



ANGUILLA

LABOUR (RELATIONS) ACT, 2018

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LABOUR (RELATIONS) ACT, 2018

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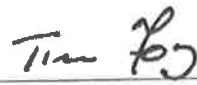
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I Assent


Timothy J. Foy, OBE
Governor

3 January 2019.
Date

ANGUILLA

No. 14/2018

LABOUR (RELATIONS) ACT, 2018

An Act to provide for the classification of employees, the terms and conditions of employment, employee performance and disciplinary matters, dispute settlement mechanisms, work permits and related matters.

[Gazette Dated: 7th January 2019] [Commencement: under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla

PART 1

PRELIMINARY

Interpretation

1. In this Act—

“Commissioner” means the Labour Commissioner;

“employee” means a person who works under a contract of service with an employer to personally perform any service or labour, whether the contract is oral or written, expressed or implied;

“Minister” means the Minister responsible for Labour;

“Ministry” means the Ministry responsible for Labour;

“remuneration” means the wage and any additional benefits, service charge, redundancy (severance) pay, retirement benefits, allowances or other emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employee’s employment;

“service charge” means the fee or gratuity charged by a restaurant, hotel or other service provider, based on a percentage of the basic fee that is additional to the basic fee or charge for food, accommodation or related services;

“Tribunal” means the Labour Tribunal; and

“wage” means sums payable by the employer to the worker in connection with the employment including any fee, bonus, commission, holiday pay or other emolument referable to the employment whether payable under his contract or otherwise.

Application

2. (1) On the date of commencement, this Act applies to all employers and employees regardless of when an employer or an employee entered into a contract of employment.

(2) Subject to subsection (2), the Act shall apply to all employers and employees except—

- (a) the police;
- (b) those employees of the Crown whose employment is governed by General Orders for the Anguilla Public Service;
- (c) persons entitled to diplomatic immunities under the Diplomatic Immunities (Representatives of Overseas Countries) Act; and
- (d) the master or member of the crew of a vessel if he is paid exclusively by a share in the profits.

More favourable terms and conditions; agreement to exclude or limit Act void

3. (1) The provisions in the Act are the minimum standards that apply to employment relationships and nothing precludes an employer from conferring upon his employees more favourable terms and conditions of employment.

(2) A provision in a contract of employment or a collective agreement shall be void to the extent that it purports to exclude or limit the minimum standards set out in the Act.

PART 2

CLASSIFICATION OF EMPLOYEES

Division 1

Principles Governing this Part and Classification of Employees

Principles governing this part

4. (1) The Ministry is responsible for ensuring that employees work in an environment where they are treated fairly and therefore the administration and interpretation of this Part shall be governed by this as the paramount consideration.

(2) The Ministry is concerned to foster an environment where businesses operate in a regulated environment that facilitates flexibility, innovation and strategic planning in labour

markets while balancing the need for the social protection of employees and therefore in administering and interpreting this part the Ministry will exercise a balancing act towards the genuine needs of the employer for the development of business with the rights of the employee.

Good faith in employment relationships

5. (1) The parties in an employment relationship must deal with each other in good faith.
- (2) The duty of good faith includes—
- (a) the implied duty of trust and confidence;
 - (b) an obligation on the employer and employee to be active and constructive in establishing and maintaining a productive employment relationship in which the parties are, among other things, responsive and communicative; and
 - (c) an obligation on the part of an employer proposing to make a decision that may have an adverse impact on the continuation of employment to provide the employee with timely access to relevant information.

Classification of employees

6. (1) Employees include—
- (a) permanent employees;
 - (b) fixed term employees;
 - (c) seasonal employees; and
 - (d) casual employees.
- (2) To avoid doubt, employees include persons who have—
- (a) been offered and who have accepted employment but have not commenced working; and
 - (b) commenced employment using a period of probation.
- (3) An employee does not include—
- (a) an independent contractor or self-employed person;
 - (b) a volunteer who does not receive a reward for working; or
 - (c) a person working on apprenticeship or internship.

Permanent employees

7. (1) A person employed on a permanent basis means that the person works on a contract of indefinite duration and attracts the full set of employment rights and responsibilities.
- (2) Permanent employees may be divided into full-time workers and part-time workers.

(3) A person may be employed as a full-time or part-time worker based on the number of hours worked having regard to the custom and practice of the employer.

(4) The main distinguishing feature between a full-time and a part-time worker is the number of hours worked and therefore payment and other benefits are based on the amount of time worked.

