

GABON LABOUR CODE

Act 3/94 of 21 November 1994, on the Labour Code.

Modified by Act n°12/2000 12 October 2000

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HEADING I. GENERAL PROVISIONS

Article 1. This Code governs relations at work between employers and workers, as well as between the latter or their representatives, and apprentices and trainees under their authority.

Under the meaning of this code, a worker is any natural person, irrespective of sex or nationality, who has undertaken to place his/her occupational activity, in exchange for remuneration, under the direction and authority of another person, physical or legal, public or private, referred to as an employer.

The legal status of the employer nor that of the employee is not taken into account when establishing the status of the employee.

Under the terms of this Code, an apprentice is any person, irrespective of sex, accepted into a company, establishment or with a craftworker or manufacturer in order to obtain theoretical and practical vocational skills and knowledge enabling him or her to enter the labour market.

A trainee is any student from a technical or vocational college or specialist higher education college whose course requirements include a period spent in practical employment to support the theoretical knowledge gained during the earlier part of their education.

Administrators, managers, directors and other employees providing administrative or managerial functions are considered to be the employer's representatives in their relationships with workers and as part of their job responsibilities. In turn they are considered workers in their relationship with the employer whom they represent.

People appointed to a permanent post in public administration are not subject to the provisions of this Code.

Article 2. Anyone, including persons with disabilities, has the right to work; exercise of a vocational occupation is a the duty of a citizen.

The State and employers are obliged to provide vocational training.

Article 3. Work is a valuable resource; it demands that the freedom and dignity of those who work should be respected. The conditions under which it is carried should enable the worker and members of his/her family to cover their normal needs, protect their health and enjoy decent living conditions.

Article 4. Forced or compulsory labour is forbidden. The term forced or compulsory labour indicates any work or service imposed on an individual under the threat of any punishment whatever and which the said individual does not willingly offer.

However, the provisions of the above paragraph do not apply to:

- a) work or service legally exacted for military service and involving purely military duties, or for conscientious objectors, duties replacing military service;

- *b)* work or service exacted of an individual as a result of a sentence imposed by a legal judgement, as long as this work or service is performed under the supervision and control of public authorities and the said individual is not transferred or put at the disposal of individuals, companies or private legal entities;
- *c)* work or service exacted in a situation of force majeure, especially war, flood, famine, epidemic, epizootic disease, plagues of harmful animals, insects or parasites, and generally any circumstances that threaten or could threaten life or normal living conditions for some or all of the population;
- *d)* local, village or departmental communal tasks as defined and voted on by the municipal, departmental or village councils, which may be treated as normal civic duties for local citizens, up to a maximum of six days a year.

Article 5. It is also forbidden to:

- *a)* to force, or try to force a worker, by violence, trickery, deceit or promise to take a post against their will, or to prevent them from taking a post or fulfilling the duties of their work;
- *b)* use a false contract or any other document containing inaccurate information, to ensure that they are hired or deliberately to replace another worker.

Article 6. Children may not be employed for work unsuitable for their age, status or condition, or which prevents them receiving compulsory education, unless exempted as specified under the term of this legislation.

Article 7. The State recognizes the importance of the role of employer and worker in developing the national economy. It encourages integration and promotion of the worker in the company, as well as their participation in planning and managing production.

Article 8. All workers are equal before the law, with the same protection and guarantees. It is forbidden to discriminate in employment and working conditions on the basis, in particular, of race, colour, sex, religion, political views, national ancestry or social origin.

Article 9. Employers are obliged to organise work reasonably to encourage good relations within the company, and to help maintain peace in society.

Article 10. Any waiver, limitation or transfer through agreement or other means of the rights granted to workers by this Code is null and void.

Any dismissal or other reprisal against a worker because the latter has asserted a right or fulfilled an obligation granted or imposed by this Labour code or legislation in general or by a collective agreement or personal employment contract, is null and void.

Article 11. Any case not explicitly covered by this Code will be governed under principles of fairness.

Article 12. If there is any doubt about interpretation of the legal, regulatory or agreement provisions in terms of work and social security, preference will be given to the most favourable interpretation to the worker.

Article 13. The worker defined in the first article retains the rights agreed by the employer, by the collective agreement, the individual labour contract or usage when these rights are greater than those recognized by this Code.

Article 14. The State guarantees freedom of association and the right to organize.

Professional organizations for employers and workers refrain from interference with each other in their formation, operation and administration.

No employer may use pressure against or in favour of an employee's trade union organisation.

Article 15. A copy of this Code must be kept by the employer and made available to workers' representatives in any establishment or company with at least ten employees.

Article 16. Those responsible for breaching the provisions of articles 4, 5, 6, 8, 14 and 15 will be liable to a fine of 300,000 to 600,000 F, and/or imprisonment of from one to six months.

For a repeat offence, the fine increases to 600,000-1,200,000 F, and the term of imprisonment to between two and twelve months.

Article 17. When a fine is imposed under the terms of this Code, it is applied for each breach of the code, up to a total sum not exceeding fifty times the maximum specified amounts.

HEADING II. EMPLOYMENT CONTRACT

Chapter 1. Individual employment contracts

Section 1. Common provisions

Article 18. The individual employment contract is an agreement whereby a person undertakes to place their occupational activity under the management and authority of another person who is bound to pay them a salary for their work.

Under the terms of this Code, this remuneration is a salary or basic wage, along with all the benefits and considerations made directly or indirectly in cash by the employer to the worker, for the latter's work.

Section 2. Conclusion of the employment contract

Sub-section 1. Conclusion of the employment contract

Article 19. The employment contract is freely entered into, either verbally or in writing subject to the compulsory production of a medical certificate showing that the applicant for the position concerned is not suffering from a contagious disease and is physically suited to carry out the duties involved in the post.

Article 20. When agreed in writing, the employment contract is exempt from any stamp duties or registration charges. If agreed verbally, proof may be established by any means.

Article 21. Wherever it is concluded, and wherever either party resides, any employment contract agreed for execution wholly or partly within the territory of Gabon is subject to the provisions of this Code. This provision does not however apply to people working in the country on a temporary assignment lasting no more than three months.

The application procedures for this article will be determined by an order issued by the minister for employment.

Sub-section 2. Duration of the employment contract

Article 22. The worker may not commit his/her services for life. The contract may be for a fixed period, for an unspecified period or else for carrying out a particular task or project.

1) Fixed term employment contract

Article 23. A fixed-term employment contract is one which covers a pre-determined period, agreed by the parties. A written form is compulsory. It shall be for a period of no longer than two years. It may only be renewed once.

Short-term contracts may however be concluded and renewed more than once, as long as they do not exceed two years in total.

Article 24. On expiry of a fixed-term contract, it may be renewed at the wish of the parties, even if this is tacit, with the extension turning the contract into a permanent contract, despite any clause forbidding tacit extension.

2) Employment contract for carrying out a particular task or project.

Article 25. A contract concluded for execution of a particular task or project must note the nature of the task to be performed or project to be carried out. A written form is compulsory.

3) Daily or weekly work

Article 26. Daily or weekly work is that covered by a written contract for one day or one week. The wage is paid at the end of this period. The contract may be renewed the next day or the following week.

After one month, if the employment concerned continues at the wish of the parties, even if this is tacit, an extension turns the contract into a permanent contract, despite any clause forbidding tacit extension.

Occupational risks incurred by a daily or weekly employee during the time he/she has worked for the employer are the responsibility of the latter if the worker is not insured.

Permanent contract

Article 27. Any employment contract that is not covered by the definitions above in articles 23, 25 and 26, or those of articles 28 and 30 below is a permanent contract.

Section 3. Execution of the employment contract

Sub-section 1. Trial period

Article 28. The trial period requirement precedes conclusion of a permanent contract. It is intended to allow the employer to judge the occupation skills and performance of the worker, and for the latter to assess general conditions of employment, health and safety.

Article 29. The trial period requirement must be explicitly stated in writing, failing which it shall be invalid. It may be included within the text of a permanent contract.

Article 30. The trial period may not include any time longer than that required to assess the person being employed, given their qualifications, the level of responsibility relating to the post and normal professional practice.

No individual employment contract or collective agreement may include a trial period, including any renewal, greater than six months for clerical staff or three months for office staff, technicians and supervisors, and one month for other employees.

Article 31. The worker undergoing the trial may not be graded at a level lower than that of the position for which he/she has been recruited.

Article 32. A trial period contract suspended as specified in article 36, sections 3, 4, 5, 6, 7, 8 and 9 below, resumes from the date the work can recommence for the period remaining to be completed at the time the suspension begins.

Article 33. Extending services after the trial period has expired without drawing up a new contract means that a permanent contract is effectively concluded from the date the trial began, using the initial clauses and conditions.

Sub-section 2. Non-compete clause

Article 34. The worker owes the company all his/her occupational activity, unless otherwise specified in the contract.

Any contractual clause that prevents the worker from taking up any activity on expiry of the contract is null and void. If the contract is terminated, this clause is valid if the worker terminates it, or is seriously to blame for the termination. In these cases however, the prohibition may only apply to activities that could be considered as constituting unfair competition for the employer. This prohibition may not last longer than 12 months, and may only apply within a radius of five kilometres around the workplace.

Section 4. Suspension of the employment contract

Article 35. Suspension of the contract is a temporary interruption of some or all of the contractual obligations, without terminating the contract.

Article 36. The employment contract is suspended:

- 1) if the establishment or business is closed if the employer is called up for national service, or for a compulsory period of military training;
- 2) during the worker's period of compulsory military or public service and during compulsory periods of military training;

- 3) while the employee is absent for up to six months as a result of accident or sickness other than those circumstances specified in paragraph 5 below. In the event of accident or illness of a partner or child of the employee, duly certified by a doctor, the suspension period will be fifteen (15) working days. The collective agreements may however include longer periods than this legal minimum.
- 4) in the event of a long-term illness;
- 5) while the worker is unavailable following an industrial accident or disease;
- 6) during maternity leave for a woman employee as specified in article 171 of this Code;
- 7) during a disciplinary suspension of a worker, lasting not more than eight days;
- 8) during a layoff period for a worker under the terms of protection specified in articles 170 and 295 of this Code;
- 9) while the worker is in custody or detention, whether or not this is preventive, if the charges against them are unconnected with the employment contract, as long as this period does not exceed six months;
- 10) while the worker is fulfilling a permanent trade union position;
- 11) while the worker is holding elected office or fulfilling a political function;
- 12) During a layoff period decided by the employer after review by the competent works inspector. Under the terms of this legislation, technical layoff is any period of suspension of the employment contract decided by the employer or his/her representative for technical and economic reasons.

Decrees from the minister for employment specify the particular procedures for applying this article.

Article 37. In the situations covered by paragraphs 1, 2 and 3 of article 36 above, the employer must pay the worker compensation equivalent to the total salary owed for the period of absence, up to the maximum notice period specified, except in the case of accident or illness of the spouse or child of the worker.

If the contract is for a fixed period, or for carrying out a particular project or task, the notice to be given is that specified for permanent contracts.

Article 38. In the situations covered by paragraphs 4 and 5 of article 36:

a) when the absence is the result of a long-term, non-industrial illness, the loss of salary following the worker's unavailability is made up by a compensation payment equivalent to the salary of the person concerned for a period equivalent to the notice period; after this the compensation is halved until it is taken over by the sickness benefit paid by the national social security fund;

b) when the absence is caused by a workplace accident or industrial illness, the worker is compensated in accordance with the terms of the social security code.

Article 39. A long-term illness not recognized as an industrial illness means one which needs regular treatment, and which is acknowledged by a medical examination, as well as requiring a long period away from work. The National health council, whose members will include a doctor from the national social security fund (CNSS) will draw up a list of such illnesses, not intended to be exhaustive. This list will be approved by decree, and appended to this Code.

Article 40. When absent for a long-term illness, the employer will pay the remuneration for the first six months' absence.

From the seventh month, it is payable by the national social security fund (CNSS) which allocates the sum to the *invalidity* branch account.

Article 41. Remuneration is owed throughout the period of unavailability until the cure is effective, or until early retirement is taken in the event of a physical or mental disability duly confirmed by a doctor.

Article 42. For the first six months of the indisposition, the worker continues to receive healthcare benefits previously obtained in the company. Similarly throughout the period of absence, he/she continues to benefit from the social security rights obtained already from the national social security fund.

Article 43. Any medical queries raised as a result of the morbid conditions concerned will be dealt with by a doctor appointed for the purpose by the board of the national social security fund, and if the sick person is not in Libreville, by a regional health council consisting of the chief medical officer for the health region concerned and the chief medical officer from the medical-social centre of the area where the sick person lives.

Decisions of the regional health councils are subject to appeal before the national health council, while the latter's decisions are final, whether dealt with directly or as appeals.

Section 5. Cancellation of the employment contract

Sub-section 1. Common provisions

Article 44. Cancellation is the act whereby one of the parties exercises their right to terminate the employment contract.

The party initiating cancellation of an employment contract must do it in writing.

The termination is effective the day after the dismissal is notified.

A copy of the cancellation letter must be sent to the competent employment inspectorate.

Sub-section 2. Cancellation of the trial period contract

Article 45. The trial period contract may be broken at any time by either party, without notice unless otherwise agreed.

Article 46. If the contract is cancelled during or at the end of the trial period by either party, the employer pays for the return trip from the workplace for the person recruited.

Sub-section 3. Cancellation of a fixed-term employment contract

Article 47. The permanent employment contract may only be terminated early at the wish of one party solely under the situations specified in the contract, or in one where there is serious fault as judged by the competent authorities.

Sub-section 4. Cancellation of employment contract for carrying out a particular task or project.

Article 48. The employment contract for a particular project or task ends when the work for which it was concluded has been completed. The employee must however be given notice according to the periods specified in article 68 of this Code.

During execution of the contract, this may be broken by the employer if the employee is at fault, or by the worker at will; in either case, unless there is a serious fault, the notice period must be respected.

Sub-section 5. Cancellation of a permanent employment contract

Article 49. The permanent employment contract may terminate following:

- - dismissal;
- -resignation;
- - retirement;
- - death of the worker.

Dismissal

a) Definition

Article 50. Dismissal is the cancellation of the employment contract resulting from an initiative by the employer.

Dismissal is declared for personal or for economic reasons.

The personal reason may relate to the employee's physical or occupational lack of ability, or because of their misconduct.

