

LABOUR AND EMPLOYMENT RELATIONS AMENDMENT BILL 2022

SAMOA

Explanatory Memorandum

Summary:

This Bill seeks to amend the Labour and Employment Relations Act 2013 (“principal Act”). The objects of the Bill are to amend the Labour and Employment Relations Act 2013 to:

- (a) improve consistency with ratified International Labour Organisation (ILO) conventions;
- (b) clarify terms and conditions of employment;
- (c) clarify the role of labour inspectors;
- (d) improve processes for resolving employment grievances and complaints;
- (e) provide for a process regarding the termination of employment.

Clauses:

Clause 1: - provides for the short title and commencement. The Act will be cited as the Labour and Employment Relations Amendment Act 2022 and will commence on the date nominated by the Minister.

Clause 2: - amends section 2 of the Principal Act to provide for:

- (a) the definitions of new terms such as “*complaint*”, “*domestic worker*”, “*grievance*”, “*gender-based harassment*”, “*redundancy*”, “*serious misconduct*”, “*sexual harassment*”, “*work performance*”; and

- (b) substitutes definitions for the following terms -
 - (i) "citizen";
 - (ii) "harassment";
 - (iii) "shift work"; and
- (c) amends following definitions in the principal Act -
 - (i) "labour inspector";
 - (ii) "employment exchange services";
 - (iii) "remuneration";
 - (iv) "employees organization";
 - (v) "Court";
 - (vi) "trade union"; and
- (d) repeals obsolete terms such as "*award*", "*discrimination*", "*industrial grievance*", "*misconduct*", and "*shift employee*".

Clause 3: - provides for an amendment to section 3 of the Principal Act to clarify its relationship with the Shipping Act 1998, in that the principal Act applies to employees working on ships where terms and conditions of employment are not provided for in the Shipping Act 1998.

Clause 4: - substitutes section 4(1)(e) and (f) of the Principal Act to clarify that employers' and employees' organisations nominate representatives to the Samoa National Tripartite Forum whom are endorsed by Cabinet.

Clause 5: - substitutes section 5(3) of the Principal Act to clarify the circumstances in which Cabinet may remove and replace a member of the Samoa National Tripartite Forum for neglect of duties or other serious misconduct. Section 5(4) is repealed.

Clause 6: - amends section 12 of the Principal Act to add a new function to the functions of the Ministry by inserting a new paragraph (g) after paragraph (f), to administer the placement of Samoan citizens overseas employment under bilateral agreements with other countries including:

- (i) the criteria and conditions for a person's selection and participation in overseas employment;
- (ii) conditions relating any person acting as a recruitment agent; and
- (iii) any related matters.

- Clause 7:** - amends section 13(1)(a) of the Principal Act by substituting "manpower" with "employees".
- Clause 8:** - substitutes section 16 of the Principal Act to update the powers of the CEO and labour inspectors including establishing a new power to issue penalty notices.
- Clause 9:** - substitutes section 17 of the Principal Act to describe the powers of labour inspectors in relation to investigating or resolving complaints and grievances under the Act.
- Clause 10:** - substitutes section 18 of the Principal Act relating to forced labour and increases the level of penalties for breaches of the section.
- Clause 11:** - substitutes section 20 of the Principal Act to extend the prohibition of discrimination to all aspects of employment and provide that discrimination based on a person's participation in the activities of a trade union is unlawful.
- Clause 12:** - inserts new section 20A to provide for harassment and sexual harassment as this is a requirement under the Violence and Harassment Convention, that a person must not engage in a conduct that is harassment or sexual harassment.
- Clause 13:** - amends section 21 by inserting new subsections (4) and (5) in the Principal Act to specify certain provisions that must be included in collective agreements, and that copies of collective agreements must be supplied to the CEO.

- Clause 14:** - amends section 22 of the Principal Act:
- (a) by amending subsections (2) by replacing the words “Employees’ organisations may join a trade union” with “An employee, or group of employees may join a trade union, and a trade union may join an employees’ organization”; and
 - (b) and amending subsection (3) by replacing the words “Employers’ organisations may join other employers’ organisations” with “An employer may join an employer’s organisation”; and
 - (c) by inserting a new subsection (4) to clarify that trade unions and employers can join employees’ and employers’ organisations; prohibit employers’ and employees’ organisations from engaging in acts of interference with each other; prohibit employers from placing trade unions under their control; and provide that a trade union shall have reasonable access to a workplace.
- Clause 15:** - repeals section 26(2) of the Principal Act to address an internal inconsistency in the section.
- Clause 16:** - provides for amendments to section 27 of the Principal Act as follows:
- (a) by inserting a new paragraph (ja) (*in subsection (1), after paragraph (j)*) to provide that trade union membership fees are a lawful deduction; and

(b) for subsection (2), paragraph (c), by substituting “of showing cause against the deduction” with “to show why the deduction is not justified” to clarify the a deduction under subsection (1)(b) must not be made until the employee has been given an opportunity to show why the deduction is not justified.

- Clause 17:** - inserts a new section 27A in the Principal Act prohibiting the imposition of a disciplinary fine by an employer for an employee’s misconduct.
- Clause 18:** - substitutes section 32(3) of the principal Act to provide that a minimum wage review shall be conducted by the Forum every two (2) years after consulting with employers and employees as the Forum considers appropriate.
- Clause 19:** - substitutes section 34 of the Principal Act to provide that all contracts of service of more than two (2) months must be in writing.
- Clause 20:** - amends section 35 of the Principal Act to delete the reference to a pro forma contract of service in Schedule 1 and inserting a new subsection (5) to provide that an employer has a duty to provide work, except where an employee has breached a contract of service.
- Clause 21:** - amends section 36(1) of the Principal Act to provide that an employer may put an employee on probation for three (3) months at the commencement of his or her employment.
- Clause 22:** - substitutes section 37 of the Principal Act to provide an employer must comply with regulations relating to the employment of people with disabilities and comply with conditions relating to the employment of domestic workers.