(5) A part-time worker shall not be treated less favourably than the employer treats a comparable full-time worker regarding the terms of the contract or by being subjected to any other detriment by the employer unless the less favourable treatment is justified on objective grounds.

(6) An objective ground under subsection (5) does not include the fact that the part-time employee works part-time.

(7) In determining whether a part-time worker has been treated less favourably than a comparable full-time worker the pro-rata principle shall be applied unless, having regard to the particular facts of the case, it is inappropriate.

(8) Permanent employment shall be considered to be the de facto or normal employment status for belongers of Anguilla unless the employee is employed using a fixed term contract.

(9) The holder of a work permit shall not be employed on a permanent basis.

Fixed term employees

8. (1) An employee may agree with an employer to work using a contract of employment that will end—

- (a) after a fixed or set term;
- (b) at the close of a specified date or period;
- (c) on the occurrence of a specific event; or
- (d) at the conclusion of a specified project or task.

(2) A contract entered into in accordance with subsection (1) may be referred to as a fixed term contract.

Genuine reasons for fixed term contract

9. (1) A fixed term contract of employment must be in writing and must state when or how the employment will end and the reasons for ending the employment in that way.

(2) In order for a fixed term contract to be effective and to end in accordance with subsection (1), the employer must have genuine reasons based on reasonable grounds for specifying that the employment is to end in that way.

(3) A genuine reason shall not include an effort to—

- (a) exclude or limit the rights of the employee under this Act;

- (b) establish the suitability of the employee for a permanent position;
- (c) prevent, frustrate or hinder an employee from becoming a permanent employee; or
- (d) exclude or limit the rights of an employee to receive any right or benefit under the Act or in accordance with the policies of the employer.

(4) Where an employer fails to comply with this section the employer is barred from relying on any term agreed to under subsection (1)—

- (a) to end the employee's employment if the employee elects, at any time, to treat that term as ineffective; or
- (b) as having been effective to end the employee's employment, if the former employee elects to treat that term as ineffective.

(5) A fixed term employee has the right to be treated no less favourably to a comparable permanent employee in relation to—

- (a) employment benefits;
- (b) any period of service qualification relating to any particular condition of service;
- (c) the opportunity to receive training; and
- (d) the opportunity to secure any permanent position in the business;

unless the treatment is justified on objective grounds.

Successive fixed term contracts

10. (1) Where a believer of Anguilla or the spouse of a believer is employed using a fixed term contract in a managerial or executive position and the—

- (a) contract or a similar contract was previously renewed so that the employee has been employed on 2 fixed term contracts then from the date of the end of the second contract the employee shall be a permanent employee; or
- (b) cumulative period of employment in the same business is 3 years then from the beginning of the 4th year the employee shall be a permanent employee; whichever occurs first.

(2) Where a believer of Anguilla or the spouse of a believer has been employed using a fixed term contract in the same business for one year then from the beginning of the 2nd year that person shall be a permanent employee but this subsection does not apply to a person in a managerial or executive position.

(4) Temporary breaks in employment or temporary cessation of work due to seasonal work, layoffs, hotel or other business closure, shift cancellations, vacation and other leave, public holidays and other breaks in employment does not affect the computation of time or prejudice the employee in any way under this section.

Seasonal employment

11. (1) Where an industry is characterised as having a regular high season and low season such as that which exists in the tourism industry, an employee may be hired to perform work in the high season and may be considered to be a seasonal employee.

(2) Where a seasonal employee is a belonger of Anguilla or the spouse of a belonger and has worked in the same business for one high season then from the beginning of the next high season in that same business that employee shall be considered to be a permanent employee.

(3) A seasonal employee shall not be treated any less favourably than a comparable permanent employee.

Overseas seasonal employees

12. (1) Where an employer wishes to hire several overseas seasonal employees, the employer must, in addition to following the requirements for work permits, apply in writing to the Minister through the Commissioner for permission to do so.

(2) An application for seasonal employees must contain the following—

- (a) proof that the employer has tried to recruit employees locally;
- (b) the number of workers needed;
- (c) a general indication of where the shortage of seasonal labour occurs;
- (d) a description of the available positions and the tasks to be performed;
- (e) when and for how long each position is available; and
- (f) an indication of the living accommodations, health benefits and rest periods to be granted to each employee.

Casual employment

13. Casual employment refers to an informal working arrangement where there is no regular or clear pattern of work and the employer is not obligated to provide work and the employee is not obligated to perform work and usually occurs when it is difficult to predict when the work needs to be done and when the work needs to be done quickly.