The economic reasons may relate to re-organization, reduction or termination of the work of the business or the establishment.

b) The dismissal procedure for personal reasons

Article 51. The employer intending to dismiss an employee must first invite the person concerned to an interview, by registered letter, which must reach the employee five clear days at least before the interview. The letter inviting the person to the interview may also be delivered by hand.

The invitation to interview sent by the employer or their representative specifies the date, time and place of the interview, the reasons for dismissal, the employee's option to have assistance or to be represented by someone of their own choice, either from the company staff or from a trades union to which they may belong.

During the interview, the employer or their representative may be assisted by a manager or an employee of the company. This person sets out the reasons leading to the possible dismissal and sums up the employee's explanations as well as the arguments produced by the person assisting them. The discussion may never include reasons other than those noted in the letter of invitation to the interview.

All company employees attending the meeting will be paid their normal rate for the working period concerned. Travel costs incurred by attending the interview will be met by the company.

Article 52. The employer may not take the decision to dismiss during the interview. A minimum five-day period of reflection must be observed following the interview.

When the employee does not attend, and is not represented at the interview, the employer is not obliged to arrange a new interview.

Article 53. The employer who decides to dismiss an employee must notify the person concerned by a letter delivered by hand; this letter may not be delivered until the fifth day following that of the interview and it must explicitly include the reason or reasons for dismissal.

In the event of dispute, the employer is responsible for proving the true, valid reasons alleged for dismissal.

Article 54. While maintaining the obligation for the interview, the periods specified in articles 51, 52 and 53 above may be reduced to 24 hours in the event of a serious fault. In this case, the staff representatives are obliged to attend the interview.

Article 55. The employer who has breached one of these procedural rules will be liable to pay the employee dismissed a sum equal to three months' salary.

This penalty may be added to that imposed because of wrongful dismissal.

c) The dismissal procedure for financial reasons

Article 56. Any individual or collective dismissal based on economic reasons is subject to authorisation by the competent works inspector, even in the event of receivership or liquidation.

However, when a company dismisses more than ten employees for economic reasons, it may not repeat this within a period of six months.

Article 57. The works inspector has a maximum of thirty working days from the date the request is made for permission to implement the redundancy process to give the applicant their decision.

Permission is granted automatically if the works inspector has not responded within the above thirty-day period, with the receipt for the request for permission to implement the dismissals providing proof of date. The decision given to refuse permission for partial or complete dismissal of staff must be supported by reasons.

Article 58. The employer may only give the works inspector the request for individual or general dismissal for economic reasons after completing the procedure specified in article 59 below.

Article 59. The employer intending to implement individual or general dismissal of staff for economic reasons must provide the staff representatives, officials of the most representative trades union and members of the standing economic and social consultation committee with information about the proposed redundancies, especially:

- the economic, financial or technical reasons for the planned redundancies;
- the number, occupational qualifications, nationality, period of service, age and family circumstances of the workers likely to be dismissed. This information must also be provided for similarly-qualified workers not included in the redundancy process;
- the measures planned to avoid redundancies or reduce the number involved on the one hand, and to help in relocating staff for whom redundancy is unavoidable on the other.
- a social plan, and the funding for it, drawn up in accordance with the national employment office or other public employment department responsible on behalf of the employees for whom redundancy is inevitable.

The employer only has to implement the social plan mentioned in the previous paragraph if a general redundancy programme implemented for economic reasons affects at least ten (10) employees. The total cost of this social plan shall not be greater than the total sum of wages owed by the employer under the provisions of articles 70 and 73.

The employee may choose either the redundancy payment or compensation from the social plan.

Staff representatives, union representatives and members of the standing economic and social consultative committee have eight working days to consider the redundancy programme submitted by the employer.

After this period, the employer must meet the staff representatives, union representatives and members of the standing economic and social consultation committee. This consultation meeting must be recorded officially in a report which as well as opinions includes suggestions and proposals from the staff representatives, the members of the standing economic and social consultative committee and union representatives and the provisional schedule of redundancies.

The information in paragraph 1) above as well as the original copy of the consultation meeting report must be sent to the works inspector by the employer, at the same time as the written request for authorisation of the redundancies.

The employees concerned are notified of their dismissal only after the works inspector's decision, or failing that, after a period of 30 days as specified in article 57 above.

In the first instance, workers least qualified for the posts they hold may be dismissed, and in the cases of equivalent occupational qualifications, those employed most recently in the company, with their service increased by one year per dependent child.

In the event of receivership or liquidation, the periods allowed for the above procedure are halved.

Article 60. Workers dismissed for economic reasons may invoke their right to priority in employment for a period of one year if the company dismissing them reopens or creates new jobs in their specialist fields.

2) Resignation

Article 61. Resignation is the worker's own expressed desire to terminate the employment contract. It is never assumed. It must be notified explicitly in writing to the employer. The latter must acknowledge receipt within forty-eight hours of notification.

3) Retirement

Article 62. Retirement is the cessation by the worker concerned of any paid work for reasons of age. It is initiated by the employer or the worker.

The age limit varies from 55 to 60, depending on the sector of activity, and is determined by order made on a proposal by the employment minister, after recommendation from the Consultative employment commission.

Under conditions specified by the Social security code, retirement gives the worker the right to an old age pension or old age allowance.

The social security agency that has the power of enforcement on the employer is however jointly liable for the failure by the employer to pay its social security contributions.

Hence if the employer and social security agency are responsible for the retiring worker being unable to claim an old-age pension or allowance, the social security agency is responsible for paying the retiring worker this allowance or pension, as specified under the terms of this Code, if the employer is insolvent.

Other than the cases of retirement covered in the above paragraphs, and those specified in the social security code, the parties to the employment contract are free to agree the terms of early retirement, with the agreement of the social security agency.

221) *Death of the worker*

Article 63. If the worker should die, any salary owing, holiday allocation and remuneration of any kind earned up to the date of death, minus any contractual advances or deductions of the deceased party with respect to the employer, are owed by right to his/her heirs, who must provide evidence of their capacity.

If a displaced worker should die in the workplace, or a member of his/her family whose travel costs were the responsibility of the employer should die the employer must meet the cost of repatriating the body of the deceased to the latter's usual place of residence as specified in the contract.

Sub-section 6. Notice

Article 64. Cancellation of the employment contract as specified in articles 44, 48, 49 and 61 of this Code is subject to notice given by the party initiating the termination.

The party cancelling the employment contract under these circumstances, however, because of a serious fault by the other party, does not have to give prior notice, and the competent authorities are responsible for evaluating the serious fault.

Article 65. The notice period depends on the length of time the employee has worked for the company. It is defined as follows:

- - up to one year, 15 days' notice.
- - from 1 to 3 years, 1 month
- - from 3 to 5 years, 2 months
- - from 5 to 10 years, 3 months
- - from 10 to 15 years, 4 months

- - from 15 to 20 years, 5 months
- - from 20 to 30 years, 6 months

Over 30 years, a further ten days per year's service is granted.

The above periods are minimum requirements for the contractual parties. Collective agreements and individual employment contracts may however include more favourable provisions, depending on the worker's occupational qualifications.

The period of notice begins on the day following notification of redundancy, resignation or retirement.

Article 66. Without prejudice to application of the legal provisions or those of an agreement for longer periods of notice, paid workers dismissed from their jobs for economic reasons as defined in article 50 of this Code are entitled to a minimum guaranteed notice period of two months, whatever the occupational qualifications of the workers concerned, and six months' family allowance, waiving the requirement for the period of service specified by the family benefits system.

Article 67. During the notice period, the employer and the worker must continue to comply with all the mutual obligations imposed on them.

Article 68. In order to assist in finding another job, the worker is given one day off a week on full pay during the whole of the notice period. The days taken are chosen and may be rejected by agreement between the parties.

Article 69. Any termination of a permanent contract without notice, or with the notice period not being respected in full, renders the party concerned liable to pay compensation to the other. The total compensation payable is equivalent to the pay and all other benefits enjoyed by the worker during the notice period that has not been respected.

During the notice period, the worker concerned who has completed at least half of his/her notice and has found another job, may leave the employer without liability, subject to giving the latter forty-eight hours' notice.

Sub-section 7. Compensation for terminating a permanent employment contract

1) Compensation for redundancy and services rendered

Article 70. Redundancy compensation is paid to any worker dismissed for reasons other than their own serious fault, with at least two years' service in the company.

The worker dismissed for economic reasons, however, receives redundancy payment after one year's service.

Article 71. Compensation for services rendered is paid to anyone resigning or retiring. It is also paid to the heirs of a deceased worker.

Conditions of service giving the right to payment for services rendered are specified in article 70 above.

Article 72. Payment for redundancy and for services rendered cannot be cumulative.

Article 73. Each of these payments is made at twenty per cent (20%) of the monthly average of the total salary for the last twelve months per year's continuous service in the same company.

The above rate is a mandatory minimum for the contracting parties; collective agreements and individual contracts may specify more favourable terms.

When calculating compensation for redundancy or payment for services rendered, fractions of years equal to thirty calendar days are included.

2) Damages payments

Article 74. Redundancy without legitimate reason, as well as that based on the views of the worker, their union activity, membership or non-membership of a particular trades union, is wrongful.

The following are also improper:

- - individual or general redundancies that breach the authorisation procedures for the employment inspector, established by this Code;
- - redundancies made contrary to the decision of the employment inspector;
- - refusal to re-employ the worker after a contract suspension, as specified in article 36 above;
- - the fact of having made a complaint, or taken part in procedures against an employer because of alleged breaches of the law, or having brought a charge before the competent administrative authorities.

Any wrongful termination of the employment contract leads to payments for damages and in the case of redundancies for economic reasons, to the sanctions specified in article 80 of this Code. The wrongful nature of the termination is assessed by the courts.

Article 75. The sum of the damages is determined on the basis of all the factors that demonstrate the injury caused and its scope.

When the worker is responsible, the employer's injury suffered is assessed according to the non-fulfilment of the contract.

When the employer is responsible the injury suffered by the worker is assessed mainly on the basis of the practices, the type of service undertaken, the length of service, the age, family situation of the person concerned, and any rights to which they are entitled.

The damages are not combined with payments made for failure to respect the notice period, nor with redundancy payments or payments for services rendered as specified in articles 69, 70 and 71 of this Code.

Article 76. When a worker who has wrongfully broken a service contract is re-employed, the new employer is jointly liable for damage caused to the previous employer in the following three situations:

- a) when involved in poaching employees;
- b) when hiring a worker known to be already bound by a contract of employment;

- c) when continuing to employ a worker after learning the latter is still bound to another employer by a contract of employment.

Article 77. The benefits gained by salary legislation for workers extend to payments for failing to respect periods of notice, payment for redundancy, services rendered and damages payments specified in articles 69, 70, 71 and 74 of this Code.

Article 78. If there is any change to the employer's legal status, especially through takeover, sale, merger, privatization or company creation, all contracts in force on the date of the change continue to apply between the new employer and the company's staff. They may only be cancelled under the terms and conditions specified in this section.

Closure of the company, except in a case of force majeure, does not excuse the employer from respecting the rules specified in this section.

Bankruptcy and liquidation are not considered to be cases of force majeure.

The parties may not waive any right in advance to claim damages under the above provisions.

Sub-section 8. Certificate of work

Article 79. When the employment contract expires, the employer is required to provide the worker with a certificate of work, under penalty of payment of damages, showing the date of employment and of departure, the nature and dates of the various positions occupied in the company, and the category of occupation, excluding any other information. The certificate of work must be provide at the time the contract is terminated.

If the employer should refuse, or adds information that could cause injury to the worker, they are liable for penalties imposed by article 80 of this Code, without prejudice to any damages payable also.

The certificate of work is not liable for stamp duty or registration charge.

Section 6. Penalties

Article 80. Only those in breach of the provisions of articles 76 and 79 are liable to a fine of 300,000 to 600,000 F and/or imprisonment of one (1) to six (6) months.

Chapter II. Apprenticeships

Section 1. General provisions

Article 81. Apprenticeship is a method of education intended to provide an occupational qualification, based on theory and practice, for persons defined under article 1 of this Code.

Article 82. Anyone may be apprenticed once they reach the age of 16 years. Exemptions may however be granted by the Minister for National Education, for young people from 14 to 16 years old.

No person may accept minors as apprentices, unless they are:

- - at least 21 years old;
- - recognized as of good moral conduct and character;
- - are themselves sufficiently qualified to give the apprentices appropriate training, or are able to appoint another duly-qualified person in their employment to give this training.

Article 83. The apprenticeship is formalized by a contract defining rights and obligations of the master and the apprentice.

This contract must be signed by a parent or tutor of the apprenticed minor.

Article 84. The period of the apprenticeship varies according to the specific needs of the trade. It may however not exceed two years.

Article 85. The apprentice receives an allowance from the master, the total of which is set at one quarter of the guaranteed minimum industrial wage (SMIG) in the first year, and half the SMIG in the second year.

The allowance paid to the apprentice is exempt from tax and deductions. It is included when determining the level of exemption from the occupational training tax.

Article 86. The master must protect the apprentice against any risk of accidents at work and industrial disease, in accordance with current legislation.

Article 87. After completion of the apprenticeship, the master must make every effort to employ the apprentice.

Section 2. Nature and form of apprenticeship contract

Article 88. The apprenticeship contract is one whereby a business manager, craft-worker or manufacturer is required to give regular, full occupational training to another person, or ensure such training is given, and in return the latter is required to comply with the instructions received and carry out the tasks entrusted to him/her in the course of the apprenticeship.

The contract must be formalized in writing, and initialled by the competent departments of the Ministry for Employment, in order to be valid.

The contract is not liable for any stamp duty or registration charge.

Article 89. The apprenticeship contract is established in accordance with professional usage and practice. In particular it contains:

- 1) surnames, first names, age, profession, residence of the master, or the company name;
- 2) surnames, first names, age, residence of the apprentice;
- 3) surnames, first names, profession and residence of the parents, tutor or person appointed by the parents, or failing that, by the judge;
- 4) dates and period of the contract;
- 5) conditions of remuneration, details of the trade to be taught and vocational courses the master undertakes to ensure that the apprentice undertakes, either in the company or outside it.

Article 90. Other substantive and material conditions, the purposes of the contract, and the situations and consequences of its cancellation and measures for monitoring its execution are governed by decree proposed by the Minister for Employment, after consultation with the Employment commission.