- Clause 23:** - provides for a new section 37A after section 37 in the Principal Act, to provide for favourable terms and conditions of a contract.
- Clause 24:** - amends section 38 of the principal Act to specify that an employee is to be paid double time, if he or she is required to work on a Sunday and it is not a day he or she would ordinarily work or scheduled to undertake shift work. Definition of “ordinarily work” is also provided for under new subsection (3).
- Clause 25:** - amends section 39 of the principal Act by substituting subsections (1) and (2) to clarify when entitlements, time off, pay and double time on public holidays apply.
- Clause 26:** - substitutes section 40 of the principal Act relating to annual leave to provide that an employee is entitled to leave calculated on a pro-rata basis during the year it is accumulated and carry forward 20 days annual leave (extendable by agreement with the employer).
- Clause 27:** - substitutes section 41 of the principal Act relating to payment in lieu of annual leave, and removes the requirement that an employer must receive consent from the CEO before paying an employee in lieu of annual leave.
- Clause 28:** - provides for an amendment to section 42 of the Principal Act relating to sick leave as follows:
- (a) by substituting the words “in each year” with “after 12 months continuous service with the same employer, including any period of probation” to clarify entitlement of sick leave of an employee;

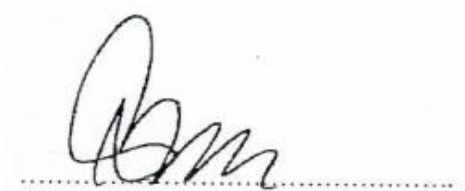
(b) by substituting subsection (3) to provide that such leave can be taken on a pro rata basis during the year it is accumulated.

- Clause 29:** - amends section 47 of the principal Act to vary hours of work provisions relating to domestic workers.
- Clause 30:** - amends section 48(1) of the principal Act to vary overtime provisions relating to domestic workers and inserts new subsections 48(3) and (4) to provide for further flexibility relating to the application of overtime provisions.
- Clause 31:** - amends section 49 of the principal Act to simplify language relating to the application of shift provisions and to establish the calculation of overtime for shift work.
- Clause 32:** - substitutes section 51 of the principal Act with a new section in relation to the employment of children to specify the minimum age for light work (13 years) entry into general employment (16 years) and entry into hazardous work (18 years).
- Clause 33:** - amends section 52 of the principal Act to extend the scope of prohibitions on the termination of an employee's employment to include dismissal by reason of making an enquiry about an employer's compliance with the Act or the Occupational Safety and Health Act 2002.
- Clause 34:** - amends section 53 of the principal Act to align provisions in other sections that permit the termination of a contract of service.
- Clause 35:** - substitutes section 54 of the principal Act with a new section in relation to termination of a contract of service for an unspecified period, describing the circumstances in which an employee or employer may terminate a contract of service.

- Clause 36:** - provides for a new section 54A of the principal Act in relation to requirements relating to redundancy, outlining steps an employer must take if an employee's contract of service is terminated by reason of redundancy.
- Clause 37:** - amends section 55 in the principal Act to clarify requirements relating to the payment of wages in lieu of notice in the event of termination and paying out leave that has been accumulated and is owing to an employee.
- Clause 38:** - substitutes section 56 of the principal Act with a new section in relation to a notice period not required in certain cases describing the circumstances in which notice of termination is not required.
- Clause 39:** - substitutes section 57 of the principal Act in relation to Dismissal due to employee's conduct or work performance to establish a processes and procedures relating to the termination of employment due to an employee's conduct or performance.
- Clause 40:** - provides for a new section 57A describing the entitlements that must be paid to an employee when his or her employment is terminated.
- Clause 41:** - amends section 58 of the principal Act to clarify the categories of persons to whom the employment permit provisions apply, and provides it is an offence to employ a person without a permit.
- Clause 42:** - amends section 59 of the principal Act to ensure it is consistent with section 58 of the principal Act.
- Clause 43:** - amends section 60 of the principal Act as follows:
- (a) to substitute "Minister" wherever occurring with "CEO" transfer the authority to grant permits from the Minister to the CEO in Part 9 of the Principal Act;

- (b) to ensure it is consistent with section 58, and to provide that a permit is valid for up to three (3) years.
- Clause 44:** - amends section 61 of the principal Act as follows:
- (a) to substitute “Minister” wherever occurring with “CEO” to transfer the authority to revoke permits from the Minister to the CEO in this section; and
 - (b) to provide that the CEO may revoke an employment permit where misleading or false information is provided by an employer or employee.
- Clause 45:** - inserts a new section 61A in the Principal Act in relation to restrictions on employers, permitting the CEO to decline an employment permit for up to one (1) year if an employer has previously breached the law.
- Clause 46:** - substitutes Heading of Part 10 of the Principal Act with “Resolution of Disputes”.
- Clause 47:** - amends section 78 of the Principal Act to raise the quantum of penalties for offences.
- Clause 48:** - amends section 82 of the Principal Act to raise the quantum of penalties for offences, from “50” penalty units to “100” penalty units.
- Clause 49:** - amends section 83 of the principal Act to provide that regulations may be made in relation to additional specified matters.
- Clause 50:** - repeals the Labour and Employment Relations Regulations 2016.

