parties write one.

Article 282:

Any agreement can be revised in the form and conditions it foresees.
The clauses 279, 280 and 281 above are applicable in the case of collective labour agreement revisions.
The publication of the revision act in the "gazette" is obligatory. It is free of charge.

Article 283:

In case of discrepancy between the text of the different copies of the collective Labour agreement, the original copy handed over to the Labour tribunal beams the references out of any other text.

Article 284:

Upon the request of a union representing workers or employers or from its own initiative, the Labour and social welfare minister can set up a parity committee aiming at settling through the collective Labour agreement process, the relationships between one or more employer's unions and one or more or more worker's or their representatives.
The workers and employers representatives are appointed by the unions and organizations concerned.
The public authority representatives can be members of the committee as advisors.
The functioning of the parity committees is determined by a decree of the Labour and Social Welfare Minister, taken after the National Labour Council notice.

Article 285:

The setting of the party committee provided for in the previous clause is obligatory in case the clause 287 hereunder is applied.

Article 286:

Any employer or employers and workers professional organization set up in accordance with the provisions of the present act and duly registered that is not part of to a Collective Labour Agreement can adhere to it after six months from the agreement coming into force. Adhesion cannot be unilateral. It must be the objective of an understanding of the signing parties. In default of a request for purpose adhesion, no employers or workers professional organizations can be a member taking part to a collective Labour agreement extant. The adherent acquires the rights and duties of the contracting parties.

However, they will not be able to use the denunciation right within the two years following their adhesion.

Article 287:

When a collective Labour agreement has been published in, the "Gazette", the Labour and Social Welfare Minister can, upon the request of one of the parties and after notice of the parity Committee provided for in article 284, decide extension of al or some provisions to the employers and workers included in the same professional and territorial sector. S(he) can decide, in the same conditions, abrogation's of extension.

Article 288:

The methods of application of the previous of articles 286 and 287 above are determined by a decree of the Labour and Social Welfare Minister, taken after notice of the National Labour Council.

Article 289:

The Collective Labour Agreement has obligatory force for:

1. All the contracting parties;
2. The individual or legal entities they represent;
3. The individual or legal entities that are or become members of the contracting professional organizations.

The provisions of a Collective Labour Agreement are applicable to all the workers of the categories concerned, employed within the business (es) mentioned by the agreement, save provisions contrary to it.

Article 290:

The collective Labour Agreement has obligatory force for the employers and the workers to whom it has been extend.

Article 291:

The provisor of a Collective Labour Agreement cannot restrict the benefits resulting for the workers from the collective Labour agreements with a larger scope of application;

The Collective Labour Agreement determines in which proportion the agreements extant between the parties or some of them and of more limited application remain in force.

Article 292:

The provisions of a Collective Labour Agreement cannot restrict the benefits resulting for the workers from the Collective Labour Agreements with a larger scope of application.

The Collective Labour Agreement determines in which proportion the agreements extant between the parties or some of them and of more limited application, remain in force.

Article 293:

Should on employer be substituted, the new employer is subrogated to the rights and obligations of the predecessor.

The collective Labour agreement keeps the obligatory force for the professional organizations resulting from the split of an organization that is a party to the agreement.
In case of merge of union, confederation or professional organization federation of which one is a party to the collective Labour agreement, this party extends its obligatory force to any professional organization as well as to its members belonging to the new organization, within the limits of the agreement application scope.

Article 294

The employer, the employer and workers professional organization as well as those who represent them, as parties to a collective Labour agreement are obliged to execute in good will the commitment resulting from it and to refrain from anything that can disturb faithful execution.

The employers and workers professional organization are further obligation to care for the members abiding by collective Labour Agreement stipulations. They bail for them in the extent determined by the agreement.

Article 295:

The violations of obligations agreed causes the parties to be entitled to on action injustice with damages of which methods and the limits can be provided for in the agreement.

Article 296:

The professional organizations capable of actions injustice and that are parties to the collective Labour agreement can do all the actions stemming from this agreement in favour of their members without having to account for a term from the organizations concerned, on condition that the batters have not declared they oppose to it.

When a lawsuit, from the collective Labour agreement, is taken against an individual or legal entity, any other contracting person can still intervene in the cause.