Temporary or substitute workers

14. (1) Where an employee is temporarily absent from employment and the employer hires a person from outside of the business to perform the work until the employee returns that person may be described as a temporary or substitute worker.

(2) A temporary or substitute worker is not an employee of the business and can only hold the position up until the time when the employee resumes their employment.

(3) A temporary or substitute worker shall only be hired using a fixed term contract.

(4) An employee working in the business or a subsidiary of the business who works in the position of the absent employee shall not be considered to be a temporary or substitute worker.

Independent contractors or self-employed persons

15. (1) An independent contractor or self-employed person works under a contract for services and is not entitled to the rights and does not bear the same responsibilities of an employee.

(2) An independent contractor or self-employed person maybe identified if one or more of the following factors exist in the employment relationship in that the person performing work—

- (a) uses their own tools and instruments;
- (b) generally has control or more discretion over when and how work is to be performed and does not require close supervision;
- (c) receives a lump sum or a fee for the work performed and carries the financial risk related to the work performed;
- (d) may delegate or subcontract work;
- (e) may provide the same or similar services for different businesses at the same time;
or
- (f) pays their own taxes, levies and other governmental fees.

Computation of time

16. For a person employed in the hotel and tourism industry, an employment year may be formulated from the time the industry generally starts to the time it generally ends or the time when the business officially opens and officially closes.

Division 2*Rights and Remedies***Written statements from employer**

17. (1) An employee may request in writing a written statement from the employer explaining the employers reasons for any less favourable treatment and the employer shall provide the employee with the written statement within 14 days from the date of the request.

(2) A written statement is admissible as evidence in any proceedings.

(3) A Tribunal may draw any inference which it consider just and equitable, including the inference that the employer has infringed the rights of the employee, if the employer fails to respond to the request for a written statement.

Determination of the employment relationship

18. It is a matter for the Tribunal to determine whether a person is employed by another person under a contract of service or a contract for services and the classification of or the real nature of the employment relationship between them and in this regard the Tribunal—

- (a) must consider all relevant matters, including the way in which the parties operated and understood the situation and any matter that indicates the intention of the persons; and
- (b) shall not treat as a conclusive matter any statement by the persons that describes the nature of their relationship.

Breach of duty of good faith

19. Where a party to an employment relationship fails to comply with the duty of good faith and—

- (a) the failure was deliberate and serious or sustained; or
- (b) the failure was intended to undermine the employment relationship or an individual;

the Tribunal shall, in addition to awarding compensation, award exemplary damages.

Remedies

20. (1) The Tribunal may find that—

- (a) the employee has been treated less favourably than a comparable permanent employee;
- (b) the employer provided no objective reason for the less favourable treatment;
- (c) the employer has no genuine reasons for the lack of objective treatment;
- (d) an employee is a permanent employee;
- (e) a person is employed on a contract of services and not for services;
- (f) the employer deliberately disguised an employment relationship as an independent contracting arrangement; or
- (g) any other complaint under this part has been proven.

(2) The Tribunal may apply the following remedies—

- (a) make a declaration as to the rights of the employee and the employer;
- (b) order the payment of remuneration where due;
- (c) order the reinstatement or re-engagement of an employee, where appropriate;
- (d) direct any sum payable at the termination of employment including—
 - (i) any vacation, notice or other benefits, or
 - (ii) the taking of vacation leave or maternity leave when due,

- (e) order the employer to pay compensation to the employee; or
- (f) recommend that the employer take reasonable action to reduce the adverse effect on the employee of any matter to which the complaint relates.

(3) The amount of the compensation awarded shall be just and equitable in all the circumstances having regard to—

- (a) the infringement to which the complaint relates; and
- (b) any loss which is attributable to the infringement including—
 - (i) any expenses reasonably incurred by the complainant as a result of the infringement, and
 - (ii) loss of any benefit which the employee might reasonably be expected to have had but for the infringement.

(4) Where the complaint or breach was contributed to by the complainant, the Tribunal may reduce the amount of the compensation by such proportion as it considers just and equitable.

(5) If the employer fails, without reasonable justification, to comply with an order under subsection (2) the Tribunal may further order—

- (a) the employer to increase the amount of compensation required to be paid to the employee;
- (b) the employer to pay compensation;
- (c) the payment of exemplary damages where the employer repeatedly behaves with impunity in refusing to follow the order.

PART 3

TERMS AND CONDITIONS OF EMPLOYMENT

Division 1

General Terms and Conditions of Employment

Contract of employment

21. (1) All employees work under a contract of employment with their employer whether the contract is an oral contract or a written contract.

