

THE LABOUR ORDINANCE, 1933.

Western Samoa

No. 3, 1933



AN ORDINANCE

made by the Administrator of the Territory of Western Samoa with the advice and consent of the Legislative Council of that Territory, and in pursuance of the Samoa Act, 1921.

Short Title.

1. This Ordinance may be cited as "The Labour Ordinance, 1933," and shall come into force on the first day of May, 1933.

Interpretation.

2. In this Ordinance except where a contrary intention appears —
"Administrator" means the Administrator of Samoa.
"Commissioner" means the person for the time being holding appointment as Commissioner of Labour in the Samoan Public Service.
"Employer" means any employer of a labourer.
"Gazette" means the Western Samoa Gazette.
"Labourer" means and includes any person other than a person belonging to the Polynesian race whether of pure or mixed descent who has heretofore arrived or shall hereafter arrive in Samoa in pursuance of any scheme established by public authority for the provision of labourers domestic servants and artisans for Samoa and their service for terms of years.
"Medical Officer" means a Medical Officer appointed under the Samoa Act, 1921.
"Month" means a calendar month.

Conditions of Employment.

3. Subject to any regulations made by the Administrator under the provisions of Section 10 hereof the terms and conditions of employment of labourers in Samoa shall be the terms and conditions set out in the schedule hereto.

Labourer's Agreement.

4. Every labourer shall be deemed to have entered into a binding agreement with the Executive Government of Samoa in terms of the provisions contained in the said schedule so far as applicable.

Employer's Agreement.

5. Every employer shall be deemed to have entered into a binding agreement with the Executive Government of Samoa in terms of the provisions contained in the said schedule so far as applicable.

Commissioner to Enforce Conditions.

6. Any proceedings arising out of any breach of the said terms and conditions may be commenced in the High Court on behalf of the Executive Government of Samoa by the Commissioner in his official name only.

Crown's Exemption from Liability.

7. No action of any kind shall lie against His Majesty or the Executive Government of Samoa or any officer thereof for or in respect of any act matter or thing done or omitted by any labourer.

Position of Labourers Employed by Crown.

8. Where a labourer is engaged in employment by the General Manager of the New Zealand Reparation Estates or otherwise by the Crown the terms and conditions set out in the schedule hereto shall apply to such employment.

Refusal of Employment an Offence.

9. Any labourer who without reasonable excuse refuses to accept an offer by the Commissioner of employment with any person is guilty of an offence and shall be liable to imprisonment for 28 days.

Regulations.

10. (1) The Administrator may by Proclamation published in the Gazette make such regulations as he may deem necessary for the regulation of the employment of labourers Provided that subject to the next succeeding subsection no such regulations shall be inconsistent with the provisions of this Ordinance or diminish or prejudice the rights of an employer or a labourer thereunder.

(2) The power to make regulations given by this section shall include the power to amend alter or add to the terms and conditions of employment set out in the schedule hereto Provided that such amendments alterations and additions shall apply only to labourers who shall subsequently to and with knowledge of the making thereof embark for Samoa or be re-engaged in Samoa for a further term of employment.

Melanesian Labourers.

11. The provisions as to wages contained in this Ordinance or in any regulations issued thereunder shall apply to Melanesian labourers as defined by "The Melanesian Labourers Ordinance, 1927," and Clause 3 of the Schedule of the said Ordinance shall be deemed to be amended accordingly.

Disclosed
N.Z. Gazette
27. 19. 4. 34
Page 1145.

Repeal and Savings.

12. The Chinese Free Labour Ordinance, 1923, shall be repealed as from the coming into force of this Ordinance.

Exempted Labourers.

13. The provisions of this Ordinance shall not apply to any labourer who arrived in Samoa during the month of September, 1931, unless and until the contract of employment of such labourer shall have expired and he shall have been engaged by the Commissioner as a labourer under this Ordinance.

Conditions of Employment of Exempted Labourers.

