



BRITISH INDIAN OCEAN TERRITORY

**REVISED ORDINANCES OF THE BRITISH INDIAN
OCEAN TERRITORY**

THE EMPLOYMENT ORDINANCE 1984

CHAPTER G.5

Revised Edition

Showing the law as at 1 September 2020

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains a consolidation of the following laws:

The Employment Ordinance 1984 - Ordinance No.7 of 1984

As amended by:

Ordinance No.5 of 2010

Ordinance No.4 of 2016

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TERRITORY**

THE EMPLOYMENT ORDINANCE 1984

CHAPTER G.5

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CHAPTER G.5

An Ordinance to make provision for securing the health, safety and welfare of persons at work and the health and safety of others arising from the activities of such persons, conciliation and arbitration in trade disputes, other obligations of employers in respect of their employees and connected matters.

Citation.

1. This Ordinance may be cited as the Employment Ordinance 1984, ROBIOT c.G.5.

PART I

GENERAL

Definitions.

2. (1) In this Ordinance, except where the context otherwise requires –

employee means any person who has entered into or works under a contract with an employer, whether the contract is by way of manual or clerical work or otherwise, is expressed or implied, oral or in writing, and whether it is a contract of service or a contract personally to execute any work;

employer means a person who employs ten or more employees;

personal injury includes any disease and any impairment of a person's physical or mental condition;

plant includes any machinery, equipment or appliance;

premises includes any place, and in particular includes –

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any installation on land (including any land intermittently covered by water), and
- (c) any tent or movable structure;

substance means any natural or artificial substance, whether in solid or liquid form or in the form of gas or vapour;

trade dispute means any dispute or difference between employers and employees, or between employees and employees, connected with employment or non-employment, or terms of employment, or with the conditions of work of any person;

tribunal means an Arbitration Tribunal and includes the Commissioner's Representative when acting as such;

work means work as an employee.

(2) For the purposes of this Ordinance risks arising out of or in connection with the activities of persons at work shall include risks attributable to the manner of conducting an undertaking, the plant or substances used for the purposes of an undertaking, and the condition of premises so used or any part of them.

Application.

3. This Ordinance shall not apply to the Crown or to persons in the service or employment of the Crown or to the government of any country or to persons in its service or employment.

PART II

HEALTH AND SAFETY

Objects.

4. The provisions of this Ordinance shall have effect with a view to –

(a) securing the health, safety and welfare of persons at work;

(b) protecting persons other than persons at work against risks to health or safety, arising out of or in connection with the activities of persons at work;

(c) controlling the keeping and use of explosive, highly flammable, poisonous or otherwise dangerous substances, and generally preventing the unlawful acquisition, possession and use of such substances; and

(d) enabling the Commissioner to make Regulations in any sphere of human activity where health, safety or welfare appear to be endangered or likely to be endangered in the future.

General duties of employers to their employees.

5. (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(2) Without prejudice to the generality of an employer's duty under subsection (1) of this section, the matters to which that duty extends include in particular –

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;

(d) so far as is reasonably practicable as regards any place of work under the employer's control, the maintenance of it in a condition that is safe and without risks to health, and the provision and maintenance of means of access to and egress from it that are safe and without such risks;

(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

General duties of employers to persons other than their employees.

6. It shall be the duty of every employer to conduct his undertaking in such way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected by the undertaking are not thereby exposed to risks to their health and safety.

General duties of employees at work.

7. It shall be the duty of every employee while at work –

(a) to take reasonable care for the health and safety of himself and of other persons who may be affected by his acts or omissions at work; and

(b) as regards any duty or requirement imposed on his employer or any other person by this Ordinance or Regulations made

thereunder, to co-operate with him so far as is necessary to enable that duty or requirement to be performed or complied with.

Duty not to misuse.

8. No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of this Ordinance or Regulations made thereunder.

Regulations.