(2) A contract of employment is an agreement of service that sets out an employee's conditions of employment, responsibilities and rights and these may also be referred to as the terms of the contract.

(3) A contract to provide services is not a contract of employment.

(4) Terms of the contract may be found in—

- (a) a written contract;
- (b) a written statement of employment particulars;
- (c) an employee handbook;
- (d) a company's notice board;
- (e) collective agreements;
- (f) an offer letter from the employer;
- (g) an oral or verbal agreement;
- (h) the custom and practice of the business; and
- (i) the conduct of the employer and employee.

(5) At the time of engagement, every employee shall be informed of his terms and conditions of employment and the nature of the work to be performed.

(6) All employees have the right to request a written statement of employment from the employer.

Implied terms

22. Terms may be implied into a contract of employment to make the contract effective in the particular business environment and shall be governed by the principle of fair management and fair employee performance.

Employment rights for all employees

23. All employees are entitled to the following rights—

- (a) reasonable hours of work;
- (b) reasonable breaks for meals;
- (c) daily and weekly rest periods;
- (d) safe and healthy conditions of work;
- (e) maternal and parenting leave;
- (f) protection from dismissal wrongfully or unfairly;
- (g) equal treatment or equality of opportunity; and
- (h) the payment of wages which have been negotiated and which are fair.

Employment rights for permanent and fixed term employees

24. All employees except casual employees are entitled to—

- (a) medical or sick leave;
- (b) paid vacation leave;
- (c) paternal and adoption leave;
- (d) benefits distributed by the company or business including retirement and other fringe benefits;
- (e) redundancy (severance) pay;
- (f) written statement of employment terms; and
- (g) where appropriate or reasonable—
 - (i) flexible work time,
 - (ii) overtime payment,
 - (iii) bereavement leave,
 - (iv) leave for emergency purposes including when a dependant falls ill, is injured or there is an unexpected disruption or termination of arrangements for the care of a dependant.

Casual employees

25. A casual employee who works for less than 12 months but more than 153 days during a period of 12 months shall be entitled to paid annual holiday on a proportionate basis.

More favourable rights

26. The provisions of this Act provide minimum standards of treatment and do not preclude an employer from providing an employee with benefits that extend beyond those to which they are entitled.

Written statement of employment particulars

27. Permanent employees and fixed-term employees have the right to receive a written statement of the most important terms of their contracts of employment including—

- (a) the name and address of employer and employee;
- (b) the date of commencement of employment;
- (c) the job title and a brief description of the work;
- (d) the rate of pay and pay interval;
- (e) the regular hours of work and rest periods;
- (f) the entitlement to public and other holidays and details about holiday pay;

- (g) retirement and corporate or fringe benefits; and
- (h) if the contract is for a fixed period the date of the end of the period.

Employee's entitlement to reasonable breaks for meals, rest, etc.

28. The Ministry recognises that adequate breaks for employees operate to—

- (a) promote good morale and productivity; and
- (b) prevent fatigue causing harm; and

therefore the Ministry mandates that an employer shall allow an employee to take reasonable breaks for meals, daily and weekly rest periods and, where appropriate, breaks to attend to personal matters.

Breaks for meals

29. (1) An employer and employee may agree on how and when an employee takes a break for meals but that break shall—

- (a) take place within 5 hours of continuous work;
- (b) not be mandated to be taken on the premises of the employer; and
- (c) subject to subsection (2), be for at least one hour.

(2) An employer may require an employee to have nothing less than a 30 minute meal break during peak seasons or at a time when the nature and duration of the work requires this approach and it is reasonable to do.

Normal hours of work, daily and weekly rest periods

30. (1) The standard workday, exclusive of meals and other agreed intervals, shall be 8 hours and the standard workweek shall be 44 hours.

(2) An employer shall permit his employees to enjoy in every period of 7 consecutive days a period of rest comprising at least 24 consecutive hours or an employer shall not employ a person in excess of 12 hours in any period of 24 hours or in excess of 72 hours in a period of 168 hours.

(3) Notwithstanding subsection (2), an employer may require an employee to work a temporarily increased number of hours or days where—

- (a) there is an accident or urgent work to the plant or equipment is required;
- (b) there is abnormal pressure of work due to special unforeseeable circumstances which does not allow the employer to resort to other measures;
- (c) in order to prevent the loss of perishable goods;
- (d) it is peak season; or

- (e) there is a planned special event and the employer has provided reasonable notice to the employee that their services would be required;

but in no case shall the night rest period or, for employees working at night, the day rest period be less than 10 hours.