14. The terms and conditions of employment of a labourer exempted from the provisions of this Ordinance by the last preceding section shall, during the period of such exemption, be the same as if this Ordinance had not been passed and The Chinese Free Labour Ordinance, 1923 had remained in full force and effect.

THE SCHEDULE.

PART I.

Term of Employment.

1. Continuous employment is offered to the labourer for a term expiring three years after his embarkation for Western Samoa provided the labourer gives his services faithfully and continuously for the term aforesaid.

Alteration of Term.
2. The said term may be reduced or extended by the Commissioner by such period as may reasonably be necessary to synchronise the expiry of such term with the departure from Samoa of a transport ship for China.

Prior Repatriation.
3. With the approval of the Administrator and for any reason which the Administrator thinks sufficient the labourer may be repatriated at any time before the expiration of the said term.

Extension of Term.
4. The labourer and the Commissioner may from time to time agree that the said term of three years be extended for such further term as may be mutually agreed upon.

Transportation.
5. The labourer will receive a free passage to Western Samoa.

Return Transportation.
6. On his repatriation the labourer will receive a free passage from Western Samoa to

Hong Kong or (at the labourer's option) to his home in China.

Nature of Employment.

7. The employment offered is in the capacity of agricultural labourer or domestic servant or in any other capacity that the Commissioner may approve.

Advance of Wages.

8. At the time of embarkation for Western Samoa the labourer will receive an advance of wages of fifteen dollars (Hong Kong currency) on account of wages thereafter to become due.

Wages during Transportation.

9. Wages at half the standard rate set out in Part II of this schedule will be paid during the period from the date of sailing from Hong Kong to the date of landing in Western Samoa.

Free Medical Treatment.

10. The labourer shall at all times be entitled to free medical treatment and free maintenance whilst in hospital.

Free Maintenance when Incapacitated.

11. If the labourer is certified by a Medical Officer to be chronically unfit for work or permanently incapacitated from working he will be entitled to free maintenance until he can be repatriated.

Grant on Disablement or Death.

12. If the labourer is incapacitated or fatally injured by any matter arising out of and in the course of his employment the sum of Thirty pounds will be paid as compensation to him or as the case may require to his next-of-kin or in the latter case at the option of the Administrator to the Government of Hong Kong or the Chinese Consular Officer at Apia on behalf of his next-of-kin.

Free Burial.

13. If the labourer dies in Samoa his body will be properly enshrouded encoffined and interred.

Legal Liability.

14. The labourer will at all times during his residence in Western Samoa be subject to and entitled to the benefit of the laws of Western Samoa.

Breach of Contract not Punishable.

15. No labourer shall be punishable by fine or imprisonment for any breach of the terms and conditions of his service with an employer:

Provided that this provision shall not relieve a labourer from civil liability.

Protection of Labourers.

16. The Commissioner will take all reasonable care that the labourer is not ill-treated and will investigate any complaint made by the labourer and take all reasonable steps to see that justice is done.

Overhead Charges During Unemployment.

17. If in the opinion of the Commissioner the labourer is at any time unemployed through his own default or through having left an employer of his own accord he shall pay to the Samoan Treasury in respect of such period of unemployment such sum as will be equivalent to the amount payable by an employer by way of overhead charges for the same period, and such sum may be deducted in such amounts as the Commissioner may determine from any wages he may thereafter earn.

Benevolent Fund.

18. The labourer will contribute the sum of six pence a week to a Benevolent Fund and such contribution may from time to time be deducted at the rate of two shillings and two pence a month from wages payable to the labourer.

Application of Benevolent Fund.

19. The Benevolent Fund shall be applied by the Samoan Treasury towards—

- (a) the cost of medical treatment of labourers;
- (b) the maintenance of labourers in hospital;
- (c) the maintenance of chronically sick, unfit, or disabled labourers;
- (d) the upkeep of a Chinese Cemetery in Apia, and
- (e) any other benevolent purpose affecting labourers and approved by the Administrator.

Accounts of Benevolent Fund

20. A statement of accounts of the Benevolent Fund shall be published annually as soon as conveniently possible after the close of each financial year.

Trading.