- Clause 51:** - repeals Schedule 1 of the Principal Act and inserts a new Schedule 3 describing employers obligations relating to the employment of domestic workers pursuant to section 37(b) of the principal Act.
- Clause 52:** - sets out savings and transitional provisions.

A handwritten signature in black ink, appearing to read 'L. Wayne Socialo', is written over a horizontal dotted line. The signature is fluid and cursive.

(Hon LEATINUU Wayne Socialo)

MINISTER FOR COMMERCE, INDUSTRY AND LABOUR

**LABOUR AND EMPLOYMENT RELATIONS
AMENDMENT BILL 2022**

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Section 2 amended
3. Section 3 amended
4. Section 4 amended
5. Section 5 amended
6. Section 12 amended
7. Section 13 amended
8. Section 16 substituted
9. Section 17 substituted
10. Section 18 substituted
11. Section 20 amended
12. New section 20A inserted
13. Section 21 amended
14. Section 22 amended
15. Section 26(2) repealed
16. Section 27 amended

17. New section 27A inserted
18. Section 32(3) substituted
19. Section 34 substituted
20. Section 35 amended
21. Section 36 amended
22. Section 37 substituted
23. New section 37A inserted
24. Section 38 amended
25. Section 39 amended
26. Section 40 substituted
27. Section 41 substituted
28. Section 42 amended
29. Section 47 amended
30. Section 48 amended
31. Section 49 amended
32. Section 51 substituted
33. Section 52 amended
34. Section 53 amended
35. Section 54 substituted
36. New section 54A inserted
37. Section 55 amended
38. Section 56 substituted
39. Section 57 substituted
40. New section 57A inserted
41. Section 58 amended
42. Section 59 amended
43. Section 60 amended
44. Section 61 amended
45. New section 61A inserted
46. Heading of Part 10 substituted
47. Section 78 amended
48. Section 82 amended
49. Section 83 amended
50. Regulations Repealed

- 51. Amendment to Schedules
 - 52. Savings and transitional provisions
-

2022, No.

A BILL INTITULED

AN ACT to amend the Labour and Employment Relations Act 2013 (“principal Act”) to:

- (a) align labour laws with international labour standards;
- (b) clarify terms and conditions of employment;
- (c) clarify the role of labour inspectors;
- (d) provide for improved processes for grievances and complaints; and
- (e) for related purposes.

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

1. Short title and commencement:

This Act may be cited as the Labour and Employment Relations Amendment Act 2022 and commences on the date to be nominated by the Minister.

2. Section 2 amended:

In section 2 of the principal Act:

- (a) insert in its alphabetical order the following new definitions:

““complaint” means a complaint about any matter arising under this Act that is not a grievance or an industrial dispute;

“domestic worker” means an employee who performs work in a private dwelling house;

“grievance” means an allegation by an employee against a current or former employer that he or she:

- (a) has been terminated from his or her employment unjustly;
- (b) has been harassed, sexually harassed or discriminated against; or
- (c) has been unfairly disadvantaged by the employer due to the employer’s failure to implement their obligations under this Act relating to the employee’s terms and conditions of employment.

“gender - based harassment” means harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment;

“redundancy” means circumstances where an employer no longer requires an employee’s job to be performed for economic, technological, structural or similar reasons;

“serious misconduct” means behaviour which is a serious breach of an employee’s terms and conditions of employment and includes:

- (a) harassment or sexual harassment of another person in a workplace;
- (b) a conviction of a crime where a sentence of imprisonment term is imposed by the Court;

- (c) dishonest conduct including theft or otherwise making a false statement whether orally or in writing;
- (d) attendance at the workplace under the influence of alcohol or illegal drugs;
- (e) any other behaviour which brings disrepute to the employer or the employer's business.

"sexual harassment" means:

- (a) the use of words, non-verbal conduct, physical behaviour, electronic material or printed material of a sexual nature; or
- (b) a direct or implied request for sexual contact as a condition of obtaining employment, advancement in employment or continuing employment; and
- (c) would reasonably be considered as unwelcome and offensive by another person.

"work performance" means the ability of an employee to perform the duties for which he or she was hired, to a satisfactory level that would be expected by a reasonable employer;"; and

- (b) the following definitions are substituted as follows:

"citizen" means a person who is a citizen of Samoa under the Citizenship Act 2004;

"harassment" means:

- (a) the use of words, non – verbal conduct, physical behaviour, electronic material or printed material;
- (b) would reasonably be considered by another person as intimidating, hostile or abusive; and

(c) is based on one of the prohibited grounds of discrimination in section 20(2) or for any other reason.

“shift work” means a pattern of work where one employee replaces another in the same job within a 24-hour period;” and

- (c) the following definitions are amended -
- (i) for the definition of “labour inspector” omit “by the Forum”;
 - (ii) for the definition of “employment exchange services” for “manpower” substitute with the word “employees”;
 - (iii) for the definition of “remuneration” for “payable by the employer to the employee and arising out of the employee’s employment” substitute with “payable directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employee’s employment”;
 - (iv) for the definition of “employees’ organisation” for “whether incorporated or not” substitute with “who are incorporated and”;
 - (v) for the definition of “Court” for “the Supreme Court of Samoa” substitute with “a Court of competent jurisdiction in Samoa”;
 - (vi) for the definition of “trade union” for “an organisation whether temporary or permanent, incorporated or unincorporated,” substitute with “an incorporated organisation”; and
- (d) the following definitions are repealed -
- (i) “award”;
 - (ii) “discrimination”;
 - (iii) “industrial grievance”;

- (iv) “misconduct”; and
- (v) “shift employee”.

3. Section 3 amended:

In section 3(4)(b) of the principal Act substitute “.” with “; and” and insert new subsection (c):

“(c) employees working on ships where terms and conditions of employment are not provided for in the Shipping Act 1998.”.

