

Mauritius National Assembly

Parliament House

Port Louis

The Employment Rights (Amendment) Bill
(No. XXXII of 2012)

Proposed amendments to be moved at Committee Stage

The Clerk of the National Assembly presents his compliments to Honourable Members and has the honour to inform them that the Honourable Minister of Labour, Industrial Relations and Employment has given notice of the following amendments which he proposes to move at the Committee Stage of the above Bill, in lieu and stead of the amendments circulated on 5 April 2013 –

- (a) in clause 5, in the proposed new section 8 –
 - (i) by numbering the proposed provision as subsection (1);
 - (ii) in the newly numbered subsection (1) –
 - (A) by deleting the words “who employs 10 or more workers,”;
 - (B) by inserting, after the word “Schedule”, the words “, or in such form in French or Creole as may be prescribed”;
 - (iii) by adding, after the newly numbered subsection (1), the following new subsection –
 - (2) A copy of the statement of particulars shall be submitted to the Permanent Secretary within 30 days after the worker has completed 30 consecutive working days’ service.
- (b) in clause 8, in the proposed new section 14A –
 - (i) by deleting subsection (1) and replacing it by the following subsection –

(1) An employer shall not, without a worker's consent, require the worker on shift work –

(a) to work more than 8 hours in a day;

(b) to perform night work on more than 4 consecutive nights, except in such sector or industry as may be prescribed.

(ii) by inserting, after subsection (4), the following subsection, the existing subsection (5) being renumbered (6) –

(5) Every worker shall be paid an allowance of 10 per cent of his basic wage in addition to his normal day's wage for work performed during night shift.

(c) by inserting, after clause 8, the following new clause –

8A. Section 19 of principal Act amended

Section 19 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection –

(1) Notwithstanding any other enactment or Remuneration Regulations, where a worker is required to perform more than 2 hours' extra work after having completed a normal day's work, he shall, in addition to any remuneration due for overtime work, be provided by the employer with an adequate free meal or be paid a meal allowance as specified in paragraph (a) of the Third Schedule.

(d) by inserting, after clause 10, the following new clause –

10A. Section 26 of principal Act amended

Section 26 of the principal Act is amended by inserting, after subsection (2), the following new subsection –

(2A) Where an employer provides a worker with a means of transport under subsection (1), the employer shall pay to the worker wages at the normal rate in respect of any waiting time exceeding 45 minutes after he has stopped work.

- (e) by deleting clause 13 and replacing it by the following clause –

13. Section 30 of principal Act amended

Section 30 of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) A female worker who remains in continuous employment with the same employer for a period of 12 consecutive months immediately preceding the beginning of leave under this section shall, on production of a medical certificate, be entitled to 12 weeks' maternity leave on full pay to be taken either –

- (a) before confinement, provided that at least 6 weeks' maternity leave shall be taken immediately following the confinement; or

- (b) after confinement.

- (b) by inserting, after subsection (1), the following new subsection –

(1A) Notwithstanding any other enactment or Remuneration Regulations and subject to subsection (2), where a female worker, who remains in continuous employment with the same employer for a period of 12 consecutive months, gives birth to a child, she shall, on production of a medical certificate, be paid within 7 days of her confinement an allowance as specified in paragraph (b) of the Third Schedule.

- (c) in subsection (7), by deleting the words "or work during night shift".

- (f) by inserting, after clause 14, the following new clause –

14A. New section 31A inserted in principal Act

The principal Act is amended by inserting, after section 31, the following new section –

31A. End of year bonus

(1) Where a worker remains in continuous employment with the same employer in a year, the worker shall be entitled at the end of that year to a bonus equivalent to one-twelfth of his earnings for that year.

(2) Every worker who –

- (a) takes employment during the course of a year;
- (b) is still in employment as at 31 December in that year; and
- (c) has performed a number of normal days' work with that employer, equivalent to not less than 80 per cent of the number of working days, during his employment in that year,

shall be entitled at the end of that year to a bonus equivalent to one-twelfth of his earnings for that year.