Section 3. Duties of masters and apprentices

Article 91. The master must treat the apprentice responsibly and with consideration. If the apprentice is illiterate and innumerate, the master must give him/her the time and freedom needed for instruction. The time allowed by mutual agreement shall not exceed a period calculated on the basis of two hours per working day.

Article 92. The master must notify the apprentice's parents or their representatives in the event of sickness, absence or anything else that could require their attendance.

The apprentice will be employed as far as possible only for work and services associated with the exercise of his/her chosen occupation.

The employer must grant the apprentice the right to holidays as specified in articles 185 to 188 of this Labour code.

Article 93. The master must gradually teach the apprentice all he/she needs to know of the craft, trade or particular occupation that is the subject of the contract.

Article 94. Under the terms of the apprenticeship, the apprentice must be obedient and respectful to the master. As far as possible he/she must assist the master in his work.

Article 95. Once the apprenticeship is finished, the apprentice sits an examination to qualify for an apprenticeship certificate issued by the master.

Article 96. When concluded without fulfilling all the obligations of the apprenticeship contract above, or without the contract being legally cancelled, the following are null and void by right:

- - any employment contract for hiring young people bound by an apprenticeship contract as workers or office staff;
- - any new apprenticeship contract.

Breaching these terms incurs payment by the employer or new apprentice-master of compensation to the deserted master.

The total compensation is awarded by a court.

Section 4. Penalties

Article 97. Breaches to article 86 will be punished in accordance with current legislation, without prejudice to civil compensation for the effects of such breaches for which the master is liable.

Chapter III. Vocational training and development, and vocational retraining

Article 98. Initial occupational training is intended to cover general theory and practice, in order to gain an occupational qualification demonstrated by a diploma or certificate issued or recognised by the minister responsible for occupational training.

Article 99. Continuing professional development or training is intended to help workers adapt to changes in technology and working conditions throughout their careers, and to encourage progress through the company by access to various levels of qualification.

Article 100. Professional retraining is intended to allow a worker to change their specialist fields.

Article 101. The State, private training establishments, occupational and trades union organisations as well as private companies compete to offer training, professional development and retraining.

Article 102. The work of the various public or private agencies delivering training, development and occupational retraining will be coordinated and developed on the basis of a national programme developed by the public authorities, without compromising their own initiative or adaptability to specific needs of each professional area, province or district.

This programme will take particular account of:

- professional, cultural and moral interests of the profession;
- - general social and economic value;
- - development of general professional teaching, guidance and selection;

- - progress in techniques and organisation of employment;
- - structure and trends in the employment market.

Article 103. Workers of both sexes have the same rights of access to all training, professional development and retaining agencies.

Chapter IV. Employment of foreign workers

Article 104. Before recruiting a foreign worker a work permit must be issued by the Minister for Employment, and an employment contract signed by the competent department of the Employment ministry.

The employer is responsible for applying for a work permit.

The employer must support the request for a work permit with an unconditional undertaking to repatriate the foreign worker and any members of its family, as well as the documents normally entered when producing the application.

Article 105. The work permit is only valid for one worker, one job and one particular company. It shall be for a period of no longer than two years. It is renewable. The renewal conditions will be determined by an order issued by the minister for employment.

The work permit application, to be valid, must be intended to fill a position for which no suitable Gabonese worker is available, because of the professional qualifications needed, the nature or location of the work.

The minister for employment may terminate the work permit early after a report from the technical departments, notwithstanding the wishes of the worker and the employer.

Unless otherwise specified, an initial work permit may only be issued for a worker resident outside the country.

Article 106. The competent authority signs the contract after, in particular:

- 1) having checked the worker's identity, their free consent and the contract's compliance with the legislative and regulatory provisions and the terms of the agreement;
- 2) having checked that the worker has no prior commitments;
- 3) being assured that the parties are familiar with the contract and have given their agreement to it, and the worker has met the conditions required for the purposes of immigration.

Article 107. The employer is responsible for requesting signatures from the competent departments of the Employment Ministry.

If the employer fails to submit the employment contract for signature, or if the signature is refused, the contract is null and void.

In both cases, the worker may report the contract is invalid and if applicable, claim damages.

The employer is responsible for the costs of repatriating the worker.

Article 108. The procedures for applying the terms of this chapter will be set by decree.

Article 109. Anyone employing a foreigner without a personal work permit, or who is in an occupational category other than that for which the permit was granted will be liable for a fine of 100,000 to 600,000F and/or a term of imprisonment from two to six months.

For a repeat offence, the fine is increased to 200,000F to 1,200,000F and the term of imprisonment from four to 12 months.

Chapter V. Internal regulations

Article 110. The internal regulations are produced by the head of the company, subject to the notification mentioned in the third paragraph of this article. Their content is limited to the rules relating to technical organisation of the work, to discipline, to provisions relating to health and safety at work, and to payroll procedures.

All other clauses that may be included especially those relating to wages will be considered as null and void.

Before the internal regulations come into effect, the head of the company must refer to the standing economic and social consultative committee for their views, as well as to staff representatives, and to the works inspectorate for signature, at which time provisions contrary to current legislation and regulations may have to be removed or modified.

Procedures for communication, filing and display of internal regulations, as well as the minimum number of workers in the business required to know that these regulations exist are determined by order of the Minister for Employment.

Article 111. The employer is forbidden to impose fines.

Article 112. Anyone breaching the terms of this chapter will be liable for punishments specified in article 80 of this Code.

Chapter VI. Piecework

Article 113. The pieceworker is a master workman or approved self-employed sub-contractor who agrees a contract with a contractor or owner to perform a particular job or supply certain services, for a price determined by mutual agreement. The piecework contract must be in writing.

Article 114. The pieceworker is forbidden to sub-contract the piecework contracts, in whole or in part.

Article 115. The pieceworker must publicise his/her status, name and address of the contractor or owner, on posters displayed permanently at every workshop, store or site used. Under the same conditions it must display a list of paydays for workers for the duration of the work, and provide the contractor or owner with this information.

The pieceworker is obliged to send the competent work inspectorate a statement, prior to execution of the piecework contract, giving its name, address and position, location of work sites, stores or workshops, supported by the posters mentioned above.

Article 116. If the pieceworker becomes insolvent, and depending on whether the piecework contract has been concluded with the contractor or the owner, the co-contractor is jointly responsible for the pieceworker's

obligations towards their workers, to the full amount of the sums it may owe to the pieceworker.

Injured workers may take direct action against the contractor or owner without prejudice to any proceedings for recourse the latter themselves may take against the pieceworker.

Article 117. A decree of the employment minister taken after advice from the consultative employment commission will determine the procedures for application of the terms of this chapter, as required.

Article 118. Anyone breaching the terms of this chapter will be punished by penalties specified in article 80 of this Code.

Chapter VII. Employment contract and collective agreements

Section 1. Nature and validity of the contract

Article 119. A collective employment agreement is a written agreement on conditions of work and social guarantees concluded between representatives of one or more of the most representative unions or professional associations of workers on the one hand, and one or more employers' organisations and one or more individual employers on the other.

The collective agreement may include provisions more favourable to workers than those of the current laws and regulations. It may not breach public order provisions defined by these laws and regulations.

Collective agreements determine their scope of application. This may be national, interprovincial, provincial or local.

Article 120. Representatives of the associations specified in the previous article may contract on behalf of the organisation they represent by virtue of: statutory provisions for the said organisation, or a special resolution for the organisation, or special, written authorities given individually by all members of the organisation.

Article 121. The collective agreement applies for an unspecified period. When concluded for a fixed period, this may not be longer than five years.

Unless otherwise stipulated, on expiry of the fixed-term agreement it continues to be effective as a permanent agreement.

The collective, permanent agreement may be terminated at the wish of either party.

The collective agreement must specify how and when it may be terminated, renewed or revised. In particular, it specifies the period of notice before withdrawal.

Article 122. A decree issued after consulting the employment commission, at the proposal of the minister for employment, determines the conditions under which collective agreements are submitted and published.

Collective agreements apply unless otherwise specified from the day after they are submitted under the conditions and at the places specified in the above-mentioned decree. They are published free of charge in the Official Journal.

Article 123. When the employer is bound by the clauses of the collective employment agreement, these apply to employment contracts concluded with the employer.

In any establishment covered by a collective agreement, the provisions of this agreement apply, unless there are more favourable provisions for workers present in the relationships established in individual or team contracts.

The collective agreement applies to all occupational categories in the branch of activity concerned.

Section 2. Collective agreements that may be extended, and the procedure for extension

Article 124. At the request of one of the most representative of the unions or associations of employers or workers concerned, the minister for employment calls a meeting of a mixed commission, within a maximum period of three months. The minister concerned may also do this on his/her own initiative.

The composition of the commission is determined by order of the employment minister, and will consist of an equal number of representatives of trades unions of workers on the one hand, and of employers on the other. It is chaired by the minister responsible for employment, or his/her representative.

Additional agreements may be concluded for each of the main occupational categories. These will contain the particular conditions of employment for these categories, and will be discussed by representatives of the union organisations.

Article 125. At the request of one of the most representative of the trades unions or employers' associations, or at the initiative of the employment minister, the provisions of the collective agreements meeting the terms of this section may be made compulsory on all employers and workers within the occupational and territorial scope of the agreement, by order made on the proposal of the employment minister.

Section 3. Content of collective agreements that may be extended

Article 126. Collective agreements that may be extended must include the following provisions:

- 1) the free exercise of the right of association and freedom of opinion of the worker;
- 2) terms for access to each occupational category;
- 3) procedures for implementation and supplements for overtime, night work and non-working days;
- 4) the duration of the trial period and notice period;
- 5) salaries applicable to each occupational category;
- 6) procedures for allocating and exercising the mandate of staff representatives, union representatives, members of the economic and social standing committees, members of health and safety at work committees and members of any other institution to be established, and their terms of office;

- 7) provisions for revision, modification or withdrawal procedures for some or all of the collective agreement;
- 8) paid holidays;
- 9) long-service premium;
- 10) temporary transfer payments;
- 11) compensation for services rendered and redundancy;
- 12) conditions for hiring and dismissing workers;
- 13) attendance bonus;
- 14) payment for professional costs and similar;
- 15) organisation of company canteens, or failing that, meal allowances for workers who have to eat at their place of work;
- 16) extra payments for difficult, dangerous or unpleasant work, if applicable;
- 17) when appropriate, procedures for organising and operating apprenticeships, training, development and retraining within the occupational area concerned;
- 18) particular conditions of work for women and children in companies covered by the agreement;
- 19) protecting workers against sexual harassment;
- 20) facilities given to union organisers, leave granted for courses and seminars and remuneration conditions;
- 21) procedures for application of the principle of equal pay for equal work, whatever the origin, sex, opinion and age of the worker;
- 22) essential elements used to determine occupational classification and level of qualification, especially regarding professional diplomas or their equivalents;
- 23) organisation and operation of regarding commissions.

Article 127. Collective agreements covered under this section may include provisions regarding:

- 1) General conditions for performance-related pay, whenever this form of payment is considered possible;
- 2) employment and salary terms and conditions for part-time staff;
- 3) organisation, management and funding of social, medico-social and leisure services;
- 4) particular conditions for shiftwork;
- 5) exceptional leave and day-release, educational leave for workers, physical education and sports education;
- 6) employment conditions for sessional staff, temporary staff, school children and students during school holidays;
- 7) staff supplementary pension plan;
- 8) any other issue relating to employment conditions and professional relationships which the negotiating parties consider appropriate.

Article 128. If a national collective agreement has been reached in the field of activity concerned, inter-provincial and local collective agreements adapt this or some of its provisions to the particular employment conditions in their own province or area. They may include new provisions and clauses that are more favourable to workers.

Article 129. A decree issued on the proposal of the employment minister after taking advice from the employment consultative commission, may govern employment conditions for a particular occupation in the absence of or while awaiting the conclusion of a collective agreement, using existing collective agreements as inspiration.

Section 4. Collective agreements for establishments

Article 130. Agreements regarding one or more specific establishments may be concluded between an employer or group of employers on the one hand and representatives of the trades unions for staff at the establishment or establishments concerned.

Establishment agreements are intended to adapt the provisions of national, interprovincial or local agreements to particular conditions at the establishment or establishments concerned, especially regarding terms for calculating and awarding performance-related pay, individual and collective production bonuses and productivity bonuses.

They may include new provisions and clauses that are more favourable to workers.

If there are no national, inter-provincial, provincial or local collective agreements, establishment agreements may relate only to definition of occupational categories, setting wages and supplements to wages.

The provisions of articles 121, 122 and 123 above apply to agreements described in this article.

Section 5. Collective agreements in public services and establishments

Article 131. As specified in this chapter, collective agreements may be concluded among public services, businesses or establishments, and the staff not governed by a particular statute.

Article 132. Unless otherwise specified, the national collective agreement, concluded in accordance with the provisions of article 119, applies to public services, businesses and establishments the nature of whose activity means they fall within its scope of application.

Section 6. Executing the collective agreement

Article 133. Collective agreements and establishment collective agreements are binding on the parties to them.

Article 134. Unions bound by a collective agreement or an establishment collective agreement may go to court to defend their interests if these agreements are breached.

This option is open to the members of these occupational groups.

Article 135. Occupational groups linked by a collective agreement or establishment collective agreement may take action in any court arising from a breach of these agreements.

Members concerned may join with the action taken or oppose it.

Chapter VIII. Securities

Article 136. Any company head who requires a worker to provide a cash or documentary security must give a receipt for it, and itemize it on the employer's register specified in article 257 of this Code.

Article 137. Any security must be accepted for deposit within one month of its receipt by the employer. Note is made on the employer's register of the security and its deposit, supported by a deposit certificate available for the works inspector to see.

The employment minister will determine by order the procedures for this deposit, as well as the list of public funds or banks authorised to receive it.

The depositor indicated provides a separate passbook from that the worker may already have, or obtain later.

Article 138. Withdrawal of some or all the deposit may only be made on joint signatures of the employer and the worker, or with the signature of one of them following a decision from the competent court.

Article 139. The passbook or deposit used for the worker's security entails a lien on the part of third parties over the amounts deposited to the benefit of the employer.

Any disregarded attachment of the depositor is null and void.

HEADING III. GENERAL WORKING CONDITIONS

Chapter 1. Wages

Section 1. Establishing wages

Article 140. Basic wages under equal employment, qualification and performance conditions are equal for all workers, whatever their origin, opinion, sex and age.