(4) Where an employee is required to work in accordance with subsection (3) that employee shall not be required to work during a break for meals and shall receive overtime pay or additional time off.

Overtime pay

31. (1) Subject to subsections (2) and (4), where an employee is employed for a period exceeding 44 hours in any one week, he shall be paid at the rate of 1½ times his basic hourly rate of pay for each hour employed in excess of 44 hours; where such period exceeds 48 hours, he shall be paid at the rate of twice his basic hourly rate of pay for each hour employed in excess of 48 hours.

(2) For all hours worked on the duly recognised day of worship for the employee involved (not being for him a scheduled work day), Good Friday, Christmas Day or any day declared at the beginning of the calendar year to be a public holiday, the employer shall pay the employee at the rate of twice his basic hourly rate of pay.

(3) Where an employee consents to working on a rest day and that employee's work hours have not exceeded the 44 hours work week limit that employee shall not be entitled to overtime pay.

(4) Managers and executive officers who work overtime shall be entitled to compensatory time off but at the very least that time shall be calculated at the rate of time and a half for each hour in excess of 44 hours per week.

(5) It is at the discretion of the employer to pay compensation for overtime to managerial and executive employees.

(6) In arranging for overtime work, the employer shall take into account the special circumstances of young persons under 18 years of age, pregnant women, nursing mothers, persons with disabilities and persons who care for dependents.

Payment for public holidays

32. (1) An employee who is paid by the day or the hour shall be paid by the employer at the single time rate for a public holiday which falls on a scheduled work day if he is at work on the scheduled work day immediately preceding and that immediately following the public holiday.

(2) For the purposes of subsection (1), a scheduled work day is a day on which an employee would have worked were it not a public holiday.

(3) Subsection (1) does not apply to—

- (a) an employee who is paid by the piece or by the task and who is not subject to continuous supervision; or

- (b) managers and executive employees who shall receive their normal pay for public holidays whether or not they worked on the public holiday and where they have worked, they shall receive compensatory time off.

Conduct of employers regarding overtime pay and public holidays

33. (1) An employer shall not rename or attach managerial or executive titles to positions in an effort to avoid paying overtime pay and must be reasonable in requesting any employee to work overtime and on public holidays.

(2) Where it is found that the salary of managers or executive officers is unreasonable or where it is found that an employer was unreasonable in requesting any employee to work overtime or on public holidays the employer shall pay compensation to the affected employee.

Payment where employee stopped or prevented from working full day or shift

34. Where an employee who is paid by the hour reports for work but is prevented from working by an act of God (*force majeure*) or is stopped from working by his employer then that employee shall be paid for the time worked using his basic rate of pay.

Pay for period of stand-by or being on call

35. Where an employer requires an employee to be on stand-by at the work place that employee remains on duty and shall be paid—

- (a) normal wages or overtime pay for the number of hours on stand-by; or
- (b) an allowance agreed to by the employer and employee where that person is a permanent or fixed term employee.

Probationary period

36. (1) At the beginning of a new job or on the transfer or promotion to a new position an employer and an employee may enter into an agreement that there should be a probationary period as a term of the employment contract.

(2) The purpose of a probationary period is to allow a specific period for an employer and employee to assess suitability for the job in that—

- (a) an employer must objectively assess whether the new employee is suitable for the job taking into account the required standard of performance matched against the employee's capability, skills, performance, attendance and general conduct; and
- (c) an employee must objectively assess whether they have the skills necessary to perform the job in the particular work environment.

(3) It is not mandatory that an employer and employee agree that a new job must commence with a period of probation but where an employer and employee agree that there should be a period of probation then—

- (a) for managers and executive staff that period must not exceed 6 months; and
- (b) for all other staff that period must not exceed 3 months.

(4) At the beginning of a probationary period the manager or supervisor must discuss the following with the new employee—

- (a) what the employee is expected to achieve in their job during the probationary period and thereafter;
- (b) details of the core values of the organisation and behaviours expected of the employee;
- (c) the standards of regular attendance expected from the employee;
- (d) the standards of customer service expected from the employee;
- (e) any further development required to help the employee to do their job;
- (f) details of structured training, guidance and supervisory support the new employee can expect to help them achieve the required standards of performance;
- (g) how any problems with performance will be addressed; and
- (h) when the probationary period review meetings will take place the purpose of which is to assist in bringing about a sustained improvement in performance and to ensure that the employee has had sufficient opportunities to achieve this.