(3) A sum amounting to 75 per cent of the expected bonus specified in subsections (1) and (2) shall be paid to the worker not later than 5 clear working days before 25 December of that year, and the remaining balance shall be paid to him not later than on the last working day of the same year.

(4) For the purpose of this section, every day on which a worker –

- (a) is absent with the employer's authorisation;
- (b) reports for work but is not offered work by the employer; or
- (c) is absent on grounds of –
 - (i) illness after notification to the employer under section 28(4)(a); or

- (ii) injury arising out of and in the course of his employment,

shall count as a working day.

(g) in clause 18 –

- (i) in paragraph (b), by deleting subparagraphs (i) and (iii);
- (ii) by inserting, after paragraph (c), the following new paragraph –
 - (ca) in subsection (4), in paragraph (a), by deleting the words “; or” and replacing them by the words “, or both; or”;
- (iii) in paragraph (f), in the proposed new subsection (7)(b), by deleting the figure “7” and replacing it by the figure “10”;

(h) in clause 19, in the proposed new section 39B, by deleting subsection (3) and replacing it by the following subsection –

(3) Notwithstanding this section, an employer shall not reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise unless he has –

(a) in consultation with the trade union recognised under section 38 of the Employment Relations Act, explored the possibility of avoiding the reduction of workforce or closing down by means of –

- (i) restrictions on recruitment;
- (ii) retirement of workers who are beyond the retirement age;
- (iii) reduction in overtime;
- (iv) shorter working hours to cover temporary fluctuations in manpower needs; or
- (v) providing training for other work within the same enterprise;

- (b) where redundancy has become inevitable –
 - (i) established the list of workers who are to be made redundant and the order of discharge on the basis of the principle of last in first out; and
 - (ii) given the written notice required under subsection (2).
- (i) in clause 27, by deleting paragraph (a) and replacing it by the following paragraph –

- (a) by inserting, after subsection (1), the following new subsections –

(1A) (a) Where a worker who has attained the age of 60 remains in continuous employment with the same employer up to the retirement age, the worker and the employer may agree on an advance payment of the total gratuity payable at the retirement age, amounting to the gratuity payable at the age of 60 calculated in accordance with subsection (2).

(b) Advance payment of the gratuity, where agreed upon under paragraph (a), shall be effected upon the worker attaining the age of 60.

(1B) Notwithstanding any agreement or any provision to the contrary in any other enactment, an employer shall not require a worker to retire before the retirement age.

- (j) by inserting, after clause 31, the following new clause –

31A. Section 55 of principal Act repealed

The principal Act is amended by repealing section 55.

- (k) by deleting clause 35 and replacing it by the following clause –

35. Third Schedule to principal Act amended

The Third Schedule to the principal Act is amended –

- (a) in paragraph (a), by deleting the words “Rs 50.00” and replacing them by the words “Rs 70.00”;
 - (b) in paragraph (b), by deleting the words “[Section 30(1)(b)]” and “Rs 2,000” and replacing them by the words “[Section 30(1A)]” and “Rs 3,000”, respectively.
- (l) in clause 39 –
- (i) by deleting subsection (1) and replacing it by the following subsection –

(1) Where, before the commencement of this Act, a worker and an employer have entered into one or more determinate agreements for a total period of more than 24 months as specified in section 5(3) of the principal Act, the agreement shall, at the commencement of this Act, be deemed to be an indeterminate agreement with effect from the date the first agreement was entered into.
 - (ii) by deleting subsection (2), the existing subsection (3) being renumbered (2);
- (m) by deleting clause 40 and replacing it by the following clause –

40. Commencement

(1) (a) Subject to paragraph (b) and subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(b) Different dates may be fixed for the coming into operation of different sections of this Act.

(2) Section 27(d) shall be deemed to have come into operation on 2 February 2009.

- (n) by inserting the following long title –

To amend the Employment Rights Act

Honourable Members are kindly requested to govern themselves accordingly.

08 April 2013