4. Section 4 amended:

For section 4(1)(e) and (f) of the principal Act substitute:

- “(e) four (4) representatives nominated by the employers’ organisation and endorsed by Cabinet;
- (f) four (4) representatives nominated by the employees’ organisation and endorsed by Cabinet.”.

5. Section 5 amended:

In section 5 of the principal Act:

- (a) for subsection (3) substitute:

“(3) Cabinet may remove and replace an appointed member under section 4(1)(e) or (f) for neglect of duties or other serious misconduct.”; and

- (b) Subsection (4) is repealed.

6. Section 12 amended:

In section 12 of the principal Act:

- (a) for paragraph (e) omit “awards and industrial agreements and by” after the word “under”; and
- (b) in paragraph (f) substitute “.” with “; and”; and

(c) after paragraph (f) insert new paragraph (g):

“(g) to administer the placement of Samoan citizens in overseas employment under bilateral agreements with other countries including -

- (i) the criteria and conditions for a person’s selection and participation in overseas employment;
- (ii) conditions relating any person acting as a recruitment agent; and
- (iii) any related matters.”.

7. Section 13 amended:

For section 13(1) of the principal Act, for paragraph (a) substitute “manpower” with “employees”.

8. Section 16 substituted:

“16. Powers of the CEO and labour inspectors:

- (1) Subject to subsections (3), the CEO or a labour inspector may, at a reasonable time, enter any place of employment to conduct an inspection for the purpose of ensuring compliance with this Act or any other Act.
- (2) In conducting an inspection under subsection (1), the CEO or a labour inspector may:
 - (a) require the production of books, registers or other documents that must be kept under this Act and make copies of such documents;
 - (b) interview any person in the place of employment;
 - (c) take or remove materials or substances used or handled at a place of employment, provided the employer is notified of the materials or substances that have been removed;

- (d) issue a compliance notice directing an employer to take measures to comply with this Act where the CEO or labour inspector believes on reasonable grounds that an employer has failed to comply with this Act;
 - (e) issue a penalty notice where the CEO or labour inspector believes on reasonable grounds that an employer has failed to comply with this Act as provided for in regulations;
 - (f) advise an employer about compliance with any other Act administered by the Ministry;
 - (g) require any notices served on the employer to be displayed in the workplace in an area visible to employees.
- (3) In exercising any powers under subsection (1), a labour inspector:
- (a) must not enter or inspect a private dwelling house without the consent of the occupier, but such consent shall not be unreasonably withheld;
 - (b) must provide at least 24 hours' notice to an employer of his or her intention to conduct an inspection, unless he or she -
 - (i) believes on reasonable grounds that notice would prejudice the performance of his or her powers; and
 - (ii) has obtained the approval of the CEO to conduct an inspection without notice;
 - (c) must produce valid evidence of his or her identity to the employer.

- (4) An employer or other person affected by a decision of CEO or a labour inspector made under this section is entitled to challenge that decision in Court.
- (5) The CEO may delegate in writing to a labour inspector or other employee of the Ministry one (1) or more powers conferred on him or her by this Act or any other Act, except the power of delegation.”.

9. Section 17 substituted:

For section 17 of the principal Act substitute:

“17. Powers of labour inspectors relating to complaints and grievances:

- (1) Subject to this section, an employee may make a complaint to, or lodge a grievance with, a labour inspector under this Act.
- (2) If a complaint is made to a labour inspector, he or she has the power to:
 - (a) interview an employer, employee or any person connected to the subject of the complaint;
 - (b) require an employer to produce any document or information connected to the subject of the complaint;
 - (c) issue a penalty notice in accordance with this Act;
 - (d) issue a compliance notice in accordance with this Act;
 - (e) take any other action in accordance with this Act.

- (3) A party to a complaint is entitled to challenge the decision of a labour inspector made under this section in Court.
- (4) An employee may lodge a grievance with a labour inspector, provided that he or she does so no later than 90 days from the date when the issue giving rise to the grievance came to his or her attention.
- (5) If a labour inspector is satisfied that subsection (4) is complied with and subject to the employee agreeing, he or she shall use his or her best endeavours to assist the parties to the grievance reach a settlement by conciliation.
- (6) Subject to subsections (2) and (5), a labour inspector may request in writing that a party to a complaint or grievance to provide written or oral information, or be interviewed, within a prescribed period of time.
- (7) A person is liable to a fine not exceeding 100 penalty units who:
 - (a) wilfully furnishes information that he or she knows to be false; or
 - (b) without good reason fails to furnish information requested by a labour inspector; or
 - (c) fail to attend an interview requested by a labour inspector.”.

10. Section 18 substituted:

For section 18 of the Principal Act, substitute:

“18. Forced labour:

A person who exacts, procures or engages another person in forced labour commits an offence and is liable on conviction to a fine not exceeding 300 penalty units or to imprisonment for a term not exceeding 14 years, or both.”.

11. Section 20 substituted:

For section 20 of the principal Act substitute:

“20. Discrimination:

- (1) An employer must not discriminate, directly or indirectly, against an employee or applicant for a position based on the grounds of discrimination in subsection (2) by:
 - (a) refusing to employ an applicant;
 - (b) providing an employee less favourable terms and conditions of employment, fringe benefits, training or promotion compared to other employees employed in the same or substantially similar circumstances;
 - (c) terminating an employee’s contract of service;
 - (d) requiring an employee to retire; or
 - (e) subject an employee to any other detriment in his or her employment compared to other employees employed in the same or substantially similar circumstances.
- (2) For the purposes of subsection (1) the grounds of discrimination are ethnicity, race, colour, sex, gender, religion, political opinion, national extraction, sexual orientation, social origin, marital status, pregnancy, family responsibilities, real or perceived HIV status, disability, and participation in the activities of a trade union.
- (3) Subsection (1) does not preclude:
 - (a) a provision, programme, activity or special measure that has as its object the improvement of conditions of disadvantaged individuals or groups, including those who are disadvantaged on the grounds specified in subsection (2); or

- (b) different treatment of a person or group because of one of the grounds of discrimination in subsection (2) based on the inherent requirements of a job.
- (4) An employer must pay male and female employees equal remuneration of equal value.”.