Extension of probation

37. (1) A period of probation shall only be extended where—

- (a) either the supervisor of the employee or the employee was—
 - (i) unavailable for work duties due to sickness,
 - (ii) unavailable for work duties due to unplanned medical leave, or
- (b) the supervisor—
 - (i) was unable to supervise the employee due to unusual and exceptional circumstances, or
 - (ii) for fair and valid reasons, needed more time to assess the suitability of the person for the position.

(2) Where a probationary period is extended in accordance with subsection (1), then that extension shall not be for more than half of the original period of probation.

Confirmation to the post on expiry of probation

38. (1) During the period of probation, an employer shall treat an employee fairly in determining whether or not to confirm the employee to the post.

(2) An employee shall be considered to have satisfactorily completed the period of probation which ended if the employer did not inform the employee before it ended that he or she satisfactorily completed the period of probation.

(3) An employer who has informed an employee that he has satisfactorily completed the period of probation or an employer who failed to indicate whether the employee did not satisfactorily complete the period of probation shall not place the employee on any further period of probation for the same job.

Short notice to end period of probation

39. (1) During a period of probation an employer or employee may end the employment relationship by providing short notice but this section does not apply to an employee who has been promoted or transferred to a new position in the organisation or a subsidiary of the organisation.

(2) An employer and employee shall agree on the amount of time that constitutes short notice but that short notice shall not—

- (a) be less than 2 weeks and not more than 4 weeks for employees who are managers and executive staff; and
- (b) be less than 4 days and not more than 2 weeks for all other staff.

Claim for unfair dismissal during period of probation

40. Where an employee has been dismissed during the period of probation that employee may request a written explanation detailing the reasoning for the dismissal.

Employment records

41. (1) An employer must keep records in sufficient detail to demonstrate that the employer has complied with provisions of this Act including—

- (a) the name, postal address, occupation and the date the employee started working;
- (b) a copy of any written statement of working conditions given to an employee;
- (c) the immigration status of each employee and the date of expiry of an employee's work permit;
- (d) the number of hours worked each day in a pay period and the pay for those hours but where the hours are agreed to as usual hours then a statement of those usual hours and pay will be enough;
- (e) the type of leave taken along with the date and duration of the leave;
- (f) the dates and number of hours worked on public holidays and the payment for these;
- (g) details of the benefits (other than wages or salary) in cash or kind given to a category of employees and details of such benefits that were distributed to an employee; and
- (h) the date when employment ended and the amount of holiday pay they received at the end of employment.

(2) Employment records may be kept in paper format or electronically as long as the information can be accessed easily and converted into written form.

(3) An employer must—

- (a) keep a register of all employees under 18 years;
- (b) allow an employee to inspect and copy his employment records; and
- (c) maintain employment records for at least 6 years after the employment of an employee ended.

(4) An employer who contravenes any of the provisions of this section commits an offence and is liable on summary conviction to a fine not exceeding \$2,000.

Division 2

Sectoral Rules

Minister may develop sectoral rules

42. (1) Where the Minister is concerned about the basic conditions of employment of a particular sector the Minister may develop sectoral rules to improve on those conditions of employment.

(2) Sectoral rules are temporary measures to address particular sectoral issues and may be used until such time as legislation is implemented.

(3) Sectoral rules may address any condition of employment that is not addressed in this Act including—

- (a) minimum rates of remuneration;
- (b) basic conditions of work;
- (c) minimum standards of housing for employees who work on premises provided by employers; and
- (d) regulating training and education schemes.

Investigating a sector

43. (1) Before developing sectoral rules, the Minister must direct the Commissioner to conduct an investigation into a particular sector.

(2) In order to conduct an investigation, the Commissioner may utilize all the powers provided in relation to evaluative mediation including referring a point of law to the Tribunal for a determination.

(3) At the conclusion of the investigation, the Commissioner must prepare and present to the Minister a report of findings which considers the following factors—

- (a) the manner in which the particular sector operates and how this in turn affects the welfare of employees;
- (b) the standards by which the particular sector should operate using local, regional or international best practices;
- (c) the payment of wages including whether there is differentials in wages;
- (d) the use of discriminatory practices including gender inequality;
- (e) the ability of employers to carry on their business successfully;
- (f) the cost of living and the need to alleviate poverty;
- (g) the likely impact of any proposed conditions of employment on current employment or the creation of employment; and
- (h) the health and safety of employees.

Enforcement of sectoral rules

44. (1) Using the report the Minister may develop sectoral rules which shall come into effect 21 days after tabling in the House of Assembly.

(2) Any sectoral rule shall be enforced for no more than 2 years from the date of tabling in the House of Assembly.