TITLE XIII:
INDUVIDUAL LITIGATIONS AND LABOUR COLLECTIVE CONFLICTS

Article 297:

The individual litigations and the Labour collective conflicts are submitted to the procedures set forth in the present title.

CHAPTER ON:
THE EARLIER CONCILIATION OF INDIVIDUAL LITIGATIONS

Article 298:

Individual litigations are not receivable before the Labour Tribunal if they have not earlier been submitted to the reconciliation procedure, initiated by one of the parties, before the Local Labour Inspector.

Article 299:

This procedure interrupts the prescription time provided for in clause 317 hereof, upon reception of the conciliation request at the Factory Labour Inspector’s Office, under the reserve however that the request before the Labour Tribunal in case of non-conciliation, is done within the maximum twelve months starting from the reception of the non-conciliation minutes by the swifter party.

Article 300:

When the Labour inspector is informed about a Labour individual litigation, he sends, with acknowledgment of receipt or by recommended letter, an invitation to appear in a conciliation session within fifteen days.

In no case the invitation can oblige one of the parties to appear less than three days;

The Labour inspector proceeds to an exchange of view on the litigation cause and verifies if the parties are ready to conciliate on the basis of the standards set forth by law, regulations, the collective Labour agreements or the Labour individual contract.
The parties can be assisted or represented.

The workers and the employers such as defined in article 7 of the present act have the right to set up organizations with the exclusive objective of survey, defense and development of their professional interest as well as the social, economic and moral progress of their members.

At the end of these exchanges of views, the Labour Inspector draws up a report notifying conciliation or not The report is signed by the Labour Inspector and the third invitation daily received a party does not appear or is not represented, the Labour Inspector draws up a shortcoming report standing for non conciliation notification

Article 301:

In case of conciliation, the swiftest party has the executorial formula mentioned on the report at the office of the competent Labour Tribunal President

The President of the Labour Tribunal is the one in whose precedence the conciliation report has been signed

Execution is pursued as a trial of the Labour Tribunal

Article 302:

In case of total or partial set back in the conciliation provided for in clause 300, the litigation is submitted to the Labour Tribunal

CHAPTER II:
THE EARLIER CONCILIATION AND THE LABOUR COLLECTIVE CONFLICT MEDIATION

SECTION 1: THE EARLIER CONCILIATION AND THE LABOUR COLLECTIVE CONFLICT MEDIATION

Article 303:

Is reputed Labour Collective conflict, any conflict occurred between one or more employers on the one hand, and a given member off staff members on the other hand , about the worsening conditions, when it is likely to disturb the good functioning of the Business or social place

Article 304:

The Labour Collective conflicts are receivable before the Labour Tribunals only if they were earlier submitted to the conciliation and mediation procedure, depending on the case, respectively by one of the parties before the Labour Inspector or the Minister on charge of the Labour and social welfare or the Provincial Governor before the mediation committee

Article 305:

In case of non-conciliation, partial or reconciliation bearing opposition, the regret is done before the Labour Tribunal by one of the parties within no working days shorting from the expiry of the strike notice or of the lock-out notified to the other party

Article 306:

In the default of settlement conventional procedure, the conflict mediation and conciliation legal procedure is fixed pursuant to the clauses 307 to 315 hereof.

Article 307:

The Labour Collective conflict is notified by the swiftest party to the local Inspector of Labour

However, the Labour Inspector can begin the conciliation procedure when he is informed about a collective conflict which was not notified to him/her.

Within the three working days work of the notification, the Labour Inspector sends, by bearer with acknowledgment of receipt or recorded delivery letter, on invitation to the parties so as to appear at the conciliation session within fifteen days.

After a minimum 3 working days notice from the reception date within the two working days of this invitation .the names of the representatives that have the capacity to conciliate these representatives may cause a union official from their professional organizations duly mandate to join in

Should one of the parties not appear nor be represented or should the representatives not appear the Labour Inspector draws up the report from which the competent jurisdiction decides the fine sentence provided for in clause 322 hereof

Moreover, the Factory Inspector draws up a shortcoming report standing for non-conciliation notification.

Article 308:

The Labour Inspector proceeds with the parties or their representatives and under his/her chairmanship, to any exchange of views on the conflict cause.