9. (1) The Commissioner may make Regulations for the better carrying into effect of the provisions of this Part, and in particular for securing the objects referred to in section 4.

(2) Without prejudice to the generality of subsection (1) of this section, such Regulations –

(a) may make a specified person responsible, to such extent as may be specified, for the enforcement of any of the provisions of this Ordinance or any Regulations made thereunder;

(b) may provide (either unconditionally or subject to conditions, and with or without limit of time) for exemptions from any requirement or prohibition imposed by this Ordinance or any Regulations made thereunder;

(c) may specify the persons or classes of persons who, in the event of a contravention of a requirement or prohibition imposed by this Ordinance or any Regulations made thereunder, are to be guilty of an offence, whether in addition to or to the exclusion of other persons or classes of persons;

(d) may provide for any specified defence to be available in proceedings for any offence under this Ordinance either generally or in specified circumstances;

(e) may take the form of Regulations applying to particular circumstances only or to a particular case only (for example, Regulations applying to particular premises only).

Offences.

10. (1) It is an offence for a person –

(a) to fail to discharge a duty to which he is subject by virtue of section 5, 6 or 7;

(b) to contravene section 8;

(c) to contravene any Regulation made under section 9 or any requirement or prohibition imposed under any such Regulation.

(2) Any person guilty of an offence under subsection (1) shall be liable to a fine of £20,000 and/or to imprisonment for 12 months and to a continuing fine of £200 a day for any period during which such offence continues after conviction therefor.

(3) Despite section 169(1) of the Criminal Procedure Code 2019, the Magistrate's Court, on convicting any person of an offence under this Ordinance or under any regulations made under section 9, has jurisdiction to impose on him any fine to which he is liable under this Ordinance or under those regulations for that offence and, despite section 197(1) of that Code, any court may, in such a case, order that person to pay to the Crown such costs and expenses incurred by the Crown in preparation for or otherwise in connection with the proceedings as it thinks proper.

Offences by bodies corporate.

11. Where an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

Onus of proving limits of what is practicable.

12. In any proceedings for an offence under this Ordinance consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

Civil liability.

13. (1) Nothing in this Part shall be construed as affecting the extent (if any) to which breach of a duty imposed by this Ordinance or any Regulations made thereunder is actionable in civil proceedings.

(2) No provision for a specified defence to be available in proceedings for any offence under this Ordinance shall affect the extent (if any) to which that defence is available in civil proceedings.

PART III

CONCILIATION AND ARBITRATION IN TRADE DISPUTES

Conciliation.

14. The Commissioner's Representative shall consider any trade dispute, whether existing or apprehended, which has been reported to him by any party to such dispute, and if he deems fit he, or any person required by him to do so, shall endeavour to conciliate the parties by all reasonable means at his disposal.

Agreement reached through conciliation.

15. Any settlement concluded as a result of action taken under section 14 shall be recorded in writing by the parties thereto, and on being endorsed by the Commissioner's Representative shall be known as a negotiated agreement. A negotiated agreement shall be binding on all the parties to the dispute if all such parties have so agreed.

Appointment of and awards made by an Arbitration Tribunal.

16. (1) Where the Commissioner's Representative or any person required by him to endeavour to conciliate is unable to effect a conciliation under section 14, the Commissioner's Representative if both parties consent may refer the matter for settlement to an Arbitration Tribunal appointed under subsection (2) of this section, which, after hearing the parties to the dispute, shall make an award thereon.

(2) A Tribunal may be appointed by the Commissioner's Representative and shall consist of either –

(a) the Commissioner's Representative, or a sole arbitrator appointed by him;

or, as may be approved by all parties to the dispute –

(b) a person referred to in paragraph (a) of this subsection assisted by one assessor nominated by each party to the dispute, all of whom shall be appointed by the Commissioner's Representative.

(3) Any award made by a Tribunal constituted under paragraph (a) or (b) of subsection (2) of this section shall be made by the arbitrator.