Article 141. Any employment contract that requires the work to change their place of residence entails an obligation on the employer to provide adequate accommodation according to their family situation, or to pay an equivalent sum in compensation for appropriate housing.

Article 142. If the worker cannot provide regular, adequate basic nutritional needs for him/herself and family from his/her own resources, the employer must ensure this under the conditions set by the decrees specified in article 144 below.

Article 143. Relocation allowance will be paid to any worker whose occupation requires occasional or temporary relocation, no matter what his/her origin or place of recruitment. The rate of this payment is set by collective agreement, or failing that, by order of the employment minister.

Article 144. Decrees made at the proposal of the employment minister determine:

- - conditions to be observed for the accommodation specified in article 141 above, especially as regards health and hygiene;
- - locations and categories of workers for whom a daily food ration is compulsory, the maximum value for repayment of this, the type and weight of the basic foodstuffs concerned, conditions of supply, especially as regards cultivation of the land reserved for the purpose;
- - situations in which supplies other than those specified in articles 141 and 142 are allowed, the procedures for granting them and the repayment rates.

Where other collective agreements do not exist, or are silent on these points, these decrees also determine:

- - minimum wages for each occupational category;

- - minimum rates for overtime, night-work or work on non-working days;
- - bonuses for long-service and attendance.

Article 145. Unless agreed otherwise by the parties, and except for cases covered by regulations, no wages are owed in the event of absence.

When the collective agreement for the area of activity does not include payment by task or item, the employer is forbidden from applying this method of payment.

However when the company's economic and financial position, duly recognised by an external audit attended by a legal expert requires this, task or piecework wages may be determined, supervised by the competent works inspector, according to an agreement freely concluded between the contracting parties. This situation may not persist for more than six months, renewable once.

Article 146. Task or piecework payment must be calculated so that it provides workers with an average capability and working normally with a wage at least equal to that of a worker paid by the hour and performing similar work.

Article 147. Minimum wage rates and terms for payment by task or piecework must be displayed in the offices of the employers and in the workplace.

Article 148. When payment for services is formed partly or entirely of commission, bonuses, other benefits or payments representing these benefits, where these do not form expenses payments, it is taken into account when calculating allowances or payments of any other kind owed to workers by the employer, as well as compensation for damages.

The sum to be taken into account under this heading is the monthly average of all the items listed in the previous paragraph. This calculation is made over a rolling period, from the day the worker takes up the post, within the limit of twelve months prior to starting a period of holiday or terminating employment.

Section 2. Guaranteed minimum industrial wage (SMIG)

Article 149. The guaranteed minimum industrial wage is the absolute minimum wage permitted to be paid to a worker. It is set by law.

Article 150. Collective employment agreements may not include clauses involving indexation of the guaranteed minimum industrial wage or references to this, in order to set or revise wages specified in these agreements.

Section 3. Procedures for paying wages

Article 151. Wages must be paid in legal tender, notwithstanding any stipulation otherwise.

Pay is distributed during working hours at the workplace, or at the employer's offices when these are close to the workplace. It may not be distributed on days when the worker has a right to a rest day, nor at a drinking establishment or retail store, except for those normally working at these places.

Article 152. Wages must be paid at regular intervals, not exceeding fifteen days for workers paid by the hour or the day, and monthly for workers paid by the month, except for occupations where normal practice is different, determined by order of the employment minister.

However daily workers paid by the hour or the day, involved in short-term contracts not exceeding one week, will be paid daily or at the end of the week.

Monthly payments must be made no later than five days after the end of the working month for which the wage is owed.

Payment dates for any piecework, or performance-related pay lasting longer than a fortnight may be determined on a case-by-case basis, but the worker must receive instalments of at least 90 per cent of their wage every fortnight, and be paid in full within a fortnight of delivery of the work concerned.

Commission gained during a quarterly period must be paid within three months of the end of the quarter concerned.

If a contract is terminated or broken, wages and payments owed must be paid as soon as the employment ends.

In the event of any dispute, however, the employer may obtain a temporary freeze from a presiding judge of some or all of the attachable fraction of the sums owed.

Workers who are absent on payday may collect their wages from the cashdesk during normal opening hours, in accordance with the company's internal regulations.

Article 153. Payment of wages must be recorded on a slip issued or certified by the employer or its representative on the one hand, and by the worker on the other, or by two witnesses if the worker is illiterate. These documents are kept by the employer under the same conditions as other accounts and must be presented on demand to the works inspector or the court.

Employers must give the worker an individual payslip when wages are issued. The employer notes the wages paid in a register held for the purpose, known as the *paybook or register*.

The format of the individual payslip is determined by order of the employment minister.

A note stating *In final settlement* or any equivalent statement signed by the worker, even after cancellation of his/her employment contract whereby the worker waives some or all of the rights to which the employment contract entitles him/her is not binding on the worker concerned.

Acceptance by the worker of a payslip without dispute or reservation does not constitute the waiver by him/her of payment of some or all of the wages, payments and additional sums owed as wages under any legal or contractual provisions.

Article 154. If there is any dispute over payment of wages, non-payment will be assumed without possibility of rebuttal, except in a case of force majeure if the employer cannot produce the paybook duly witnessed, or the double witnessed payslip for the disputed wages payment.

Section 4. Privileges and guarantees of wage claims

Article 155. Sums owed to contractors for all works of a public nature may not be subject to attachment or challenge to the detriment of the workers to whom wages are owed.

Sums owed to workers for all types of remuneration take priority for payment over those owed to suppliers.

Article 156. A wage is earned or owed when the employee can demand payment in accordance with laws and regulations in force.

The wages privilege extends to all the items in the debtor employer's assets.

Article 157. In the event of receivership or liquidation, wages owed under the terms of the above articles are given priority, notwithstanding any contrary provisions.

Article 158. The worker housed by the employer before receivership or liquidation continues to be housed until the date his/her final wage claim is settled or to the date the transportation provided leaves, when he/she has a journey provided.

Section 5. Procedures for claims for payment of wages

Article 159. Claims by workers for payment of wages, compensation, bonuses, commissions and other benefits, or compensation for such benefits shall lapse five years from the date on which the rights fall due.

This period allowed may be broken by a verbal or written claim issued by the worker, and duly recorded with the works inspectorate or competent court.

The work may require the employer challenging the requirement to swear an oath. Refusal by the employer to swear on oath that payment has been made constitutes proof of non-payment.

Article 160. The employer may not restrict the freedom of the worker in any way to spend of his/her wages.

Article 161. Apart from compulsory deductions or repayments under the terms of regulatory provisions specified by collective agreements and contracts, no withholding may be applied to stipends or wages except for attachments or voluntary transfer agreed before a local magistrate in the place of residence or failing that before the works inspector to settle debts the employer claims from the worker.

However, if there is no magistrate or works inspector available, there may be mutual, written consent given before the head of the nearest administrative unit.

Payment of wages on account are not considered to be debts, but as payments establishing the amount of the remuneration.

The offset between wages and sums owed by the worker can only be made by a court decision.

In calculating the amount to be withheld, not only wages themselves, but all additional wage payments must be considered, excepting however compensation considered legally unattachable, sums allocated as repayment of expenses incurred by the worker, and allowances and payments for family costs.

The procedures for application of this article, as regards attachments, are defined in article 729 onwards of the Civil Procedure Code.

Article 162. The provisions of an agreement or contract authorising any other deductions are null and void.

Any sums withheld from the worker in contravention of the above provisions incur interest on his/her behalf at the legal rate from the date on which they should have been paid, and may be claimed up to the end of the limitations period, suspended for the duration of the contract.

Section 6. Staff stores

Article 163. A staff store is any organisation operated by the company which sells or transfers goods directly to the company's workers for their everyday personal needs.

Staff stores are permitted under three conditions:

- a) workers are not obliged to shop there;
- b) goods are sold there preferably at cost and for cash;
- c) management is wholly independent, under the responsibility of the company, and at least once a quarter reports to the staff representatives and may at any time be checked by the standing economic and social consultative committee.

The price of goods on sale must be clearly displayed.

Sale of alcohol and spirits is forbidden in the workplaces.

Other than a staff store, no other form of business may be operated in the company. The staff store may however be constituted as a workers' cooperative.

Article 164. The opening of a staff store under the terms specified in article 163 above is subject to permission from the employment minister.

In this case, the employer is required to provide for the setting-up of the staff store, and to assist its operation.

When there is no compulsory requirement for a daily food ration under the terms of article 142 above, and there is no retail store near the workplace, the employment minister, after consulting the works inspector, may require a staff store selling basic foodstuffs to be created.

The operation and accounts of the staff store are monitored by the works inspector, who will apply the penalties specified in this Code if abuses are detected.

The minister for employment may order the company's staff store or stores to be closed, temporarily or finally, following a report by the works inspector.

Chapter II. Working hours

Article 165. In all public or private establishments, including educational or charitable organisations, the legal working hours shall not exceed forty hours a week.

Hours worked after the legal working limit shall be considered overtime, and additional wages must be paid for them.

In all farming and similar businesses, working hours are based on 2400 hours a year. Within this limit, the working time will be set by decree following a proposal by the employment minister. This decree will also determine procedures for payment of overtime.

Exemptions may however be agreed by decree following a proposal from the employment minister.

These decrees will determine procedures for application of working time limits for each branch of activity and occupational category, as well as the maximum overtime hours that may be worked in the event of urgent or exceptional work, and for seasonal work.

Chapter III. Night work

Article 166. Work carried out between 9pm and 6am is considered to be night work.

No more than eight consecutive hours may be worked at night.

Article 167. Women of any age, and children under 18 years may not be employed at night in any public or private industrial establishment, or in a branch of any of these establishments, except for establishments where the only employees are members of the same family.

Article 168. The previous article does not apply:

- a) in a situation of force majeure when an unforeseeable break in operation occurs in a company, that is not a regular event;
- b) if the work involves raw materials or materials being processed that could quickly deteriorate, when the work is needed to prevent the inevitable loss of such materials otherwise;
- c) for children over the age of 16 employed in the following industries on work which has by its nature to be continued day and night, namely:
 - iron and steel works, for jobs using reverberatory or regeneration ovens, and galvanising sheet metal and wire, except for stripping workshops;
 - glassworks;
 - paper mills;
 - sugar plants where raw sugar is processed;
 - gold ore processing.
- d) for women in managerial positions with responsibility, who do not normally carry out manual work.

Article 169. Night work in industry for women and children will be governed by decree issued on a proposal from the employment minister, in accordance with international standards.

For women and children, at least twelve consecutive hours of a daytime rest period must be allowed.

Chapter IV. Female and child labour

Article 170. Women have the same rights and obligation under employment law, subject to particular provisions in this law.

No employer may dismiss or take any other reprisal against a female employee because of pregnancy or childbirth.

Dismissal of a pregnant woman whose condition has been confirmed by medical examination, or whose pregnancy is obvious, or any dismissal within fifteen months of childbirth, is subject to prior authorisation by the works inspector.

Article 171. A pregnant woman has the right to suspend her employment contract for fourteen consecutive weeks by reason of her pregnancy, for six weeks before and eight weeks after the estimated date of delivery.

During this period it is forbidden for an employer to use the services of a pregnant woman in full knowledge of her condition, without an explicit written agreement between the parties, at the employee's initiative, with a copy given to the competent works inspector.

If childbirth takes place after the specified date, the prenatal leave will be extended until the date of delivery, without reducing the postnatal leave.

This break in service does not affect the period of service in the job, and will not be treated as a reason to terminate the contract, and also may be extended by three weeks in the event of illness duly reported and as a result of the pregnancy or childbirth.

In the event of multiple births, the period during which the employee may suspend the employment contract following childbirth is increased by two weeks. During this period, the employer may not discharge her.

Article 172. During her pregnancy, and for fifteen months after childbirth, a woman normally employed in a job considered hazardous to health, or who can produce a medical certificate confirming that a change in the nature of her job is needed in the interests of her own health or that of her child, has the right to be transferred, with no reduction in wages, to a job that is not injurious to her condition.

Article 173. During maternity leave, the woman has the right to free medical care and to the full wages she was receiving at the time her job was suspended, the benefits to be paid by the national social security fund. She retains the right to benefits in kind.

Article 174. For fifteen months from the date she resumes work, the mother has the right to rest periods for breast-feeding. The total period of these breaks may not exceed two hours per working day.

These rests periods form part of her working hours and must be paid as such.

During this period the mother may leave her job without notice, and without having to pay any compensation for breaking her contract.

Article 175. When a woman asks for annual leave directly after her postnatal leave, the employer is required to agree to her request in accordance with the relevant provisions in force.

Article 176. Decrees issued on a joint proposal from the employment minister and the public health minister determine the nature of work prohibited to women and to pregnant women.

Article 177. Children may not be employed in any business before the age of 16, unless otherwise specified by a decree taken on the joint proposal of the employment minister, the public health minister and the national education minister, taking into account the circumstances, and the tasks they may be required to do.

A decree taken on the joint proposal of the employment minister and the public health minister determines the nature of the work and categories of business forbidden to young people, and the age limit to which this prohibition applies.

Article 178. The works inspector may require a medical examination of women, children and adolescents up to the age of 18, and for those presenting a greater risk to health up to the age of 21 at least, by an approved doctor to ensure that the work they are given does not exceed their strength. This requirement must be fulfilled by right at the request of the parties involved.

Women or children may not be kept in a job acknowledged to be beyond their strength and must be reassigned to a suitable position. If this is not possible, the contract must be cancelled, with compensation paid for breaking the terms.

Chapter V. Employment of people with disabilities

Article 179. It is strictly forbidden to discriminate during the period of an employment contract or on its completion, against any person in employment on the basis of physical or mental disability, assuming they have equivalent occupational qualifications.

Article 180. An employer of people with disabilities must as far as possible create easy access in their premises for their workers, and a suitable work environment, so that a person with disabilities can perform their work as easily as someone without disability, as far as possible, and given the disability of the worker.

Article 181. Business owners must keep a quota of jobs available for people with disabilities having the occupational qualifications required.

The level of this quota is set at one fortieth of the total workforce of the company or the establishment.

Any employer with 40 workers or more must make an annual declaration to the works inspector of the number of employees, the number of employees with disabilities and the particular disability of each one of these.