21. The labourer shall not without the consent in writing of the Commissioner engage in trade or undertake any work outside his employment.

Translations.

22. Notwithstanding the translation of these provisions into any Chinese dialect or other language upon any question arising out of the interpretation thereof reference shall be made only to the English text herein contained.

PART II.**Labourer's Duty.**

23. The labourer shall duly and punctually obey the orders of his employer and properly perform all work allotted to him.

Standard Rate of Wages.

24. The standard rate of wages shall be ~~two~~ ¹¹⁹ shillings per working day. 3 1934

Working Day.

25. A working day shall be a day of nine and a half hours of fair and honest actual work; but shall be nine hours upon any day during which the shade temperature reaches 100 degrees Fahrenheit.

Payment of Standard Wages.

26. The employer shall subject as hereinafter appears pay the labourer wages at the standard rate; provided that the employer and the labourer may agree for payment of wages at any other rate but no such agreement shall have any effect unless the Commissioner shall have given his consent thereto in writing.

Overtime Rate.

27. The overtime rate of wages shall be a rate per hour equal to one and a half times the standard rate.

Holidays.

28. There shall in each year be ten labourers' holidays to be fixed annually by the Commissioner.

Overtime.

29. If the employer shall reasonably so require the labourer shall work overtime or on a Sunday or on a labourer's holiday subject to payment of overtime rate of wages unless the employer and the labourer shall otherwise agree.

Domestic Service.

30. A labourer employed as a domestic servant shall work on every alternate Sunday and every alternate labourer's holiday at the standard rate of wages.

Broken Days.

31. No wages shall be payable for a day upon which from any cause no work is done and a proportionate part only of the standard wage shall be paid for a day upon which the labourer works for only a part of the full working day.

Piece Work.

32. In lieu of the daily wages payable under clause 26 of this schedule the employer may whenever the nature of the work permits employ the labourer in daily piece work of such extent as may be agreed upon between the employer and the labourer or in default of such agreement as shall be decided by the Commissioner and in such case the labourer shall be entitled to the standard daily wage for each such daily piece of work completed notwithstanding the number of hours worked or to a proportionate part thereof if the whole of such daily piece of work has not been completed.

Time of Payment.

33. Payment of wages shall be made within seven days after the end of each month.

Deductions.

34. Upon payment of any wages due the following sums shall be deducted:—

- (i) the price of any rice or meat theretofore supplied by the employer to the labourer pursuant to clause 37 hereof;
- (ii) the labourer's contribution of sixpence a week to the Benevolent Fund;
- (iii) any moneys due and owing by the labourer to the Executive Government of Western Samoa.

Labourer's Obligations.

35. The labourer shall not without the permission of his employer—

- (a) leave his quarters or place of employment during working hours;
- (b) be absent from his quarters after the hour of 9 p.m.;
- (c) permit any light to be burning in his quarters after the hour of 9.30 p.m.

Free Quarters.

36. The employer will provide free living quarters for the labourer during his employment, but the labourer shall provide his own food.

Maintenance.

37. The employer will arrange for the labourer to be able to purchase rice and fresh meat of a quality to be approved by the Chief Medical Officer up to fifty pounds of rice per month at a price not exceeding three pence per pound and with fresh meat up to fifteen pounds per month at a price not exceeding sixpence per pound the cost of such rice and meat to be deductible from the labourer's wages.

Garden Plots.

38. Wherever in the opinion of the Commissioner it is practicable to do so the employer shall provide a garden plot for the use of the labourer.

First Aid.

39. The employer will maintain at the place of employment a supply of medicine and appliances sufficient in the opinion of a Medical Officer to provide for first-aid treatment of casualties and the treatment of minor ailments.

Termination of Employment.

40. The labourer shall not determine his employment unless he shall have given the employer and the Commissioner at least seven clear days' notice of his intention so to do.

PART III

Notice of Employment.

41. Every person who employs a labourer shall give notice in writing to the Commissioner of such employment within seven days of the commencement thereof.

Commissioner to Approve Employment.