12. New section 20A inserted:

After section 20 of the principal Act, insert:

“20A. Harassment and sexual harassment:

No person shall engage in a conduct that is harassment or sexual harassment including gender based harassment or sexual harassment of another person in a workplace.”.

13. Section 21 amended:

After section 21(3) of the principal Act, insert:

- “(4) A collective agreement must:
 - (a) be in writing and signed by the parties to the agreement;
 - (b) contain a coverage clause specifying who is covered by the agreement;
 - (c) include a clause specifying the date the agreement expires;
 - (d) include a clause specifying the process for amending or terminating the agreement by the consent of the parties before the expiry date; and
 - (e) include a clause specifying how disputes arising from the agreement may be resolved.
- (5) A copy of a collective agreement negotiated under this section must be submitted to the CEO.”.

14. Section 22 amended:

- (1) In section 22(2) substitute the words "Employees' organisations may join a trade union" with "An employee, or group of employees may join a trade union, and a trade union may join an employees' organisation".
- (2) In section 22(3) substitute the words "Employers' organisations may join other employers' organisations" with "An employer may join an employer's organisation".
- (3) After section 22(4) of the Principal Act, insert:
 - "(5) Trade unions, employees' organisations and employers' organisations, including their agents or members, must not engage in any act of interference with the establishment, functioning or administration of each other.
 - (6) An employer or employers' organisation must not engage in any act to promote the establishment of an employees' organisation or trade union under the domination of an employer or employers' organisation, or to support an employees' organisation or trade union by financial or other means, with the object of placing them under the control of an employer or employers' organisation.
 - (7) An employer shall provide a trade union with reasonable access to a workplace, for the purpose of recruiting or meeting with members."

15. Section 26(2) repealed:

Section 26(2) of the principal Act is repealed.

16. Section 27 amended:

Section 27 of the principal Act is amended as follows:

(a) In subsection (1), after paragraph (j) insert:

“(ja) at the request of an employee, trade union membership fees payable by the employee to a trade union;” and

(b) In subsection (2)(c) substitute “of showing cause against the deduction” with “to show why the deduction is not justified.”.

17. New section 27A inserted:

After section 27 of the Principal Act, insert:

“27A. Disciplinary fines prohibited:

An employer must not impose a fine on an employee as a penalty for misconduct or serious misconduct.”.

18. Section 32(3) substituted:

For Section 32(3) of the principal Act substitute:

“(3) The Forum must review the minimum wage no less than every two (2) years and make a recommendation under subsection (2) after consulting with such employers and employees as the Forum considers appropriate.”.

19. Section 34 substituted:

For section 34 of the principal Act substitute:

“34. Contracts of service of more than two (2) months:

A contract of service of more than two (2) months shall be in writing and in accordance with section 35.”.

20. Section 35 amended:

Section 35 of the principal Act is amended as follows:

- (a) In subsection (1) omit the words “as shown in Schedule 1”; and
- (b) After subsection (4), insert:

“(5) An employer has a duty to provide an employee with work in accordance with his or her contract of service.”.

21. Section 36 amended:

Section 36 of the principal Act is amended as follows:

- (a) For subsection (1) substitute:

“(1) An employer may place an employee on probation for a maximum of three (3) months at the commencement of his or her employment.”;

- (b) In subsection (3) omit the words “(including an extension of that period)”.

22. Section 37 substituted:

Section 37 of the principal Act substituted as follows:

“37. Contracts of service for domestic workers and people living with disabilities:

If an employer employs:

- (a) a person living with a disability, the employer must comply with additional conditions in regulations;
- (b) a domestic worker, the employer must comply with additional conditions in Schedule 3.”.

23. New section 37A inserted:

After section 37 of the Principal Act, insert:

“37A. Favourable Terms and Conditions of contract:

- (1) Nothing in this Act prevents a party to a contract regulated under this Act, from negotiating terms and conditions of employment that are more favourable to an employee other than those provided for in this Act.
- (2) The provisions of this Act continue to have effect despite any contract or provision in a contract providing for less favourable terms and conditions of employment to an employee.”.

24. Section 38 amended:

Section 38 of the principal Act is amended as follows:

- (a) in subsection (1) substitute “is engaged in work which is required to be carried on continuously as a succession of shifts” with “would ordinarily work on a Sunday”; and
- (b) in subsection (2) after “Sunday”, where first occurring, insert “and it is not a day on which the employee ordinarily works, he or she”; and
- (c) insert a new subsection (3) as follows:

“(3) For the purpose of this section “ordinarily work” includes shift work required under terms and conditions of a contract of service.”.

25. Section 39 amended:

Section 39 of the principal Act is amended as follows:

- (a) For subsections (1) and (2), substitute:

- “(1) If a public holiday falls on a day that an employee is ordinarily required to work, or undertake shift work, he or she is entitled to a day off work and to be paid at the ordinary rate of wages that he or she would have otherwise earned on that day.
- (2) If an employer requires an employee to work on a public holiday, and it is a day that the employee would not ordinarily work, or undertake shift work, the employer shall:
 - (a) pay the employee double his or her ordinary rate of wages for working on the public holiday; or
 - (b) pay the employee his or her ordinary rate of wages for that day, and substitute another working day for the employee to take off work as his or her public holiday.”;

- (b) Subsection (3) is repealed.

