

# **LABOUR AND EMPLOYMENT RELATIONS AMENDMENT ACT 2023**

## **SAMOA**

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2023, No. 2

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

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

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

**1. Short title and commencement:**

This Act may be cited as the Labour and Employment Relations Amendment Act 2023 and commences on the date to be nominated by the Minister.

**2. Section 2 amended:**

In section 2 of the principal Act:

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

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

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

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

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

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

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

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

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

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

"sexual harassment" means:

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

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

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

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

"harassment" means:

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

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

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

(c) the following definitions are amended -

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

(d) the following definitions are repealed -

- (i) "award";
- (ii) "discrimination";
- (iii) "industrial grievance";

- (iv) "misconduct"; and
- (v) "shift employee".

**3. Section 3 amended:**

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

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

**4. Section 4 amended:**

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

- "(e) four (4) representatives nominated by the employers' organisation and endorsed by Cabinet;
- (f) four (4) representatives nominated by the employees' organisation and endorsed by Cabinet."

**5. Section 5 amended:**

In section 5 of the principal Act:

- (a) for subsection (3) substitute:

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

- (b) Subsection (4) is repealed.

**6. Section 12 amended:**

In section 12 of the principal Act:

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

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

- “(g) to administer the placement of Samoan citizens in overseas employment under bilateral agreements with other countries including -
- (i) the criteria and conditions for a person’s selection and participation in overseas employment;
  - (ii) conditions relating any person acting as a recruitment agent; and
  - (iii) any related matters.”.

**7. Section 13 amended:**

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

**8. Section 16 substituted:**

**“16. Powers of the CEO and labour inspectors:**

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



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

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

9. **Section 17 substituted:**

For section 17 of the principal Act substitute:

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

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

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

**10. Section 18 substituted:**

For section 18 of the Principal Act, substitute:

**"18. Forced labour:**

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

**11. Section 20 substituted:**

For section 20 of the principal Act substitute:

**"20. Discrimination:**

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

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

**12. New section 20A inserted:**

After section 20 of the principal Act, insert:

**“20A. Harassment and sexual harassment:**

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

**13. Section 21 amended:**

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

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

**14. Section 22 amended:**

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

**15. Section 26(2) repealed:**

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

**16. Section 27 amended:**

Section 27 of the principal Act is amended as follows:

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

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

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

**17. New section 27A inserted:**

After section 27 of the Principal Act, insert:

**“27A. Disciplinary fines prohibited:**

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

**18. Section 32(3) substituted:**

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

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

**19. Section 34 substituted:**

For section 34 of the principal Act substitute:

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

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

**20. Section 35 amended:**

Section 35 of the principal Act is amended as follows:

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

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

**21. Section 36 amended:**

Section 36 of the principal Act is amended as follows:

- (a) For subsection (1) substitute:

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

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

**22. Section 37 substituted:**

Section 37 of the principal Act substituted as follows:

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

If an employer employs:

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



**23. New section 37A inserted:**

After section 37 of the Principal Act, insert:

**"37A. Favourable Terms and Conditions of contract:**

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

**24. Section 38 amended:**

Section 38 of the principal Act is amended as follows:

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

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

**25. Section 39 amended:**

Section 39 of the principal Act is amended as follows:

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

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

- (b) Subsection (3) is repealed.

**26. Section 40 substituted:**

For section 40 of the principal Act substitute:

**“40. Annual leave:**

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

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

**27. Section 41 substituted:**

For section 41 of the Principal Act substitute:

**"41. Payment in lieu of annual leave:**

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

**28. Section 42 amended:**

Section 42 of the principal Act is amended as follows:

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

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

- (c) For subsection (5) substitute:

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

**29. Section 47 amended:**

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

**30. Section 48 amended:**

Section 48 of the principal Act is amended as follows:

- (a) For subsection (1), after “An employee” insert “other than a domestic worker to whom Schedule 3 applies,”; and
- (b) After subsection (2) insert:

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

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

- (a) the employee is a managerial personnel; and
- (b) the employee is paid an annual salary; and
- (c) the annual salary includes compensation for the likelihood of working hours that are additional to an employee’s ordinary hours of work.”.

**31. Section 49 amended:**

Section 49 of the principal Act is amended as follows:

- (a) For subsection (1) -
  - (i) in paragraph (d) omit "under any circumstances,"; and
  - (ii) omit "but the average number of hours worked over a period of three (3) weeks must not exceed 40 hours in a week";
- (b) For subsections (2), (3) and (4) substitute:
  - "(2) Despite section 48(1), if a shift employee works on average in excess of 40 hours per week over a period of two (2) weeks, he or she is entitled to overtime to be paid at one and a half times his or her ordinary rate of pay."

**32. Section 51 substituted:**

For section 51 of the principal Act substitute:

**"51. Employment of children:**

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

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

**33. Section 52 amended:**

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

- (a) for "during a period where" substitute "by reason of";
- (b) for paragraph (a) substitute the word "is" with "being";
- (c) for paragraph (b) substitute the word "is" with "being" and the fullstop with "; or";
- (d) after paragraph (b) insert:

"(c) making an enquiry to any public body or trade union about the employer's compliance with this Act or the Occupational Safety and Health Act 2002."

**34. Section 53 amended:**

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

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

(b) after paragraph (b) insert:

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

**35. Section 54 substituted:**

For section 54 of the principal Act substitute:

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

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

**36. New section 54A inserted:**

After section 54 of the principal Act, insert:

**"54A. Requirements relating to redundancy:**

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

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

**37. Section 55 amended:**

Section 55 of the principal Act is amended as follows:

- (a) for subsection (1) substitute:

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

- (b) for subsection (4) substitute:

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



**38. Section 56 substituted:**

For section 56 of the principal Act substitute:

**"56. Notice period not required in certain cases:**

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

**39. Section 57 substituted:**

For section 57 of the principal Act substitute:

**"57. Dismissal due to employee's conduct or work performance:**

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

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

**40. New section 57A inserted:**

After section 57 of the principal Act, insert:

**"57A. Entitlements on termination:**

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

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

**41. Section 58 amended:**

Section 58 of the principal Act is amended as follows:

- (a) for subsection (1) substitute:

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

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

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

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

**42. Section 59 amended:**

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

**43. Section 60 amended:**

Section 60 of the principal Act is amended as follows:

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

**44. Section 61 amended:**

Section 61 of the principal Act is amended as follows:

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

**45. New section 61A inserted:**

After section 61 of the Principal Act, insert:

**"61A. Restrictions on employers:**

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

**46. Heading of Part 10 substituted:**

For Part 10 heading of the principal Act substitute:

**"PART 10  
RESOLUTION OF DISPUTES"**

**47. Section 78 amended:**

Section 78 of the principal Act is amended as follows:

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

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

**48. Section 82 amended:**

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

**49. Section 83 amended:**

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

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

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

**50. Regulations Repealed:**

The Labour and Employment Relations Regulations 2016 are repealed.

**51. Amendments to Schedules:**

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

**“SCHEDULE 3  
(Section 37(b))**

**Additional requirements relating to the employment of domestic workers:**

**Requirements of a contract of service (“contract”)**

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

**Pay and deductions**

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

**Hours of work and overtime**

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

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

#### **Living and working arrangements**

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



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

#### **Personal documents**

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

#### **Right to privacy**

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

#### **Freedom of movement and communication**

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

#### **Supervision and worker representation**

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

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

**52. Savings and transitional provisions:**

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

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