At the end of the conciliation attempt, the Labour Inspector draws up a report notifying either the agreement or the total or partial disagreement of the parties who countersign the report and receive copies.

The conciliation agreement or the disagreement must le notified within the month dating from the first conciliation session.

The conciliation agreement is executorial in the conditions fixed in

SECTION 2: THE LABOUR COLLECTIVE CONFLICT MEDIATION

Article 309:

In case of total or partial non conciliation, the conflict is obligatorily submitted to the mediation legal procedure, as defined in articles 310 to 315 of the present act.

When the conflict affects one or more establishments located in only one province, the local Labour Inspector sends the file to the provincial Governor within forty-eight hours from the conciliation attempt.

When the conflict affects a lot of establishments of the some business or more businesses written a lot of provinces, the local Labour Inspector sends the file within the same time, to the Labour and social welfare Minister.

Article 310:

The collective conflicts not settled in conciliation by the Labour inspector are submitted a mediation committee specially set up for this purpose.

The committee comprises of the president of the peace tribunal within the precedence where the conflict rose or of a magistrate appointed by him/her; of an employer assessor and a worker assessor. It is presided over by the President of the Peace Tribunal or the magistrate appointed by him/her.

The assessors are appointed upon proposals of the most represented professional organization by:

- The Provincial Governor in the case set forth in the second paragraph of clause 309 above;
- The Labour and Social Welfare Minister in the case set forth in the third paragraph of the same article;

The assessors must be third parties to the establishment(s) affected by the conflict.

The appointment of assessors and the transmissions of the conflict file to the chairman of the mediation committee intervene within the four working days from the reception by the competent authority of the non-conciliation report.

Article 311:

The mediation committee meets within the three working days after being notified. It cannot utter opinions on other causes different from the ones determined by the non-conciliation report or those that are the direct consequence of the conflict under way and resulting from events posterior to this report.

The commission rightfully utters opinions in the conflicts related to the interpretation and to the execution of legislative or regular acts or a Collective Labour Agreement.

It decides in equity on all the other conflicts.

It is endowed with larger powers to inform itself about the economic situation of the business or establishments and about the situation of the workers concerned by this conflict.

It can undertake any investigation in businesses or establishments and professional organizations and require from the parties the production of all the documents or data about economy-accounts, statistics, finance and administration likely to be useful to it for the mission accomplishment.

It can also resort to the experts offices.

The committee members are obliged to keep the professional secret about the pieces of information and documents sent as well as the facts that they would be informed about while accomplishing their mission.

All the committee sessions are held in camera.

The committee is obliged to finish its examination within so working days dating from the first session. When there is parity of voices during the proceedings, the chairman's is prevalent.

The decision rendered in writing and signed by the chairman and the members must occur within 5 working days from the proceedings over the cause.

In defaults of this, a committee otherwise set up will be appointed in accordance with the provisions of clause 310 to render imperatively its decision within the 10 working days dating from its assignment.

Article 312:

In case of agreement, a report is drawn up by the committee chairman it is signed by the committee members and by the parties or their representatives

A certified true copy of the report is delivered free of charge to the Labour Inspector, to the parties or their representatives.

Article 313:

In case of non conciliation, the committee formulates the justified recommendations that are immediately notified to the parties.

A recommendations notified copy is delivered free of charge to the Labour Inspector and to the parties or to their representatives,

Upon expiry if seven full days from the notification to the parties and if none of the parties manifested opposition, the recommendations acquires, executorial force in the conditions of 314 hereafter.

Opposition is formed, with the nullity sanction, by a letter sent to the committee chairmen and the other party. The party forming opposition sends at the same time a copy of the said letter to the local Labour Inspector.

Article 314:

The execution of a conciliation agreement reached either before the Labour Inspector or before the mediation committee and the one of the recommendations not concerned with opposition is obligatory for the parties concerned.

In their silence about this, the conciliation agreement and the recommendations are in force of the day of the notification of the Labour conflict to the Labour Inspector.

The conciliation agreements and the recommendations not concerned with opposition are stuck in the premises of the establishments affected by the conflict and in the office of the local Labour Inspector.

The agreement and recommendations minutes are deposited in the office of the Labour Tribunal in the conflict place. The conciliation and mediation procedure is free of charge.