26. Section 40 substituted:

For section 40 of the principal Act substitute:

“40. Annual leave:

- (1) Subject to this section, an employee is entitled to at least 10 days’ paid annual leave after 12 months of continuous service with the same employer, including any period of probation.
- (2) An employee is entitled to take leave under subsection (1) on a pro rata basis during the year in which the leave is accumulated.
- (3) Subject to subsection (4), an employee is entitled to carry forward his or her unused annual leave entitlement to a subsequent year.

- (4) An employee is entitled to carry forward 20 days' annual leave which may be extended by agreement between the employer and employee.
- (5) An employer who contravenes this section commits an offence, and upon conviction, is liable to a fine not exceeding 100 penalty units."

27. Section 41 substituted:

For section 41 of the Principal Act substitute:

"41. Payment in lieu of annual leave:

Despite section 40(4), instead of taking annual leave, the employee may, with the approval of his or her employer choose to have his or her annual leave entitlement paid to him or her."

28. Section 42 amended:

Section 42 of the principal Act is amended as follows:

- (a) In subsection (1) -
 - (i) for "subsection (3)" substitute "this section"; and
 - (ii) for "in each year." substitute "after 12 months continuous service with the same employer, including any period of probation.";
- (b) For subsection (3) substitute:

"(3) An employee is entitled to take sick leave after three (3) months from the commencement date of his or her employment under subsection (1) on a pro rata basis during the year in which the leave is accumulated.";

(c) For subsection (5) substitute:

“(5) An employee is entitled to carry forward 20 days’ sick leave, which may be extended by agreement between the employer and employee.”.

29. Section 47 amended:

In section 47(1), after “an employee” insert “other than a domestic worker to whom Schedule 3 applies,”.

30. Section 48 amended:

Section 48 of the principal Act is amended as follows:

(a) For subsection (1), after “An employee” insert “other than a domestic worker to whom Schedule 3 applies,”; and

(b) After subsection (2) insert:

“(3) Despite subsections (1) and (2) an employer may, if requested by an employee, grant time off in lieu of overtime worked.

(4) A contract of service may provide that overtime payments in subsections (1) and (2) do not apply if:

(a) the employee is a managerial personnel; and

(b) the employee is paid an annual salary; and

(c) the annual salary includes compensation for the likelihood of working hours that are additional to an employee’s ordinary hours of work.”.

31. Section 49 amended:

Section 49 of the principal Act is amended as follows:

- (a) For subsection (1) -
 - (i) in paragraph (d) omit “under any circumstances;” and
 - (ii) omit “but the average number of hours worked over a period of three (3) weeks must not exceed 40 hours in a week”;
- (b) For subsections (2), (3) and (4) substitute:

“(2) Despite section 48(1), if a shift employee works on average in excess of 40 hours per week over a period of two (2) weeks, he or she is entitled to overtime to be paid at one and a half times his or her ordinary rate of pay.”.

32. Section 51 substituted:

For section 51 of the principal Act substitute:

“51. Employment of children:

- (1) A person must not engage or employ a child under the age of 16 in work except light work in accordance with subsection (2).
- (2) An employer may employ a child of no less than 13 years of age in light work that:
 - (a) is unlikely to be harmful to the health and development of the child;
 - (b) will not affect the child’s attendance at school or vocational training during school hours or at any other time if the work would prevent or interfere with the child’s attendance at school, active participation in school activities or the child’s educational development;

- (c) will not adversely affect the child's ability to benefit from school or vocational training; and
 - (d) complies with regulations.
- (3) A person must not engage or employ a child under the age of 18 in hazardous work, which by its nature, or the circumstances in which it is carried out, is likely to jeopardise the child's health, safety or morals as provided for in regulations.
- (4) A person who engages a child in employment or work in contravention of this section commits an offence, and upon conviction, is liable to a fine not exceeding 300 penalty units or a term of imprisonment not exceeding three (3) years."

33. Section 52 amended:

Section 52(2) of the principal Act is amended as follows:

- (a) for "during a period where" substitute "by reason of";
- (b) for paragraph (a) substitute the word "is" with "being";
- (c) for paragraph (b) substitute the word "is" with "being" and the fullstop with "; or";
- (d) after paragraph (b) insert:
 - "(c) making an enquiry to any public body or trade union about the employer's compliance with this Act or the Occupational Safety and Health Act 2002."

34. Section 53 amended:

Section 53(1) of the principal Act is amended as follows:

- (a) in paragraph (b), substitute the fullstop with insert "; or"; and

(b) after paragraph (b) insert:

“(c) on the expiry of notice given by an employee under Schedule 2.”.

35. Section 54 substituted:

For section 54 of the principal Act substitute:

“54. Termination of a contract of service for an unspecified period:

- (1) A contract of service for an unspecified period may be terminated by an employee:
 - (a) by giving notice in accordance with Schedule 2; or
 - (b) without notice if section 56 applies.
- (2) A contract of service for an unspecified period may be terminated by an employer:
 - (a) without notice if section 56 applies;
 - (b) in accordance with section 57; or
 - (c) if the employee’s position is made redundant under section 54A and notice is given in accordance with Schedule 2.
- (3) Subject to section 57(2), an employer may retain and refuse to pay to the employee any earned wages owing to an employee where the employee fails to provide notice required under schedule 2.
- (4) Wages earned by an employee and retained by an employer under subsection (3) should not exceed the notice period for which the wages earned is being retained or withheld.”.