Article 182. In the event of economic redundancies, the employer will make every possible effort to retain the worker with disabilities.

Chapter VI. Weekly rest days and public holidays

Article 183. Weekly rest periods are mandatory. They must be at least 24 consecutive hours per week. In principle they are fixed on a Sunday.

A decree taken after consulting the employment commission, following a proposal by the employment minister, determines the procedures for application of this article, according to the needs of the occupation or sector of activity.

Article 184. A decree following a proposal by the employment minister sets the list of public holidays and the procedures for payment or restitution of the hours worked on those days.

Chapter VII. Annual leave

Article 185. Subject to more favourable contractual terms, the worker obtains the right to holidays from the employer, at a rate of two working days per month of actual service. Workers under 18 have the right to two and half working days.

Article 186. In determining holiday entitlement, working days are considered to be every day other than Sundays and those which are public holidays and days off according to legislation, regulations, collective agreements and normal practice.

When calculating periods of leave, four weeks or twenty-four days' work are treated as being effectively one month's work.

The holiday period is increased according to the length of service in the company. It is set by regulations in force or the provisions of collective agreements.

Mothers of families have the right to one extra day's leave a year per dependent child under 16.

When calculating the length of holiday entitlement, absences for workplace accidents or industrial illness, rest periods for women over childbirth as specified in article 171 above and up to six months' absence for illness duly reported by a doctor are not deducted.

Services performed without equivalent leave for the same employer, whatever the place of employment, will also be deducted.

Exceptional permission for absence up to a limit of ten days may not be deducted from the holiday entitlement earned where this has been granted to the worker for family occasions. Conversely, special leave granted in addition to public holidays may be deducted if not made up at another time.

Article 187. Holiday entitlement is gained after one year's service in the company.

If the contract is broken, or expires before the worker has gained holiday entitlement, compensation calculated on the basis of the rights obtained according to article 185 must be given instead of the leave.

Apart from this situation, any agreement including compensation payable in lieu of holiday entitlement is null and void.

Article 188. The employer must pay the worker an allowance throughout their holiday period at least equal to the average total of wages, compensation, bonuses and commission which the worker may earn during the twelve months prior to the start of the holiday leave.

Performance or attendance-related bonuses, compensation for occupational risk or unsocial working, and compensation for expenses other than that relating to the accommodation requirement may be excluded from the holiday allowance.

The holiday allowance must be paid in full to the worker before the holiday leave begins.

For workers recruited outside the place of employment, the holiday period is increased by the travel time required to reach the place of work specified in the contract, and for the return journey.

The request for paid leave is prescribed within two years from the date when the maximum period of service entitles the worker to paid leave, except in a case of force majeure, or where the employer is at fault.

The employer must enter in the register, approved by the works inspector:

- a) the date his/her employees enter service, and the duration of annual leave to which each of them is entitled;
- b) the dates on which each person takes their annual paid leave;
- c) the payment each person receives for the period of their annual paid leave.

Chapter VIII. Travel and transport

Article 189. When the employment contract requires the worker to travel from the place they were recruited to the place of work, travel costs for themselves, their spouse and dependent minors, as well as costs of transporting luggage, are met by the employer:

- 1) from the place of recruitment to the place of work;
- 2) from the place of work to the place of recruitment and back for normal holiday leave. The return trip to the place of employment is only paid if the contract has not expired before the date the holiday leave ends, and if on that date the worker is ready to resume work;
- 3) from the place of work to the place of recruitment;
 - - if a fixed-term contract expires;
 - - if the contract is broken, or for a trial period;
 - - if a contract is broken because of force majeure;
 - - if a contract is cancelled following an accident or illness at work rendering the worker incapable of fulfilling the functions for which they have been employed;
 - - in the event of the worker's death;
 - - if the contract is cancelled by the employer or the worker.

Collective agreements will determine travel conditions with regard to paid leave specified in article 185 above.

However, collective agreements or employment contracts may include a minimum period of residence, not longer than six months, after which the employer will no longer be liable for the costs of the family's travel.

Article 190. Except situations where the contract is broken, as stated in article 189 above, and subject to proceedings for recourse available under common law, the employer must ensure the return of the worker and their family to the place of recruitment.

Article 191. Unless otherwise specified, the employer chooses the travel and transport by normal routes and means.

Article 192. Unless otherwise agreed, the worker using a slower means of transport or route may not consequently claim longer travel times than those which normal means and routes would require.

Article 193. The worker who has terminated their service may claim holiday, travel and transport entitlements from the employer within a minimum period of one year from the day they cease to work for the said employer. However, the employer will only pay travel costs if the worker actually travels.

The worker who has ended their work and is waiting for the means of transport specified by the employer continues to receive their wages under the same conditions as if they were still in service.

Article 194. If the displaced worker or a member of their family whose travel is the responsibility of the employer should die, the employer is responsible for repatriating the body of the deceased person.

Chapter IX. Penalties

Article 195. A fine of 30,000 to 300,000 F, increased to between 60,000 and 600,000F for a repeat offence, and/or imprisonment from two to six months will be incurred:

- a) by anyone who has required or obtained from the worker any kind of payment, as an intermediary in payment of wages, compensations, allowances and costs of any kind;
- b) by those who breach the provisions of articles 140 to 153, 160 to 172, 177, 179, 183 to 188 of this Code.

HEADING IV. HEALTH AND SAFETY AT WORK

Chapter I. General provisions

Article 196. This heading sets the basic rules for health and safety in the workplace for the most effective protection possible of the health of the workers.

Article 197. Establishments subject to the provisions relating to health and safety at work include farming, forestry, industrial, commercial or logistics businesses, and specifically factories, manufacturers, plants, worksites, workshops, laboratories, kitchens, cellars and wine stores, shops, stores, offices, places of entertainment, family workshops as well as their outbuildings of any kind, lay or religious, even when these are professional establishments for teaching or charity work.

Similar establishments are also subject to the same provisions, associated with civil and military (land, sea and air) authorities, public and ministerial authorities, liberal professions, unions, civil societies or organisations, of any kind.

They apply to all employees, apprentices, trainees and family members.

Application of these provisions does not release the companies and establishments listed above from compliance with other provisions relating to health and safety at work, regulated by particular legislation issued by the employment minister after advice from the consultative technical committee for health and safety at work.

Section 1. Obligations of employers

Article 198. The employer is directly responsible for applying prevention measures for health and safety at work intended to protect the workers it employs.

With the aim of providing and maintaining a safe and healthy working environment, according to the national policy on industrial health, the employer must define, implement and regularly review, in consultation with the company's staff representatives, a workplace risk prevention programme.

When workers from several employers are employed at the same time in the same workplace, the latter must collaborate to ensure they are all as effectively protected as possible. Each employer is responsible for any damage caused as a result of their own activities.

Article 199. Any employer using manufacturing processes that entail particular risks, or that could cause industrial illness, must declare this before the work begins, by registered mail to the competent works inspectorate.

This declaration must describe the nature of the risks involved and the steps taken to prevent them and protect workers from the harm that may result from their activities.

In every case the works inspector pursues an investigation to ensure that all necessary provisions have been taken.

Article 200. The employer is required to provide workers with well-maintained premises, installations and equipment suitable for the work they carry out, to ensure that these workers are properly protected from workplace accidents and any injury to their health.

The employer is also required to provide workers with personal and communal protection equipment, that is recognised as effective and appropriate to their work, and keep this regularly maintained and replaced.

Article 201. When a new worker is hired, or a new work process introduced, the employer must give the workers full information regarding the hazards of their respective occupations and the steps to take in order to avoid them, including the use of protection systems.

The worker must be given appropriate training in health and safety at work in order to instruct him/her on the risks inherent in the work and the means to prevent them.

Continuing information is also given to workers, in collaboration with the competent departments of the employment and social security ministries, the most representative of the employers' associations or trades unions and any organisation involved in issues of health and safety at work where appropriate.

Article 202. Unless prevented by force majeure, the employer must report any workplace accident or industrial illness contracted within the company to the social security organisation, in accordance with the legislation in force. A copy of this report is sent to the workplace inspectorate within the deadline specified in this article.

The workplace inspector must open an enquiry according to the nature or severity of the accident or the illness.

Section 2. Obligations of workers

Article 203. All workers are required to comply strictly with the legislation and regulations on health and safety at work, as well as instructions in internal regulations, particularly regarding:

- a) execution of the work;
- b) use of equipment, machinery and installations they use, and their maintenance in good condition;
- c) use and maintenance of the personal protection equipment they are given.

Article 204. Workers are strictly forbidden:

- a) from preventing or hindering application of the health and safety at work procedures required for the workplaces;
- b) from modifying, removing, destroying or taking away notices or instructions provided at workplaces and the alarm systems installed at workplaces;
- c) causing to operate, use or engage the safety equipment, devices and systems, when there is no immediate danger.

Article 205. All workers must cooperate with the employer in applying prevention measures against risk in the workplace.

Among other things, the worker must notify any accident or injury to health occurring during his/her work, or in the company premises.

Article 206. The worker has the right to withdraw and notify his/her line manager immediately of any situation that could reasonably lead to the fear of imminent or serious danger to life of health.

Section 3. Suitability for use and medical examination

Article 207. No worker may be accepted for a job before undergoing a medical examination for their suitability for employment.

The pre-employment medical inspection is however compulsory when it applies to:

- a) work involving serious risk, either because of the nature of the products and objects handled or used, or because of the conditions in which the work is carried out;
- b) women, and children under 18 years old;
- c) physical or mental disability.

All workers must undergo regular health checks in accordance with the regulations in force.

Article 208. Workers whose activity comprises serious risk must undergo a medical examination, which the employer is responsible for arranging, within a suitable period after leaving their job.

Article 209. Workers whose activities need special abilities that could jeopardise their health and life and that of other workers or anyone else, must undergo appropriate medical examinations regularly, together with additional examinations as required.

Article 210. The employer is responsible for arranging these examinations. They are compulsory for the worker.

Chapter II. Health and safety conditions

Article 211. Establishments and premises described in article 197 above must be kept clean at all times, in the sanitary and hygienic conditions needed for the health of the workers.

Article 212. Establishments and premises described in article 197 above must be organised to ensure safety in the workplace.

Machinery, mechanisms, transmission equipment, tools and plant must be designed, manufactured, installed and maintained according to safety regulations.

Article 213. Decrees taken following of the employment minister, after advice from the consultative technical committee for health and safety at work will determine the general sanitary and safety measures for the workplace.

Chapter III. Health and safety at work committees

Section 1. Scope of application

Article 214. Health and safety at work committees are created in establishments described in article 197 of this code, employing at least 50 people.

A health and safety at work committee does not have to be set up unless there have been at least 50 employees in the establishment for twelve consecutive months or during the previous three years.

If there is no health and safety at work committee in establishments of 50 employees and more, and in those with fewer than 50 employees, staff representatives are empowered with the functions of the members of health and safety at work committees.

Article 215. The works inspector may impose the creation of a health and safety at work committee in establishments with a smaller workforce when this is necessary, particularly because of the nature of the works, the arrangement or equipment in the premises. An appeal against this decision may be made to a superior authority.

Article 216. Establishments with fewer than 50 employees may group together to form a health and safety at work committee, within one occupation or across different occupations.

Section 2. Missions of committees

Article 217. Health and safety at work committees have the following missions:

- - to contribute to protection of health and safety of workers in the establishment, and those provided by an external company, including daily workers, as well as to improve their working conditions;
- - to ensure that legislative and regulatory requirements applicable to these issues;
- - to analyse professional risks, as well as working conditions;
- - to perform regular checks and investigations in the event of accidents in the work place, or industrial or occupational-related diseases;
- - to help to promote occupational risk prevention in the establishment and to encourage any initiative considered helpful in this.

The committee is consulted before any significant development decision, to modify health and safety conditions or working conditions and in particular, before any significant changes to workstations resulting from modifications to tooling, change of product or workflow.

Article 218. The committee gives an opinion on any issue for which it is competent, when informed by the head of the business or establishment, staff representatives or staff members on the committee.

Section 3. Composition and operation

Article 219. Provisions for composition and operation of health and safety at work committees will be determined by decree of the employment minister after advice from the consultative technical committee for health and safety at work.

Chapter IV. Special measures for health and safety at work in particular occupations

Article 220. Special decrees issued after advice from the consultative technical committee for health and safety at work determine particular workplace health rules for particular occupations, especially:

- - mining operations;
- - oil facilities;
- - forestry and agricultural operations;
- - river and sea transport;
- - road and rail transport;
- - air transport;
- - building and civil engineering.

Businesses belonging to the occupations listed above, and any others for which separate regulations have to be published, are liable to apply the provisions of this heading.

Chapter V. Occupational medicine

Article 221. All companies or establishments must provide a workplace health service. This health service must provide, among other things, first aid and emergency assistance for workers who fall victim to accidents or illnesses in the workplace.

Decrees taken following proposals from the employment minister and advice from the consultative technical committee determine the procedures for implementing this requirement, until a general sickness insurance scheme is established, in particular:

- 1) conditions under which medical examinations for new staff are carried out, as well as regular examinations, repeat consultations, supplementary health checks, composition and maintenance of medical files and records;

- 2) categories of businesses which because of their workforce, isolation or local conditions, will have to have a medical and health service;
- 3) medical resources in staff, premises or equipment which these companies must provide for their workers, and the care, medication and benefits they must provide free of charge;
- 4) conditions under which workers will have the right to free medical care and prescriptions;
- 5) conditions under which some companies may use the services of a health centre or dispensary run by the national health service or a private medical establishment;
- 6) procedures for set-up and operation of the medical service of one or more companies;
- 7) conditions under which the occupational doctor or doctor providing this function monitors the overall health of the company.

Article 222. When the medical services described in the article above, or the sickness insurance companies are established in a region, in a particular field of activity or within a group of companies, a decree issued on a proposal from the employment minister after advice from the consultative technical committee for health and safety at work, makes membership of such institutions mandatory.

Article 223. Removal of sick and injured people to the nearest medical facility is the responsibility of the employer.

If the employer does not have the necessary resources for this, it must immediately contact the head of the nearest administrative district.

The provisions of the social security code govern removals of workers for health reasons, whatever their destination.

Chapter VI. Control measures and penalties

Section 1. Control measures

Article 224. Works inspectors, medical works inspectors and social security agency control officers are responsible for applying the general health and safety at work measures.

Article 225. The works inspectors produce a report on any breaches of the provisions of the general health and safety at work provisions.