Article 315:

The Labour collective cessation or the participation to the Labour collective cessation takes place only on occasion of a Labour collective conflict and once the conflict settlement means, conventional or legal here above have been regularly finished Are forbidden any acts and any threat tending to force a worker to participate to a Labour collective cessation or to impeach the Labour or the resumption of work

When a Labour collective cessation is started at the end of a conventional procedure or the settlement legal procedure, are forbidden any threat, any reprisal or vexation measures toward the workers who propose to take part to it or who took part to it

A decree of the Labour and social welfare Minister, taken after the National Labour Council notice, fixes the present article execution methods

CHAPTER III:
THE LABOUR TRIBUNALS

Article 316:

A law creates the Labour tribunals and fixes their organization and their functioning.

CHAPITRE IV:
THE PRESCRIPTIONS

Article 317:

The actions stemming the Labour agreement are prescribed three years after the fact at the origin of the action, except:

1) The salary payment actions that are prescribed one year starting from the date when the salary is due;

2) The travelling and transport allowance action prescribed two years after opening the right to travelling, during contract execution, or after the termination of the contract. This the prescription is interrupted only by:

a) The lawsuit;

b) The balancing of account between the parties mentioning the balance due to the worker and remained unpaid;

c) The claim formulated by the worker to the employer, by recommended letter within acknowledgment of receipt;

d) The claim formulated by the worker before the Labour Inspector, under the reserve of the provisions of clause 299 hereof

TITLE XIV: THE ADMINISTRATIVE SANCTIONS

Article 318:

Article expiry of the injunction time, the employer or his/her representation persists in the violation of the provisions related to clauses 6 literas a and e, 87,119,120, 125, 126, 126, 133, 171, 177, 255, and their application or execution texts, if necessary, the Labour and social welfare Minister or his/her delegate, upon proposal of the Labour Inspector can, without prejudice to the criminal provisions set forth, order the provisional closing of all or part of the company.

During closing, until the moment when the notified irregularities are ended, the salaries and other social benefits are due and the contract under way cannot be terminated.

Article 319:

Without prejudice to the provisions of clause 211 hereof, the President of the Republic, upon proposal of the Labour and social welfare Minister and after notice of the National Labour Council, fixes the relevant taxes and credits from the activities devoted to the Minister of Labour and social welfare.

TITLE XV: THE PENALTIES

Article 320:

Without prejudice to the action set forth in clause 295, the authors of infringements to the provisions of the Collective Labour Agreement extended pursuant to clause 287 are liable to a fine not exceeding constant FC 7,500

Article 321:

Are liable to a fine not exceeding constant FC 20,000, the authors of infringements to the provisions:

a) of clauses 6 literas a, b, c and d, 8,18,19,20,21,25,26,33,paragraph 2,44,47, 51,55 paragraph 3, 56, 60, 64, 65, 66, 78, 79, 84, 89, 90, 98, 99, 100, 101, 106, 111, 112, 113, 114, 116, 117, 118, 119, 121, 122, 125, 126, 127, 129, 133, 136, 137, paragraph 2, 138, 140, 141, 142, 143, 144, 145, 146, 148, paragraph 1, 152, 154, 157, 167, 176, 181, 182, 212, 213, 215, 216, 217, 218, 221, 229, 234, 258, 265, 268, 269

b) the decrees provided for in clauses 87 and 123;

c) the decrees taken in application of clauses 35, 38, 47, 56, 58, 94, 103, 112, 120, 121, 123, 124, 128, 139, 156, 158, 169, 171, 177, 207, 219, 222, 236 and 255

Is liable to the same sanction any person invited in charge of representing the parties at an individual litigation or at a collective conflict before the inspector or Labour controller who will not have appeared after the third invitation that will have been sent to him/her against acknowledgment of receipt. In this case, article 322 of the present act is inapplicable.

Article 322:

Without prejudice to the provisions of clauses 133 to 135 of the Criminal Act, is liable to imprisonment of maximum 30 days and a fine not exceeding constant FC 30,000 or one of these sanctions only, whoever is an obstacle or attempts to have an

obstacle done to the exercise of the functions recognized by the present act to the Labour inspectors and controllers and to the mediation committee.