42. If for any reason the Commissioner does not approve the employment of a labourer by an employer he may at any time within seven days of his receipt of the aforesaid notice from the employer or at any time after the employer has made default in giving the said notice terminate the employment of the labourer and thereafter the employer shall not re-engage the labourer without the consent in writing of the Commissioner first had and obtained.

Overhead Charges

43. The employer shall within thirty days after the end of every month pay to the Samoan Treasury by way of Overhead Charges the sum of thirteen shillings and sixpence in respect of each labourer employed by him during that month subject to reduction in respect of any period of less than a month to an approximate proportionate amount to be fixed by the Commissioner.

Continuance of Liability

44. The liability of the employer for payment of overhead charges as aforesaid shall continue in respect of a labourer after the termination of his employment until the commencement of his engagement with another employer:

Provided that—

(a) if at the termination of his employment the labourer is physically unfit for work and during the three months next following remains physically unfit for work such liability shall cease at the expiration of such period of three months;

(b) if at any time the labourer is convicted of an offence and sentenced to a term of imprisonment such liability shall cease upon the date of such conviction.

Refund

45. Any sums paid by a labourer under clause 17 of this Schedule in respect of the period following the termination of his employment and for which the employer is liable to pay the Overhead Charges pursuant to the last preceding clause hereof shall be paid or credited to the employer in reduction of the employer's liability;

Provided that nothing in this clause shall make it obligatory upon the Executive Government to take any steps for the recovery of any sum payable by a labourer under clause 17 of this schedule.

Application of Overhead Charges

46. The sums received in respect of Overhead Charges will be applied by the Executive Government towards the expenses incurred in the administration of this Ordinance including the purposes of the Benevolent Fund set out in Clause 19 of this Schedule.

Variation of Overhead Charges

47. If in the opinion of the Administrator the sums received by way of Overhead Charges together with labourers' contributions to the Benevolent Fund are at any time more than sufficient or insufficient to meet the purposes to which the Overhead Charges are to be applied he may from time to time by warrant under his hand published in the Gazette reduce or increase the overhead charges as the case may require but so that the monthly Overhead Charges shall not at any time exceed twenty shillings per labourer.

Deductions

48. The employer will duly deduct from the wages of the labourer the labourer's contribution to the Benevolent Fund and also any moneys claimed to be due and owing by the labourer to the Executive Government which the Commissioner may direct him to deduct and will forthwith pay to the Samoan Treasury all moneys so deducted, and shall be entitled to an indemnity from the Executive Government for all sums so deducted and paid.

Standard Wages

49. The employer shall not increase by way of bonus or otherwise the standard wages of a labourer without the prior consent of the Commissioner.

Information to be Furnished

50. The employer shall furnish such information relating to labourers and their employment in such form and at such times as the Commissioner may direct.

Termination of Employment

51. The employer shall give written notice to the Commissioner immediately a labourer shall leave his employ and shall state therein the reasons therefor.

Labourers Trading

52. The employer shall not permit the labourer to engage in trade or undertake any work outside his employment and will forthwith notify the Commissioner in writing of any breach by the labourer of the provisions of Clause 21 of this Schedule.

Obligations towards Labourer

53. The employer will at all times in respect of the labourer duly and faithfully comply with all the obligations imposed upon an employer under the provisions contained in Part II of this Schedule.

Employer's Default

54. If the employer makes default in payment of any Overhead Charges or in the observance or performance of any of the duties or obligations imposed upon him by this Schedule then unless such default is in the opinion of the Commissioner excusable the Commissioner may terminate the engagement of all or any of the labourers employed by him and thereafter the employer shall not engage any labourer without the written consent of the Commissioner first had and obtained:

Provided that the exercise by the Commissioner of his powers under this clause shall not prejudice or affect any liability of the employer arising out of such default as aforesaid.

Assented to this Twenty-eighth Day of April, 1933.

H. HART,

Administrator.

(L.S.)

By Authority of
The Samoa Times Printing and Publishing Company, Ltd.,
Apia, Western Samoa.

1933