36. New section 54A inserted:

After section 54 of the principal Act, insert:

“54A. Requirements relating to redundancy:

Before an employer invokes section 54(2)(c) he or she must:

- (a) consider if an employee can be redeployed to another position in the enterprise for which the employee is qualified;
- (b) before making a final decision, consult with the relevant trade union representing the employee on the nature and content of redundancy proposals and ways of mitigating the impact of redundancy on the employee;
- (c) provide written reasons for the redundancy; and
- (d) notify the CEO no less than one (1) month in advance of invoking section 54(2)(c) if a proposed redundancy applies to more than 20 employees.”.

37. Section 55 amended:

Section 55 of the principal Act is amended as follows:

- (a) for subsection (1) substitute:

“(1) If a contract of service is terminated in accordance with this Part, an employer may pay an employee in lieu of the employee continuing to work during a notice period.”; and

- (b) for subsection (4) substitute:

“(4) An employee whose employment is terminated under this section is entitled to the payment of all annual leave owing to him or her, including any annual leave accumulated during a part year of employment.”.

38. Section 56 substituted:

For section 56 of the principal Act substitute:

“56. Notice period not required in certain cases:

- (1) Notice under section 54 is not required where an employee, is:
 - (a) a seasonal employee engaged for a specific season or short time period; or
 - (b) a trainee (other than an apprentice) and whose employment is terminated at the end of the training agreement; or
 - (c) a casual employee who has worked for the same employer for less than two (2) months.
- (2) In this section “casual employee” means a person who:
 - (a) is paid at the end of each work period; and
 - (b) has no expectation of further employment with the same employer at the end of each work period.”.

39. Section 57 substituted:

For section 57 of the principal Act substitute:

“57. Dismissal due to employee’s conduct or work performance:

- (1) Subject to this section, an employer may terminate an employee’s employment by reason of unsatisfactory conduct or work performance in circumstances where:
 - (a) the employee’s conduct or work performance does not amount to serious misconduct under subsection (2);

- (b) the employer has warned the employee about their unsatisfactory conduct or work performance in writing at least three (3) times;
 - (c) the employer has provided the employee with an opportunity to improve their conduct or work performance;
 - (d) the employer has given the employee a reasonable opportunity to respond to the allegations made against them prior to termination;
 - (e) the employer has provided the employee with the reasons in writing for the termination; and
 - (f) the employer has given the employee notice of termination in accordance with Schedule 2.
- (2) An employer may terminate an employee's employment without notice by reason of serious misconduct, provided the employee is first given a reasonable opportunity to respond to allegations of serious misconduct put to them in writing.
- (3) In this section "conduct" means the behaviour of an employee in the workplace that is reasonably expected by an employer."

40. New section 57A inserted:

After section 57 of the principal Act, insert:

"57A. Entitlements on termination:

If a contract of service is terminated by an employer or an employee under this Part, the employee must be paid, no less than five (5) working days from the date his or her employment ends:

- (a) all wages due and payable for work performed up to the date his or her employment ends;
- (b) the balance of any annual leave that has accumulated, but has not been taken, up to the date his or her employment ends; and
- (c) any other remuneration or benefits due and payable under the employee's contract of service."

41. Section 58 amended:

Section 58 of the principal Act is amended as follows:

- (a) for subsection (1) substitute:

"(1) A person is prohibited from being employed in Samoa, unless the person is granted an employment permit under this Part, if he or she is:

- (a) not a citizen of Samoa; or
- (b) not a permanent resident of Samoa; or
- (c) not the holder of a temporary resident permit granting employment as provided for in the Immigration Act 2004."; and

- (b) after subsection (2), insert the following new subsection (3):

"(3) An employer who employs a person that does not have an employment permit in accordance with subsection (1) commits an offence and is liable to a fine not exceeding 100 penalty units."

42. Section 59 amended:

In Section 59(1) of the principal Act, for "not being a citizen of Samoa," substitute with "to whom section 58(1) applies,".

43. Section 60 amended:

Section 60 of the principal Act is amended as follows:

- (a) for "Minister", wherever occurring, substitute "CEO";
- (b) In subsection (1), for "who is a non-citizen" substitute "to whom section 58(1) applies,";
- (c) For subsection (2), after paragraph (e) insert:
 - “(f) the criminal conviction history of the applicant or a pending criminal proceeding against him or her in Samoa or in another jurisdiction;
 - (g) any unresolved grievances or complaints against the employer who is likely to employ the applicant.”;
- (c) For subsection (3)(b) substitute:
 - “(b) is valid for up to three (3) years.”.

44. Section 61 amended:

Section 61 of the principal Act is amended as follows:

- (a) for subsection (1), for "Minister", wherever occurring, substitute "CEO";
- (b) for subsection (1)(c) substitute:
 - “(c) the employment permit holder, or his or her employer, provided misleading or false information for the purpose of the employee obtaining the employment permit;”;
- (c) for subsection (2) -
 - (i) for "Minister" substitute "CEO"; and
 - (ii) for "CEO" substitute "Labour Inspector".

45. New section 61A inserted:

After section 61 of the Principal Act, insert:

“61A. Restrictions on employers:

- (1) Subject to subsection (2), the CEO may decline to issue an employment permit with respect to a particular employer, for up to one (1) year, if the CEO is satisfied that:
 - (a) the employer has previously provided misleading or false information for the purpose of an employee obtaining an employment permit; or
 - (b) the employer has previously breached this Act or any other Act administered by the Ministry; and
 - (c) it is appropriate to do so in the circumstances in the public interest.
- (2) Before invoking subsection (1), the CEO must first consider a report or recommendation made to him or her by the Labour Inspector relating to the applicable employer.”.