Article 323:

Without prejudice to the provisions of the Criminal Act is sentenced to a month imprisonment and liable to a fine not exceeding constant FC 25,000 or one of these sanctions only whoever:

a) Uses violence, threat or any other constraint, false promises and fraudulent deeds either to appoint or to be appointed, to oppose an appointment, either to force a worker to participate to a Labour collective cessation or to prevent. Work or work resumption;

b) Causes a worker to refuse the execution of the obligations imposed on him/her by law, regulations, the Collective Labour Agreement, the individual contract or prevents him/her to fulfill his/her duties;

c) Destroys or voluntarily lacerates the written agreement, maker illegible the inscriptions herein, alter: or fraudulently modifies them;

d) uses a written contract or a discount where the inscriptions have been fraudulently deteriorated or modified;

e) Infringes the regulations on the national manpower protection.

Article 324:

Is sentenced to maximum 2 months imprisonment and liable to a constant FC 25,000 fines or one of these sanctions only:

a) Whoever will have attempted or cause to attempt either to the free appointment of the workers representatives within the establishments or to the regular exercise of their functions;

b) Any employer who will have kept or used for his personnel interest or fir the business requirements the sums or titles remitted as caution any ones:

Article 325;

Without prejudice to the provisions of the law number 82-001 of 7th January 1982 ruling the industrial property, is sentenced to maximum three months imprisonment and liable to a constant FC 30,000 fine or one of these sanctions only, the

one who will have fraudulously divulged or communicated to a competitor or an outsider the manufacturing or business secrets of his/her employer or who will collaborate to an unfaithful competition.

Article 326:

Without prejudice to the penal law providing for the severer sanctions, will be sentenced to maximum 6 months imprisonment and liable to a constant FC 30,000 or one of these sanctions only, whoever will have contravenes the provisions of 2 paragraphs 2, 3, 173 and 315 hereof.

Article 327:

Without prejudice to the disciplinary sanctions provided for at the status of the state public service career personnel, the Labour inspector or controller who will reveal the secrets and procedures indicated in article 194 or will violate the reserve obligations prescribed in article 198, will be sentenced to the sanctions provided for in clause 73 hereof

Article 328:

Concerning:

a) the infringements to the provisions of article 215, the fine is applied as many times as there are workers most registered or omitted data;

b) the infringements to the provisions of the clauses 55 paragraph 3, 56, 79, 86, 89, 98, 99, 112, 113, 120, 121, 125, 126, 128, 133, 137 paragraph 2, 140, 141, 234, the fine is applied as many times is there are workers concerned by the infringement.

However, the total amount of the fines charged by virtue of, the present article cannot exceed fifty times the maximum rates provided fir in the above articles.

Article 329:

The employers are civil responsible for the payment of the fines at the expenses of their workers concerned by virtue of the title hereof.

TITLE XVI: THE TRANSITIONAL PROVISIONS

Article 330:

The present sAct provisions are rightfully applicable to the current individual contracts under reserve that the workers continue earning the benefits previously allotted to them when these are superior to those the present act recognizes to them.

They cannot become a cause for terminating these contracts.

Any current contract clause that would be in accordance with the provisions hereof, of a decree taken for its application will be modified within six months from their publication onward.

In case one of the parties refuses, the competent jurisdiction will be able to order, under the constraining sanction, to proceed to the modifications fit necessary.

ARTICLE 331:

The employers and workers professional organizations, approved of by the Labour Act application attached to Ordinance-Law 1067-310 of 9th August 1967 shall be rightfully registered by the Labour and Social Welfare Minister.

Netherless, these organizations will have to certify their by-laws to the revised provisions hereof within maximum six months from its implementation onward.

After this time, the successful organizations are erased from the register, by decree of the Labour and Social Welfare Minister.

Article 332:

The present Act abrogates and replaces all the legislative provisions previously in force as far as Labour is concerned.

The regular institutions, procedures and measures extant in application of the law and the regulations in terms of Labour not contrary to the provisions hereof remain into force.

Article 333:

The decrees of the President of the Republic and the decrees of the Labour and Social Welfare Minister provided for hereof, shall have to be taken within a maximum year from its publication in the “Gazette”.

Article 334:

The present Act comes into force on the date of its promulgation.

Thus done at Kinshasa on 16th October 2002

Joseph KABILA