Before producing this report however, the employer must be warned to comply with the provisions that have been contravened.

This is in the form of a written warning entered in the employer's register, or where there is no register, sent by registered post or other demonstrable means.

The dated and signed warning specifies the breach noted, and sets the deadline by which the said breach must have been removed.

This period, which may not be shorter than the minimum set by decree of the employment minister after advice from the consultative technical committee for health and safety at work, is determined by the works inspector, given the circumstances and significance of the work needed in order to eliminate the breach.

Article 226. In the event of serious and imminent danger, the works inspector informs a judge in chambers so that all necessary steps can be ordered to prevent the risk, despite the warning procedure described, including temporary closure of a workshop or site, taking out of service, immobilising or seizure of equipment, machines, devices or products.

The judge may combine his/her decision with a penalty that will be paid to the public purse.

Section 2. Penalties

Article 227. Heads of establishments, managing directors or their employees who are personally to blame for breaching the terms of Heading IV of this Code are liable to a fine of between 300,000 and 500,000 F.

Article 228. In the event of an accident at work in a company where serious or repeated breaches of health and safety at work rules have been noted, the competent court must oblige the company to take all necessary steps to restore normal health and safety at work conditions, even while not detaining in custody the person or persons prosecuted under the terms of the criminal code or the labour code.

The court orders the company to present a plan for completing these measures, within a specified deadline, together with the duly supported opinion of the staff representatives and the health and safety at work committee.

After advice from the works inspector, the court approves the plan submitted, and gives the head of the company a date for its completion.

The works inspector monitors completion of the measures specified. If necessary, he/she notifies the judge in chambers, who may order the complete or partial closure of the establishment for as long as it takes to ensure the completion of these measures.

The head of the company who has not submitted or completed the plan that the court has approved, according to the second paragraph above, is punished with a fine of 200,000 to 10,000,000F.

Article 229. For a repeated offence, the perpetrators of breaches to health and safety at work provisions are liable to imprisonment of between two months and one year, and a fine of 400,000 to 15,000,000 F.

However, no new breach may be observed for the same reasons during the period that may have been granted according to the terms of the previous article.

In the event of a repetition, the correctional court may order partial or total, temporary or final closure of the establishment.

HEADING V. AGENCIES AND RESOURCES FOR ENFORCEMENT

Chapter I. Administrative bodies Section 1. Employment minister

Article 230. The job of the Employment ministry is to implement legislation and regulations, and to apply the general policy of the government as regards work, employment and social security. It is also responsible for all issues relating to the International Labour Organisation and other international labour agencies.

The responsibilities, organisation and operation of its departments and associated bodies are determined by decree issued on the proposal of the employment minister.

Section 2. Work inspection

Article 231. Works inspectors:

- implement and monitor legislative, regulatory and contractual provisions applied in terms of work, employment, social security, health and safety at work, and occupational medicine;
- - advise employers, workers and public authorities with their counsel and recommendations;
- - provide conciliation services for workplace disputes;
- - bring to the attention of the employment minister any deficiencies or abuses not specifically covered by existing legal provisions.

The employment minister may give them general or particular powers to exercise control as appropriate over specialist agencies relating to work, employment and safety in their own territory.

Article 232. The works inspectors may not have any interest, direct or indirect, in the businesses they are responsible for supervising.

Article 233. In their own area, works inspectors take the initiative as regards their tours of inspection and investigations according to the legislation in force.

Article 234. Before they take up their posts, works inspectors take the following oath before the Court of appeal: *I swear that I will faithfully and honestly perform my duties, and even after leaving my position, will not reveal any manufacturing secrets or generally any operational processes of which I may become aware in the exercise of my job.*

Any breach of this oath is punished in accordance with the legislation in force.

Works inspectors must treat as confidential any reports or observations whereby they have learned of failures in the installation or breaches of the legislative and regulatory provisions.

Article 235. Works inspectors report any breaches to the provisions of the legislation and regulations governing work, employment, health and safety at work and social security, in a statement used as evidence until challenged.

They are thus authorised to:

- - set the total of fines payable to the court;
- - have any offender summoned before the court;
- - apply for legal remedies and have the right to speak at a hearing in the competent court.

Procedures for application of this article will be the subject of a decree issued on the joint proposal of the employment minister and the finance minister.

Article 236. The works inspector must be notified of the legal proceedings for reports. During the proceedings, written or oral statements may be taken.

Article 237. Works inspectors, on presentation of their business card, have the authority:

- - to enter establishments freely, and without prior notice, at any time of the day or night, where people with legal protection regarding their work and social security are working;
- - to enter any premises during the day which they have reason to believe are subject to supervision by the inspectorate.

At the start of an inspection, they must warn the head of the business or his/her representative, unless the works inspector concerned believes that this notification could prejudice the effectiveness of the inspection.

- - if applicable, require advice and consultation with doctors and engineers, especially as regards health and safety at work provisions. Doctors and engineers are bound to professional confidentiality, under the same terms and with the same sanctions as the works inspectors;
- - they are accompanied in their inspections by representatives of the staff of the company concerned, as well as the doctors and engineers described in the previous paragraph;
- - they perform all inspections, checks or investigations considered necessary to ensure that the legal provisions for work and social security are actually being respected, in particular:
 - 1) to question the employer or staff of the company with or without a witness present, to check their identity, collect information about anyone else whose evidence may appear to be necessary;
 - 2) to request any record or document which this law and its implementation orders require to be kept;
 - 3) to take samples of any substances used or handled, for the purpose of analysis, in the presence of the head of the company or their representative, as long as the latter have been informed of the materials or substances which have been sampled and removed for this purpose;
 - 4) require display of notices that this Code specifies should be posted.

Article 238. In carrying out their mission, the works inspectors may require help from the law enforcement agencies.

Article 239. Works supervisors are authorised to report offences in written reports from which the works inspector may produce statements in the form specified in article 235 above.

Article 240. Works supervisors, labour office heads, apply all the powers specified in articles 224 to 226 and 235 to 238 of this Code.

Article 241. Work supervisors take the same oath as works inspectors, under the same conditions.

Article 242. Works medical inspectors may operate alongside works inspectors. Their powers and terms of appointment and pay are determined by decree issued on a joint proposal of the public health minister and the employment minister.

Article 243. The provisions of articles 235 and 237 above do not depart from common law regulations regarding criminal investigation officers reporting and prosecution of offences, who must then always inform the competent works inspector.

Article 244. Works inspectors and supervisors are public officials, whose status and conditions of service ensure stability in their employment and make them independent of any change of government and undue influence.

Article 245. Works inspectors always have the necessary staff and equipment resources needed for them to perform their job. In particular they also have vehicles and the means to maintain them.

Works inspectors and supervisors benefit from free accommodation and furnishings.

Article 246. Works inspectors and supervisors will carry a business card establishing their identity and confirming their role.

The format of this business card will be determined by a decree from the employment minister.

Article 247. The works inspector must publish an annual report, within not more than one month, covering the following subjects:

- a) the laws and regulations relating to the works inspectorate's jurisdiction;

- b) works inspectorate staff;
- c) statistics of the establishments under the control of the works inspectorate, and the number of workers in these establishments;
- d) statistics of inspections;
- e) statistics of offences committed and sanctions imposed;
- f) statistics of workplace accidents;
- g) statistics of occupational illnesses and all other relevant points, as long as these subjects and points are the responsibility of the works inspectorate.

Article 248. Provisions of the Penal code which specify and punish acts of resistance, outrages and violence against criminal investigation officers apply to those guilty of the same offences against works inspectors and supervisors.

Article 249. Those guilty of breaches according to the provisions of article 232 above will be liable to a fine of 100,000 to 500,000 F, and punished with imprisonment of three (3) to eighteen (18) months.

For a repeat offence, the fine is increased to 500,000F to 1,000,000F and the term of imprisonment from six (6) to thirty-six (36) months.

Chapter II. Consultative bodies

Article 250. The employment ministry sets up the following consultative bodies:

- - a consultative technical committee on health and safety at work;
- - a consultative commission on employment;
- - a national commission to consider wages.

Section 1. The consultative technical committee on health and safety at work

Article 251. The consultative technical committee on health and safety at work is responsible for considering issues relating to occupational health, safety and medicine.

A decree from the minister for employment sets the composition and governs the operation of this committee, which must include representatives of both workers and employers.

Section 2. The consultative commission on employment

Article 252. Apart from situations when it is compulsory to seek its views under the terms of this law, the job of the consultative commission on employment is:

- 1) to consider issues about work and labour, professional relationships, employment, occupational guidance, training and development, and labour movements;
- 2) to study any problem arising when negotiating agreements;
- 3) to issue advice and draw up proposals and resolutions on the regulations to be applied on these matters.

Article 253. A decree issued on a proposal from the employment minister sets the tripartite composition of the consultative commission on employment, the method for appointing its members and the frequency of its meetings.

At the request of its chairman or the majority of its members, the commission may summon for consultation anyone with recognized qualifications in economic, medical or social issues.

Section 3. National wages review commission

Article 254. The national wages review commission is responsible for:

- 1) giving its duly supported opinion to the government commission on wages, on setting the minimum guaranteed industrial wage (SMIG); it may ask the authorities involved for any surveys and documentation that may be useful in fulfilling its task;
- 2) at the request of the employment minister, give an opinion on any problem arising when negotiating agreements; it may also be consulted on any issue relating to establishing and applying a national income policy;

- 3) consider the composition of a standard budget used to determine the SMIG;
- 4) monitor changes to the cost of living together with the national department for statistics and economic studies.

Article 255. The composition of the national wages review commission is determined by decree issued at a proposal from the employment minister.

The national wages review commission meets at least once every three years on the invitation of its chairman or at the request of most of its members.

The employment minister is the chairman.

Chapter III. Control resources

Article 256. Anyone proposing to start a business of any kind must first declare this intention to the works inspectorate and deliver a business plan with the steps recommended for protecting workers.

The format of this declaration will be determined by decrees from the employment minister.

These decrees will also set the time allowed for existing companies to make this declaration and specifies production of regular reports on the labour situation and health and safety at work measures.

Article 257. The employer must keep a register up to date at all times at the place of its operations, the *employer's register*, the form of which is determined by decree from the employment minister after advice from the consultative employment commission.

The employer's register must be kept available for the works inspector, and held for two years after its last entry.

Some businesses or categories of business may be exempt from the obligation to keep a register because of their position, their small size or the type of activity they undertake, on a decision by the employment minister.

The procedures for application of this article will be determined by a decree from the employment minister.

Article 258. Each Gabonese worker is given an employment card by the works inspectorate services, the format of which is determined by decree of the employment minister.

The details shown on the employment card must be entered on the employer's register.

The employer or successive employers must sign the employment card at the time the worker is hired.

Article 259. A foreign worker's card is compulsory for all employees working in Gabon who are not Gabon nationals.

The format and means of issuing the foreign worker's card are determined by decree of the employment minister.

Article 260. The foreign worker's card is issued at the request of the employer, on presentation by the latter of a receipt for payment from the public finance office, the sum for which is set by decree issued at a proposal from the employment minister.

Chapter IV. Employment services

Article 261. Placement operations are carried out by the competent departments of the employment ministry or any other body governed by the said ministry.

Article 262. Any worker seeking a job is required to register with the department or agency specified in the previous article.

Any head of a business or establishment must notify the said competent department or agency of any vacancy in their business or establishment.

Article 263. No offer or request for work must be advertised in the media unless it has first been registered by the department or agency responsible for placement.

Article 264. It is forbidden to open or maintain a private employment office or agency, or supply employment services of any kind.

Article 265. Employment operations are free of charge. It is strictly forbidden to offer or deliver to anyone belonging to the employment service, or for the latter to accept, payment of any kind for employment services, subject to penalties as specified in article 144 of the Penal code.

Article 266. Decrees taken on a proposal of the employment minister after advice from the consultative commission on employment may determine and if necessary restrict in accordance with economic demographic and social requirements, the resources in terms of workforce for businesses in a given region, a particular sector of activity or all the businesses in a particular region.

Article 267. Without prejudice to sanctions specified in article 268 below, works inspectors may order immediate closure of any office or agency maintained or opened, despite the provisions of article 264 above.

Article 268. Those guilty of breaches according to the provisions of this chapter will be liable to a fine of 100,000 to 500,000 F, and punished with imprisonment of three to 18 months.

For a repeat offence, the fine is increased to 500,000F to 1,000,000F and the term of imprisonment from six to 36 months.

HEADING VI. PROFESSIONAL ORGANISATIONS

Chapter I. Professional associations

Section 1. Purpose and constitution of associations

Article 269. Professional associations are constituted solely to consider and protect the rights and the material and moral interests, of all their members, individually and collectively.

Article 270. People exercising the same occupation, similar trades or associated professions have the right to associate.

Any worker or employer may freely belong to the professional association of their choice.

Article 271. Acts of interference or discrimination that could affect freedom of association are forbidden.

Article 272. Founders of any professional association must deposit the statutes and list the names of those responsible for its leadership.

Four copies are deposited at the town hall or administrative authority's offices where the association is established, and a receipt issued.

The mayor or head of the administrative authority where the association is established sends a copy of the statutes deposited to the employment ministry, to the regional administrative ministry and to the competent district attorney.

The district attorney must check the compliance of these statutes and report his/her conclusions within two months to the other authorities noted above, as well as to the association concerned.

If the district attorney does not reply within two months, the statutes are considered to be compliant with the legislation and regulations in force.

Modifications made to statutes and any changes in composition of the management of the association must be reported to the same authorities and checked under the same terms.

Article 273. Members responsible for managing an association must be reputable, enjoy all their civil rights and not have been guilty of any criminal offence or suffered a penalty involving loss of civil rights. Foreign members of an association must have lived in Gabon for 18 consecutive months and to have carried out a specific occupation for this period.

Article 274. Dependent minors aged over sixteen may belong to associations unless their parents or guardian objects.

Article 275. In the event of voluntary, statutory or judicial liquidation, the association's assets are distributed according to the statutes, or where there is no provision made, according to the rules determined by the general meeting.

Section 2. Civil status of professional associations

Article 276. Professional associations benefit from a civil personality. They have the right to go to court and to purchase or acquire free of charge, fixed and moveable assets, without seeking permission.

They may go to law and exercise before the competent courts the rights reserved to the plaintiff in a civil action regarding issues causing direct or indirect injury to the collective interest of the occupation they represent.