Division 3

Accrued Benefits (transitional matters)

Accrued benefits provided by an institution etc.

45. (1) Where prior to the enactment of this Act, an institution, company or business had a workplace policy which provided employees with benefits on retirement (including early retirement), at the end of a contract, on termination of the contract of employment or on resignation then the eligible employee accrued a right to those benefits on the date of retirement, on the date the contract ended or on the date of resignation.

(2) Retirement benefits and other established corporate benefits attained by an employee in accordance with the policies of the employer prior to enactment of this Act, shall be, from the date of enactment, treated as a trust and where the laws of Anguilla are silent, the laws pertaining to pensions, equity, trusts and companies in the United Kingdom shall apply to the determination, preservation and distribution of those benefits.

(3) An employee who claims that their rights as provided for under subsection (1) have been breached may provide the Commissioner with all relevant information to substantiate their claim.

(4) Where the Minister is of the view that there is sufficient evidence to substantiate a claim for benefits and the Minister declares in writing that the matter is one of national interest then the dispute settlement procedure under the Department of Labour shall be temporarily suspended and the Minister may—

- (a) attempt to resolve the matter in the first instance through the process of negotiation; or
- (b) instruct the Attorney-General to proceed to act as the *de facto Pensionable Commissioner* for the purpose of protecting the benefits of employees.

(5) Where subsection 4(a) or (b) has been invoked, the Attorney-General, acting in conjunction with the Minister, shall establish a local working group to oversee the process including the appointment of external counsel, accountants and financial managers to conduct this matter.

(6) The Tribunal has jurisdiction to hear and determine any claims made under this section.

Division 4

Leave

Annual holiday terms and conditions

46. (1) From 31 August 2019, an employee shall be entitled to at least 15 days paid annual holiday leave.

(2) Annual paid holiday accrues from the anniversary date of the employment of the employee with the employer.

(3) Where practicable, the annual paid holiday shall be given and taken in one period, or not more than 2 periods subject to a signed agreement by the employer and employee.

(4) Where the employer and employee so agree, the annual paid holiday or either of such separate periods may be taken wholly or partly in advance immediately before the commencement of the annual holiday.

(5) Unless otherwise agreed in writing between the employer and the employee, the annual paid holiday shall be taken by the employee before the end of 3 months of entitlement, provided that such annual paid holiday may, with the approval of the Commissioner, be further postponed for a specified period for good reason.

(6) Where the annual paid holiday or any part thereof has been taken before the right to such paid holiday has accrued, the right to a further annual paid holiday shall not begin to accrue until after the expiration of the period of the year of employment in respect of which the annual paid holiday or part thereof has been so taken.

(7) Periods of absence from work due to maternity leave, or to illness or injury for a period not exceeding 3 months shall not be deducted from the period of an employee's service for the purpose of the calculation of annual paid holiday entitlement.

Payment for annual holiday

47. The following formula shall be used to calculate the amount of paid annual holidays for an employee—

- (a) an employee employed on an hourly, daily or piecework basis shall become entitled to 15 days paid holiday after working for an aggregate of at least 154 days during a period of 12 months; and
- (b) an employee employed on a weekly, fortnightly, monthly or yearly basis shall become entitled to 15 days paid holiday after working for an aggregate of at least 238 days during a period of 12 months.

Exclusions from annual holiday

48. A period of annual holiday shall not include any period—

- (a) of sick leave to which the employee is entitled;
- (b) of maternity leave to which a female employee is entitled;
- (c) of disability caused by accident or disease for which compensation is payable under the provisions of the Act or any other enactment;
- (d) for which an employee is called to serve on jury duty or national service or public duty; or
- (e) of public holidays.

Paid annual holiday upon termination

49. (1) Where an employee's employment has been terminated, he shall be paid wages in lieu of annual paid holiday or proportionate part due and not taken.

(2) Where the employee has taken his paid annual holiday in advance of his entitlement, the employer shall be entitled to deduct the sum paid in annual holiday in advance from any amounts payable to the employee upon termination.

Sick leave

50. (1) An employee, other than a casual employee, who due to illness is unfit for work, shall be eligible for sick leave with pay on the basis of one day for every 22 days worked, provided that he has worked for his employer for at least 110 days.

(2) An employee, other than a casual employee, who due to illness is unfit for work, shall be eligible for sick leave with pay for up to 2 normal working weeks per year, provided that he has worked for the employer for more than 12 months.

(3) Where the employment contract provides for part-time employment, an employee shall be eligible for sick leave in accordance with subsection (1).