Appointment of assessors.

17. (1) Whenever a Tribunal consists of an arbitrator assisted by assessors and any vacancy occurs in the number of assessors, the Tribunal may, in the discretion of the arbitrator, either act despite such vacancy or consent to another assessor being nominated and appointed to fill such vacancy.

(2) No act, proceeding or determination of a Tribunal shall be called in question or invalidated by reason of any such vacancy.

Submission of award.

18. Every award shall be submitted to the Commissioner, the Commissioner's Representative and each of the parties to the dispute. The Commissioner at his discretion may publish the award in such manner as he may think fit.

Effect of award.

19. An award shall be binding on all the parties to the dispute if all such parties have so agreed.

Questions as to interpretation of an award.

20. (1) If any question arises as to the interpretation of any award of a Tribunal, any party to such award may apply to such Tribunal for a determination of such question, and the Tribunal shall determine it after hearing the parties concerned, or without any such hearing if the consent of the parties has first been obtained.

(2) The determination of such Tribunal shall be notified by it, in writing, to the Commissioner, the Commissioner's Representative and to the parties concerned, and shall be deemed to form part of, and have the same effect in all respects as, the original award.

Evidence in proceedings before Tribunal.

21. (1) For the purpose of dealing with any matter referred to it, a Tribunal may, by order, require any person –

- (a) to furnish, in writing or otherwise, such particulars in relation to such matters as the Tribunal may require;
- (b) to attend before the Tribunal;
- (c) to give evidence on oath or otherwise; and
- (d) to produce any relevant documents or answer any relevant question:

Provided that a witness may be excused from answering any question or producing any document on the ground that it will tend to incriminate him or on any other lawful ground.

(2) A Tribunal shall not be bound by rules of evidence in civil or criminal proceedings.

(3) Any person who fails to obey an order given under subsection (1) of this section shall be guilty of an offence and liable to a fine of £500.

Procedure before Tribunals.

22. A Tribunal may regulate its own procedure, including whether or not to admit members of the public to its proceedings and whether or not to permit legal representation.

Payment to arbitrators and assessors.

23. The Commissioner may authorise payment to any member of a Tribunal of such remuneration as he may think fit.

PART IV

**OTHER REQUIREMENTS OF EMPLOYERS IN RESPECT OF
EMPLOYEES**

Insurance against death or injury.

24. (1) Subject to subsection (2) of this section, at all times while any employee is employed in the Territory his employer shall keep him insured against death or personal injury arising out of and in the course of his employment, to such an amount and in such a manner as the Commissioner is satisfied to be reasonable in each case having regard to all the circumstances of the employee concerned, including the relevant laws and practices of the countries in which the employer has his principal business and in which the employee was resident before coming to the Territory.

(2) The Commissioner may exempt an employer from the requirements of subsection (1) of this section, if he is satisfied that, under the law of a country other than the Territory which applies to the employer in respect of his employees while they are within the Territory, the employer is required to pay compensation in respect of the death of or personal injury to his employees arising out of and in the course of their employment of such amounts as would satisfy him under subsection (1) of this section.

Medical care for employees.

25. An employer shall provide for his employees, or ensure that there is available for them in the Territory, adequate facilities for their medical care and attention in case of personal injury however arising.

Repatriation of employees.

26. On the termination of the employment in the Territory of an employee his employer shall be liable to repatriate him to the country whence he came to the Territory for employment or to some other country which will admit him and to which he is willing to go.

Sanction against non-compliance with this Part.

27. (1) If the Commissioner considers that any of the requirements of section 24 or 25 will not be satisfied by an employer in respect of any employee, the Commissioner may direct that a permit for that employee to enter the Territory shall not be issued under the Immigration Ordinance 1971.

(2) An employer who fails to comply with section 26 shall be guilty of an offence and liable to a fine of £1,000 or the cost of repatriating the employee, whichever is greater.