Article 277. Professional associations may allocate part of their resources to creating homes for workers, to purchase land for cultivation or for sport, or to meet any communal needs.

Article 278. They may create, administer or subsidise occupational facilities such as insurance institutions, mutual savings banks, laboratories, experimental fields, science, agriculture or social educational facilities, courses and publications of interest to their occupation.

They may create or subsidise staff shops and cooperative societies for production or consumption.

The fixed and moveable assets required for the work of the associations are unattachable.

Article 279. Associations may conclude contracts or agreements with any other associations, companies, businesses or persons.

Article 280. Excluding associations of any kind, the most representative trade union organisations formed in accordance with this heading are allowed to discuss collective agreements and conduct negotiations with establishments.

Any contract or agreement relating to collective working conditions is concluded under the terms specified in Heading II, chapters I and VII of this Code.

Article 281. As long as they do not distribute the profits, even in the form of rebates to members, the associations may:

- 1) purchase anything required for the exercise of their occupation, for hire and lending or sharing among their members, including raw materials, tools, instruments, machines, fertilizers, seeds, plants, animals and animal feed;
- 2) provide assistance free of charge to sell products exclusively contributed by their own work or operations of their members, facilitate the sale by exhibitions, advertising, publications, grouping orders and dispatch, without doing this on their own behalf or with their own responsibility.

Article 282. Associations may be consulted about any disputes and issues relating to their particular area of expertise.

In contentious matters, the association provides advice to the parties, who may take note of it and copy it.

Section 3. Association trademarks

Article 283. By decree issued on a proposal from the employment minister, associations may register their trademarks or labels. They may then claim exclusive ownership of these. These trademarks or labels may be applied to any product or trade item to certify its origin and conditions of manufacture. They may be used by all individuals or businesses who are members of the association selling these products.

Any agreement under which use of the association's trademark by an employer is subject to employing only members of the association owning that trademark shall be null and void.

Section 4. Special funds for mutual savings and pensions

Article 284. In accordance with the provisions of current legislation, associations may form special mutual savings and supplementary pension funds among their members.

Article 285. These special savings funds are unattachable.

Article 286. Anyone who leaves an association retains the right to remain a member of the supplementary old age savings mutual funds, to the assets of which they have made contributions or payments.

Section 5. Federations and confederations of associations

Article 287. Professional associations of workers and employers have the right to form and join federations and confederations. Any union, federation or confederation has the right to join international organisations of workers and employers.

Article 288. The terms of articles 270 and 271 apply to federations and confederations, which must publish the name and registered address of the associations and federations that belong to them, under the terms of article 272 above.

Article 289. These federations and confederations enjoy all the rights granted to professional associations under sections 2, 3 and 4 of this chapter.

Section 6. Penalties

Article 290. Those guilty of breaches according to the provisions of articles 271 and 281 above will be liable to a fine of 30,000 to 300,000 F, and/or punished with imprisonment of one to six months.

For a repeat offence, the fine is increased to 60,000F to 600,000F and the term of imprisonment from two to twelve months.

Imprisonment is automatic for a second repeat offence.

Chapter II. Staff representatives, union representatives and standing economic and social consultative committees

Section 1. Staff representatives

Article 291. Staff representatives are appointed in all establishments where there are normally more than ten employees.

Sub-section 1. Election of staff representatives

Article 292. Staff representatives are elected for a three-year, renewable period.

A decree from the employment minister sets:

- - conditions required to be a voter or to be eligible;
- - the number of representatives and their distribution among the various occupations;
- - electoral procedures, which must be with a secret ballot;
- - resources available to representatives;
- - conditions under which they will be received by the employer or its representative;
- - conditions for dismissing the representative by the college of workers who elected him/her.

Article 293. Disputes relating to the electoral roll, the eligibility of staff representatives and the compliance of electoral procedures are the responsibility of the works inspector who rules as a matter of urgency on the issues.

The management may appeal a decision of the works inspector to the employment minister.

Article 294. Every delegate has a deputy elected under the same conditions, who replaces him/her in the event of an authorised absence, death, resignation, dismissal, change of occupational category, cancellation of employment contract or loss of the qualifications for eligibility.

Sub-section 2. Status of staff representatives

Article 295. A staff representative or their deputy may not be laid off by the employer or their representative without the prior authorisation of the works inspector.

Any dismissal without this permission being requested and granted is null and void.

The same procedure applies:

- - to candidates for the position of staff representative during the period between the date the lists of names are given to the head of the establishment and the date of the ballot;
- - to former staff representatives for a period of six months following the end of their term of office.

However, in the event of serious fault, the employer has two working days from the date the facts become known for certain to declare the temporary suspension of the person concerned and submit the request for permission for dismissal to the works inspector. If permission is not granted, the representative is reappointed, with payment of their wages for the period of the suspension.

The works inspector must reply within one month. During this period the representative is suspended, and must keep away from the business.

After this period, permission is considered to be granted, unless the works inspector notifies the employer that he/she requires a further period of one month to complete the investigation.

Article 296. It is possible to appeal against the decision of the works inspector. This appeal falls within the jurisdiction of the administrative court.

Article 297. The parties have five working days from the date of notification to initiate an escalation appeal against the works inspector's decision. They have the same period from notification of the decision of the higher authority to submit a legal appeal.

Article 298. The superior authority has one month in which to give its decision.

Sub-section 3. Remit of staff representatives

Article 299. Staff representatives have the job of:

- - presenting to employers individual or joint complaints that may not have been directly met regarding working conditions and protection for workers, application of collective bargaining agreements, occupational classifications and wage levels;
- - informing the works inspector of any complaints or claims regarding application of legal and regulatory provisions that the latter is responsible for monitoring, ensuring that health and safety at work provisions are applied, social security rules and any other relevant issues;
- - notifying the employer of any useful suggestions to improve organisation and performance of the business;
- - giving their opinion on terms for redundancies planned by the employer, following steps to reduce the workforce, a slowdown in production or company reorganisation.

The period considered as working hours for which the representatives are paid in carrying out their duties may not exceed fifteen hours per month.

Article 300. Despite the above provisions, workers are permitted to submit claims and suggestions directly to the employer.

Section 2. Union representatives

Article 301. Trade unions may be represented by union delegates within the company.

The procedures for their appointment, exercise of their mission and the period of their term of office are determined by collective agreements.

Article 302. Provisions relating to sub-section 2 of this chapter apply to union representatives.

Section 3. Standing economic and social consultative committees

Article 303. Standing economic and social consultative committees are set up in all commercial, industrial, forestry, agricultural and mining businesses, whatever their legal status, employing at least 50 workers.

This measure may be extended by decree issued following a proposal from the employment minister:

- 1) to businesses with fewer than 50 employees;
- 2) ministerial offices, liberal professions and civil societies;
- 3) to public services that are commercial or industrial by nature, including utilities operated by local authorities.

Article 304. The standing economic and social consultative committee exercises the following functions:

- a) it considers, suggests and gives advice on any measure relating to general organisation of work, to productivity, profitability, improving quality of production, use of plant, introduction of innovations and new machines, rational and efficient use of the company's human resources, discipline and conditions for workers, except for issues relating to wages;
- b) together with the ministry responsible it helps to develop professional training and staff development programmes as well as any measures for increasing workers' responsibility for the tasks with which they are entrusted;
- c) it monitors or manages all social works established in the company for employees or their families, and suggests creating or removing any of the company's social works.

Any worker in the company may make a suggestion to the standing economic and social consultation committee on issues within its area of competence as set out above defined via staff delegates or the union organisation to which they belong.

Article 305. The standing economic and social consultative committee is also obliged to be told about any issues relating to the company's management, financial position and the general progress.

The head of the company is therefore required at least once a year to give a report on the position and activity of the company as well as on its plans for the next financial year. It is also required to notify the committee before they present the annual report and auditors' report to the shareholders' meeting, as well as other documents that may be presented to the shareholders' meeting.

It may make any useful comments, which must be presented to the shareholders' general meeting at the same time as the board of directors' report.

Article 306. The chairman of the committee must report to the next meeting on the outcome of the proposals presented at the previous meeting.

Article 307. The standing economic and social consultative committee may draw the attention of the head of the business to the particular merits of individual employees who are outstanding for their enthusiasm for their work, initiatives and performance.

Article 308. Members of the standing economic and social consultative committee are bound to professional secrecy, subject to penalties specified by the legislation in force, as regards all confidential information of which they become aware while carrying out their work.

Article 309. The composition of the standing economic and social consultative committees is determined by decree issued at a proposal from the employment minister.

Article 310. The business head must provide the committee with a suitable room, equipment and if necessary staff that are essential for their meetings and secretarial requirements.

Article 311. Sections may be created of the standing economic and social consultative committee, on a decree by the employment minister, in branches of the company employing at least 25 people.

These sections, formed of the branch manager, a representative of the managerial staff and two representatives of other branch employees will be particularly responsible for ensuring that the provisions adopted by the standing economic and social consultative committees are properly implemented.

The standing economic and social consultative committee may form commissions where it considers this is necessary. It may invite employees from the company who do not belong to the committee to join these commissions. They are chaired by a full member or their deputy of the said committee.

Article 312. The committee's approval must be sought for dismissal of a full member or deputy of the standing economic and social consultative committee. In the event of a disagreement, dismissal may only take place with a decision of the competent works inspector, under the same conditions as those specified in sub-section 2 of this chapter.

Section 4. Penalties

Article 313. Those guilty of breaches to the conditions of articles 291 and 303 of this code will be liable for a fine of 24,000 to 200,000 F, increased to between 100,000 and 600,000F for a repeat offence, and/or imprisonment from one to six months.

HEADING VII. LABOUR DISPUTES

Article 314. Individual or collective labour disputes are subject to the procedure implemented under this heading.

Chapter 1. Individual dispute

Section 1. Prior conciliation procedure before the works inspector

Article 315. Any personal dispute at work must be subject to a prior conciliation procedure at the initiative of one of the parties, before the works inspector.

The parties are required to meet on the date and time set by the explanatory invitation, before the competent works inspector.

If conciliation is not reached, the works inspector is required to send the case to the court within three months at the most. After this period, the parties may go to court directly themselves.

Article 316. If either party fails to appear on the day set by the invitation, with no justifiable reason, the case file will be sent to the employment tribunal without prejudice to the penalty imposed on the defaulting party of a civil fine of 50,000 F declared by the chairman of the tribunal, with a statement of non-appearance issued by the works inspector and passed to the clerk of the court with a receipt issued, for payment to the treasury.

Article 317. If the dispute is settled amicably, the conciliation report is sent to the competent employment tribunal to be signed and sealed by the president of the tribunal. It is archived with the minutes and is an enforceable instrument.

Section 2. Remit of employment tribunals

Article 318. Employment tribunals deal with the individual disputes that may arise between workers and employers over execution of employment contracts.

These tribunals are solely competent to take decisions on all personal disputes relating to collective agreements and the decrees serving as such agreements. Their competence also extends to disputes in social security provisions as well as those between workers arising from or at work.

Article 319. The competent tribunal is that at the place of work. Despite the normal area of competence, a worker living in a place other than the place of work may choose the tribunal where he/she lives or that at the place of employment.

Section 3. Composition of employment tribunals

Article 320. The employment tribunal consists of:

- 1) the president of the court of first instance, who if not available may be replaced by order of the president of the appeal court, at the suggestion of the president of the court;
- 2) a clerk of the local court concerned;
- 3) an associate on behalf of the employer and an associate on behalf of the worker, taken from those on the lists produced in accordance with article 321 below.

The nominated associates are placed if unavailable, by their deputies, the number of which is equal to those of the nominated associates. If the court cannot sit because there are no associates, the president is assisted by two professional magistrates.

Article 321. Associates and their deputies are appointed by decree of the employment minister, on presentation of the lists drawn up by the most representative of the union organisations, or failing that from the lists produced by the works inspector, including the same number of names as there are posts to be filled.

The nominated and deputy associates have a two-year term of office. This is renewable.

Associates and their deputies must provide evidence that they have their civil rights. They must also never have been subject to any kind of correctional penalty, excepting however:

- 1) penalties for crimes of recklessness, except for the concomitant failure to report a crime;
- 2) penalties for offences other than those classified as offences against company legislation, but whose composition is not subject to evidence of bad faith by the perpetrators and which are not liable to a fine.

Associates subject to one of the penalties specified above, or who lose their civil and political rights are relieved of their position.

Article 322. Any nominated or deputy associated that is seriously deficient in fulfilling their functions will be called to explain their behaviour before the employment tribunal.

The chairman of the employment tribunal and the district attorney initiate this summons.

Within one month of the invitation, the statement of the session is sent by the president of the employment tribunal to the Attorney General.

The Attorney General may order the following sanctions:

- - censure;
- - suspension for a period of not more than six months;
- - dismissal;

Any associate punished by dismissal may not be appointed to the same position again.

Article 323. Associates and their deputies swear the following oath before the court:

I swear to perform my duties zealously and with integrity and to keep deliberations confidential.

If necessary, this oath may be taken in written form.

Article 324. The associates are paid a fee for attending sessions to carry out their work, the sum for which is set by decree of the Justice minister, the Attorney General. The State meets the cost of this fee.

Article 325. Associates at the employment tribunals may be challenged:

- 1) when they have a personal interest in the dispute;
- 2) when they are parents or relatives of one of the parties to the sixth degree;
- 3) if in the year preceding the challenge, there has been a criminal or civil action involving them and one of the parties, or their spouse or relative in direct line;

- 4) if they have given an opinion in writing on the dispute;
- 5) if they are employers or workers with one of the parties in the case.

The challenge is made before any discussion. The president gives an immediate decision. If the request is rejected, the discussion proceeds. If it is accepted, the matter is referred to the next hearing at which deputy associates attend.

Section 4. Procedures before employment tribunals

Article 326. Procedures before employment tribunals are free. Workers also receive legal aid for execution of judgements in their favour.

Associates must be present for the deliberations of the court.

Article 327. An individual labour dispute may only be brought to the employment tribunal if no conciliation is reached before the works inspector or brought directly as specified in article 315 above.

Legal action is entered by oral or written declaration to the clerk of the employment tribunal by the applicant, or the works inspectorate sending the request to the employment tribunal and a copy of the non-conciliation statement.