46. Heading of Part 10 substituted:

For Part 10 heading of the principal Act substitute:

**“PART 10
RESOLUTION OF DISPUTES”.**

47. Section 78 amended:

Section 78 of the principal Act is amended as follows:

- (a) For subsection (1) for “50” substitute with “100”;

- (b) For subsection (2) -
 - (i) after the word "CEO" insert "conciliation committee";
 - (ii) for "50" substitute "100";
- (c) For subsection (3) -
 - (i) for "20" substitute "100";
 - (ii) After subsection (3) insert:
 - "(4) Despite subsection (3), the CEO or a labour inspector may issue a penalty notice where an employer has failed to comply with a provision of this Act as set out in regulations.
 - (5) A person who objects to the issuance of a penalty notice may challenge the issuance of such in Court."

48. Section 82 amended:

In section 82(2) of the principal Act, for "50" substitute "100".

49. Section 83 amended:

Section 83(2) of the principal Act is amended as follows:

- (a) For paragraph (t) for "industrial grievances;" substitute "complaints and conciliation of grievances;";
- (b) for paragraph (v), substitute:
 - "(v) regulating the employment of domestic workers;
 - (w) providing for all matters necessary and incidental to issuing compliance notices;
 - (x) providing for all matters necessary and incidental to issuing penalty notices;
 - (y) regulating the processes, procedures and fees of a grievance panel;

- (z) regulating the placement of Samoan citizens in overseas employment under bilateral agreements with other countries; and
- (za) prescribing fees for the purposes of this Act.”.

50. Regulations Repealed:

The Labour and Employment Relations Regulations 2016 are repealed.

51. Amendments to Schedules:

- (1) Schedule 1 of the Principal Act is repealed.
- (2) After Schedule 2 of the Principal Act, insert:

**“SCHEDULE 3
(Section 37(b))**

Additional requirements relating to the employment of domestic workers:

Requirements of a contract of service (“contract”)

- 1. An employer must provide a written contract to a domestic worker in a language that is understandable to him or her in accordance with regulations.

Pay and deductions

- 2. A domestic worker’s hourly wage must be no less than the minimum wage after any deductions provided for in this Act are made.

Hours of work and overtime

- 3. A domestic worker must be provided with at least 36 hours’ continuous rest per week.

4. Subject to paragraph 5, a domestic worker's ordinary hours of work shall not exceed 45 hours per week.
5. A domestic worker's ordinary hours of work per week may be exceeded by a maximum of eight (8) hours, provided that such hours are paid overtime at a rate of one and a half times the domestic workers ordinary hourly rate of pay.
6. A domestic worker shall not be required to work between 8:00 pm and 5:30 am, unless:
 - (a) he or she is required to attend to an emergency;
 - (b) the domestic worker is required to be on standby, but only with his or her consent; or
 - (c) for another temporary and compelling reason.

Living and working arrangements

7. A domestic worker is entitled to negotiate with his or her employer or potential employer on whether to reside in the household or accommodation provided by the employer.
8. If a domestic worker lives in accommodation provided by the employer, no deduction shall be made from his or her remuneration for the cost of accommodation, unless otherwise agreed to by the domestic worker and such agreement is recorded in his or her contract.
9. An employer must not require a domestic worker to be present in the household or with household members during periods of daily and weekly rest or annual leave.
10. An employer must provide all items related to the performance of the employee's duties including uniforms, tools or protective equipment and cleaning materials.
11. An employer must not deduct the cost of items in paragraph 10 from a domestic workers remuneration.
12. A domestic worker who is required to live in the employer's household must be provided with a separate, private room in accordance with regulations.

13. A domestic worker, whether or not they live in an employer's household, must be provided with access to suitable sanitary facilities that may be shared or private.
14. A domestic worker must be provided with meals, rest and meal breaks in accordance with regulations.

Personal documents

15. An employer must not withhold any personal documentation belonging to the domestic worker including his or her passport, employment permit, identity cards or bank account documentation or bank cards.

Right to privacy

16. An employer is not permitted to search a domestic worker's personal belongings unless such permission to search is provided for in his or her contract.
17. An employer shall under paragraph 16 only be entitled to conduct a search in exceptional circumstances and must do so in the domestic worker's presence.

Freedom of movement and communication

18. An employer must not prevent a domestic worker from leaving the household during his or her personal time.
19. An employer must not prevent a domestic worker from communicating or corresponding by phone, email or other forms of communication with another person.

Supervision and worker representation

20. An employer must provide a copy of the written contract established under paragraph 1 to the CEO.
21. An employer must include in a contract, a written statement that:

- (a) the domestic worker has the right to raise a complaint or a grievance with the Ministry in the course of his or her employment, and include the phone number and address of the Ministry; and
- (b) the domestic worker has the right to join a trade union in the course of his or her employment, and include the name and contact address or phone number of a representative trade union or employees' organisation in Samoa."

52. Savings and transitional provisions:

At the commencement of this Act the following transitional arrangement applies:

- (a) subject to paragraph (b), all applications, prosecutions, complaints, industrial grievances, disputes and other matters arising out of, or under the provisions that are affected or repealed by this Act, which are not yet determined or otherwise dealt with continue and have full force until they are dealt with;
 - (b) all employment permits issued under Part 9 of the principal Act prior to the commencement of this Act are validated and continue until the expiry of the two (2) year period specified in the permit;
 - (c) all contracts of service and collective agreements established under the principal Act or the Labour and Employment Relations Regulations 2016 or any provision that is affected or repealed by this Act prior to the commencement of this Act shall continue, subject to such modifications that are necessary to comply with this Act.
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