At the applicant's request, the employment inspector must immediately send the tribunal the whole of the file relating to the dispute which he/she received for conciliation purposes.

The declaration bringing the action is recorded on a register kept for the purpose by the clerk of the court, with a receipt for the declaration given to the party bringing the action. The date of the application interrupts the limitation period.

Article 328. Within two clear days of receipt of the request, the president summons the parties to appear within one week at most, plus any travel times required as set by the Civil procedure code, if applicable. The procedure follows rules specified by the civil procedure code, if no requirements are made by this labour code.

Article 329. The parties are required to meet on the date and time set before the employment tribunal. They may be assisted or represented by a worker or employer in the same occupation, or by a lawyer duly called to the bar, or else by a representative of a labour organisation of which they are members. Employers may also be represented by a director or employee of the company or establishment.

Except as regards lawyers, the mandate of the parties must be given in writing.

Article 330. The hearing is in public, except at the conciliation stage.

The president leads discussions, questions and confronts the parties and summons witnesses at the initiative of the parties or by him/herself according to the procedures given in article 328 above. He/she hears anyone whose statement is considered helpful in settling the disputes. He/she may carry out any observations or inspections, or order these carried out and consult the works inspector to inform the court.

The investigation is performed according to normal procedures specified in the Civil procedure code.

The president is responsible for the policy of the hearing and the discussions.

In urgent matters, the president may order any steps considered necessary at any time.

Article 331. If on the day fixed for the case, the applicant does not appear and cannot demonstrate a valid reason or case of force majeure, the case is struck from the court list. It may only be recalled once, and according to the procedures specified for the first request, subject to being extinguished.

If the defendant does not appear and does not demonstrate a case of force majeure or has not submitted their documents as a memorandum, they are judged as defaulting, and the court gives its decision on the basis of the request.

Article 332. Minors who cannot have the assistance of their legal representative, may be permitted by the president to represent themselves, or to apply or defend themselves before the employment tribunal.

Article 333. When parties appear before the employment tribunal, a new attempt is made at conciliation.

In the event of an agreement, a conciliation report, entered immediately in the court records, classifies it as an amicable settlement of the dispute.

The conciliation statement signed by the president and clerk of the court constitutes an enforceable instrument.

Article 334. If partial conciliation is achieved, the copy of the statement signed by the president and clerk of the court constitutes an enforceable instrument on the points on which agreement was reached, with a non-conciliation statement covering the rest of the application.

Article 335. In the event of non-conciliation, or for the disputed part of the application, the court must retain the case. It proceeds at once to examine it. It may not be postponed except with the agreement of the parties. The court may always request any investigations, site surveys and other steps to obtain any information, giving its reasons, including personal appearance of the parties and consultation with the works inspector submitting the case.

Article 336. The judgement may order immediate execution of the decision, notwithstanding any appeal procedures, at a specific time with no surety required if the sums involved are not disputed and recognised as owing.

A copy of the judgement, signed by the president and clerk of the court must be given to the parties on request. The clerk notes the issue of copies, date and time in the margin of the judgement document.

If within fifteen days of notification, plus the time allowed for distance, the defaulting party has not challenged the judgement according to the procedures specified in article 337 below, it is considered as enforceable. If there is a challenge, the president calls the parties again, as stated in article 328 above. The decision is enforceable the second time, subject to appeal.

Section 5. Appeal procedures

Article 337. The judgements of the employment tribunal are final, with no option of appeal except by the local authority, when the figure awarded is not more than 200,000F. There is no appeal against interlocutory discussions except by a judgement on merits.

Article 338. The employment tribunal can hear counterclaims or compensation claims which fall within its area of competence by their nature.

If a counterclaim is considered groundless and submitted only to obtain the right to an appeal, the appellant may be subject to damages payable to the other parties, even when on appeal the first judgement was only partly confirmed.

All requests arising from the employment contract between the same parties must be the subject of only one case, subject to being declared unacceptable, unless the applicant can show that the causes of new claims are not made for his/her own benefit or were only discovered after the first claim was entered.

New subjects for claims are however accepted as long as the court has not yet given its judgement on the first claim. It will give a single judgement for all claims.

Article 339. Within fifteen days of delivering conflicting judgments, within fifteen days of issuing default judgements and judgements considered conflicting, an appeal may be submitted in the form specified in this article.

Within eight days of its submission, the appeal claim is sent to the clerk of the Court of appeal along with the disputed judgement and the case file.

The appeal is judged on the basis of the documents. The parties may however request to be heard.

Article 340. Decisions given on appeal or as a final resort by the court may be referred for judicial review.

Article 341. Execution of final decisions given on social issues is made by a bailiff appointed by the court concerned or chosen by the interested party.

Within eight days of the clerk sending the instruction to proceed, the bailiff notifies the party sentenced of the decision he/she is required to execute.

This notification constitutes an order, warning the debtor to settle within ten days. After this period, forced execution of the decision proceeds according to common law.

Chapter II. Collective labour disputes

Section 1. Strikes

Sub-section 1. General provisions

Article 342. A strike is a concerted stoppage of work by a group of employees. It is a means of defending occupational, economic and social rights and interests.

Article 343. A strike does not break the employment contract, unless the employee is guilty of a serious fault. It simply suspends the contract.

Article 344. The following are illegal:

- a) strikes of a purely political nature;
- b) strikes initiated without due notice as specified in articles 346 and 354 below;
- c) strikes with violence, assault, threats, actions intended to harm the operation of the industry and freedom to work;
- d) strikes violating minimum levels of service;
- e) a strike during a collective bargaining process;
- f) any other strike with an aim other than that specified in article 342 above.

Article 345. Apart from situations specified in article 344 above, no employee may be punished for taking part in a strike, or for their role in it.

Article 346. The most representative union for the group of workers in dispute, or failing that, by representatives of the group of workers in dispute, must give notice of the start of the strike.

The notice must specify the reasons for calling the strike, and be delivered to the head of the company or establishment at least five working days before the strike begins. It sets the place, date, time and length of the strike.

The notice given does not prevent negotiation intended to settle the dispute.

Article 347. The representative characteristics of a union are:

- - the workforce;
- - contributions;
- - independence of the government, political parties or sponsors.

Article 348. During the notice period, the parties involved must make every effort to reach a compromise.

Article 349. A minimum level of service is compulsory for some businesses because of the social utility or their specific nature.

The list of companies involved and the procedures for applying minimum service levels will be the subject of a decree issued in the Council of ministers on a proposal from the employment minister, after advice from the consultative committee on employment.

The staff involved must be able to work.

Strikers are forbidden from preventing them from providing the minimum level of service under normal conditions, failing which they shall be liable to penalties specified in the legislation in force.

Article 350. After the strike, the date and time work resumes must be the same for all staff concerned.

Article 351. Working hours or days lost because of the strike are not paid, unless the reason for the strike is the non-payment of wages when due.

Article 352. A lock-out is the deliberate closure of the business or establishment by the employer, in order to protect their own interests.

A preventive or defensive lock-out aimed at breaking a strike is illegal. Working days or hours lost for this reason must be paid.

The illegal nature of the lock-out gives the worker the option of breaking their employment contract, and makes the employer liable for breaking the contract.

Sub-section 2. Special provisions for strikes in the public sector

Article 353. The terms of this section apply to state employees and decentralised local authorities, covered by private law status, as well as staff in companies with the status of public and private businesses, bodies or establishments responsible for managing a public service.

Article 354. When the staff described in the above article invoke their right to strike, the concerted stoppage must be preceded by a period of notice under the terms of article 346 of this law.

The notice must be given to the authority with management powers or their representative ten working days before the stoppage.

Article 355. A compulsory minimum level of service is always required.

Section 2. Collective labour disputes and settlement procedures

Sub-section 1. General provisions

Article 356. A collective labour dispute is any dispute between an employer and a group of workers or all the workers, because of their work, or arising from their work, which affects the shared rights or interests of this group of employees.

Article 357. The competent works inspector must be informed immediately of any collective labour dispute by the first party to act.

Article 358. Procedures for settling labour disputes specified by this law are free of charge.

They are mandatory unless otherwise specified in particular agreements.

Article 359. Settlement procedures for collective labour disputes are as follows:

- a) conciliation;
- b) mediation;
- c) arbitration.

Sub-section 2. Conciliation

Article 360. In private companies, the works inspector notified of a collective dispute calls the parties together as quickly as possible in order to implement conciliation.

The parties are required to be present. They may also be represented or assisted.

When a party does not appear or is not represented, the works inspector summons them again in within two days maximum.

If conciliation succeeds the works inspector issues a conciliation report signed by the parties, who each receives a copy. The conciliation report is mandatory and becomes enforceable when it is submitted to the clerk of the competent employment court.

If the conciliation procedure fails the conflict is subject to the mediation procedure described in section III of this chapter if the two parties agree, or to the arbitration procedure specified in section IV.

The non-conciliation report is sent to the clerk of the competent employment tribunal.

Article 361. In companies, organisations or establishments responsible for managing a public service, the supervisory body or its representative calls the parties concerned as soon as possible to attend a conciliation procedure. This takes place in the presence of the competent works inspector.

The parties must appear within two days. They may be supported.

Conciliation agreements are recorded in a conciliation report written by the works inspector and signed by the parties, who each receives a copy.

The conciliation report is mandatory and becomes enforceable when it is submitted to the clerk of the competent employment court.

If the conciliation procedure fails, the conflict is submitted to the mediation procedure or the arbitration procedure specified in this Code.

The non-conciliation report signed by the parties is sent to the employment minister and supervisory minister by the competent works inspector.

Sub-section 3. Mediation

Article 362. The mediation procedure may be undertaken by the parties to the conflict or by the employment minister.

The parties appoint a mediator by mutual agreement in order to encourage an amicable settlement to their dispute.

Article 363. The mediator invites the parties according to the procedure specified in article 361 above.

Article 364. The mediator has the broadest powers to enquire about the economic situation of the companies and the position of the workers involved in the conflict. He/she may carry out all necessary investigations with companies and unions and require parties to produce any economic, accounting, financial, statistical or administrative document or information that could be useful to fulfil his/her mission. He/she may call on the services of experts and generally to anyone qualified to clarify the issues.

The parties give the mediator a memo containing their comments. The party producing a memo gives it to the opposing party.

Article 365. The mediator is responsible for keeping confidential any information of which he/she may become aware during the mission.

Article 366. The mediator has the right to decide on conflicts relating to execution of laws, regulations, agreements or collective labour agreements, or other agreements in force.

It gives a fair judgement on other conflicts, especially when they relate to wages or working conditions not set by legal or regulatory conditions or other agreements or collective negotiations.

Article 367. The mediator makes recommendations to the parties offering proposals for settling the disputed points, within fifteen clear days from his/her appointment. This period may be extended with agreement from the parties.

When the mediator finds that the conflict relates to interpretation or breaching of legislative, regulatory or agreed provisions, he/she must recommend that the parties submit the case to the competent court.

Once the mediator has sent the parties the proposal for settling the conflict, the latter can inform him/her of their rejection of the proposal within eight days by registered mail, giving the reasons.

After the eight days noted above, the mediator records the parties' agreement or disagreement. The mediator's recommendation binds the parties who have not rejected the proposals under conditions specified by legislation in force as regards employment agreements and collective agreements.

Article 368. If the mediation attempt fails, after a period of 48 hours from the expression of the disagreement, the mediator sends the employment minister the text of the recommendations, together with a report on the disagreement, as well as the parties' rejections sent to the mediator, with their reasons. The conflict is then submitted to the arbitration council.

Sub-section 4. Arbitration.

Article 369. If the agreement or collective employment agreement does not include a contractual arbitration procedure, the interested parties may jointly decide to submit for arbitration any disputes remaining after a conciliation or mediation procedure.

Article 370. The arbitration council consists of:

- - a judicial officer appointed by the Attorney General, minister for Justice, president;
- - a representative of the employment minister, member ex officio;
- - two nominated members and two deputy members chosen by the most representative employers' associations;
- - two nominated members and two deputy members chosen by the most representative workers' unions;

The clerk of the employment tribunal in the place where the dispute arises provides secretarial services for the arbitration council.

Article 371. Within five working days following the invitation by the employment minister, the arbitration council hears the case concerned and gives its decision.

The points submitted to the arbitration council are those which could not have been settled by conciliation, as arising from the non-conciliation report, or by mediation, as specified by the recommendation.

The arbitration council has the same powers of investigation and information as the mediator. It may hear the parties in conflict and obtain all the documents it considers useful to settle the case.

The members of the arbitration council are bound to professional secrecy.

Article 372. The documents produced for the conciliation or mediation procedures are given to the arbitration council.

Article 373. The arbitration council cannot give decisions on other subject than those specified by the non-conciliation report or the mediator's proposal or those which, arising from events occurring after this report, are the result of the current conflict.

Article 374. The reasons for the decision must be given. The minister responsible for employment or his /her representative must immediately notify the parties of the decision.

It is binding unless an appeal or challenge is brought to the court of appeal sitting for the purpose by either party within four days of notification.

The decision of the court of appeal may be the subject of an appeal to the judicial chamber of the Supreme Court which pronounces sentence within eight days of being consulted.

The decision of the judicial chamber is effective on the day it is issued.

Article 375. If some or all of the appeal court's decision is cancelled, the matter is returned to the same Court before a different bench.

In the event of a further application, the judicial chamber hears and makes a final decision on the case.

Article 376. Costs incurred by the conciliation, mediation and arbitration procedure, especially those for expert opinion, are paid by the State.

Article 377. All documents produced for execution of the provisions of this section are exempt from stamp duty and registration charges.

Section 3. Penalties

Article 378. Disputing parties that do not respond to invitations sent to them for settlement procedures in the various collective disputes described in this section are liable to a fine of 50,000 F on issue of a statement of non-appearance.

Article 379. Procedure for applying this chapter are determined by decree, issued on a proposal from the employment minister.

HEADING VIII. TEMPORARY AND FINAL PROVISIONS

Article 380. Regulatory texts specified by this Code will be implemented within eighteen months from the date this law is promulgated.

Existing regulations applying the above laws, individual employment contracts already running and collective agreement passed before this law was promulgated remain in force as regards those of their provisions that are not contradictory.

Article 381. This law, cancelling Act 5/78 1st June 1978 covering the Labour Code of the Gabonese Republic and all earlier provisions to the contrary will be registered and published according to the emergency procedure, and executed as a Law of the State.