(4) Notwithstanding subsections (1) and (2), an employee shall not be eligible for sick leave pay from his employer for any period of illness—

- (a) in respect of which he is entitled to be paid sick leave benefit under the Social Security Act or compensation under the Workmen's Compensation Act where such benefit is equal to the wages which he would have received for the period of illness; or

- (b) in respect of which he fails to notify his employer within the first working day of his illness, and if the period exceeds 3 days, to furnish the employer with a certificate from a duly qualified medical practitioner, stating that he is unfit for work due to an illness and specifying the period of unfitness for work.

(5) Subject to subsection (3), the minimum remuneration payable by an employer during any period of sick leave shall be the normal rate of wages less any amount to which the employee is entitled by virtue of the Social Security Act or the Workmen's Compensation Act.

(6) For the purposes of this section, any fraction of a day which is obtained by dividing a number of days of work by 22 shall be reckoned as one day.

Maternity leave

51. (1) Subject to section 53, on the production of a certificate from a duly qualified medical practitioner stating the presumed date of confinement, a female employee who has—

- (a) completed 24 months continuous employment shall be granted a period of maternity leave with pay by her employer;
- (b) served for 2 years since she last returned from maternity leave shall be granted a further period of maternity leave with pay by her employer; or
- (c) been employed for less than 24 months or who has served for less than 2 years since her last maternity leave shall be granted a period of maternity leave with pay by her employer but such leave shall be prorated (using paragraph (a) as a guide) for a period which bears the same proportion to 14 weeks as her service bears to 24 months, but in no case shall she be granted less than 6 weeks to be taken after the date of confinement.

(2) The period of maternity leave shall not be less than 14 weeks of which not less than 6 weeks compulsory leave shall be taken after the date of confinement.

(3) The remainder of the period of maternity leave may be taken—

- (a) before the presumed date of confinement;
- (b) following the period of compulsory leave; or
- (c) partly before the presumed date of confinement and partly following the period of compulsory leave.

(4) The leave before the presumed date of confinement shall be extended by any period elapsing between that date and the actual date of confinement and the period of compulsory leave to be taken after confinement shall not be reduced on that account.

Additional period of maternity leave

52. Where a qualified medical practitioner certifies that an illness necessitating absence from work arises out of pregnancy or confinement or both, the employer shall grant the employee an additional period of maternity leave, with or without pay, not exceeding 3 months.

Amount of maternity leave pay

53. The employer shall pay to an employee, during the full period of maternity leave not exceeding 14 weeks, the basic wage and remuneration, less any amount payable as maternity benefits under the Social Security Act.

Paternity leave

54. (1) The father of the baby or the husband of the baby's mother shall be granted paternity leave for such period as requested in the application but in any case not exceeding one month in any 12 month period beginning with the date of confinement and ending not later than 16 weeks from the birth of the child.

(2) Paternity leave comprises of 4 consecutive weeks of leave divided in the following manner—

- (a) 2 weeks during which the employer shall pay the employee his basic wage and remuneration, less any amount payable as paternity benefits under the Social Security Act; and
- (b) 2 weeks which the employer may grant to the employee with or without pay.

Entitlement to adoption leave

55. An employee is entitled to maternity or paternity leave of 4 weeks after the adoption of a child who is no more than 3 years but this leave may be granted with pay or without pay.

Paid leave to carry out parental responsibilities

56. (1) On the production of a written notice issued under section 110(4) of the Education Act setting out the day and time at which an employee is required to attend and an estimate of the amount of time the employee's presence will be required, an employee who is a parent of a child attending a public school or an assisted private school shall be granted a reasonable period of leave to carry out the parental responsibilities referred to in section 110(1) and (2) of the Education Act.

(2) The period of leave referred to in subsection (1)—

- (a) shall not exceed—
 - (i) 8 hours in any month, and
 - (ii) 32 hours in any calendar year; and
- (b) shall be on full pay.

(3) No employer shall impose upon or exact from the parent any penalty by reason of leave taken under subsection (1).

(4) An employer may, in his discretion, grant to an employee who is a parent of a child attending a public school or an assisted private school such additional leave as may be required to carry out the parental responsibilities referred to in section 110(1) and (2) of the Education Act and such additional leave may be unpaid.

(5) For the purposes of section 31 (overtime), any leave granted under subsection (1) or (4) shall not be counted as time employed when determining the period during which the parent is employed in any one week.

(6) This section applies, with such changes as the circumstances require, to an employee who—

- (a) is the parent of a child attending a private educational institution; and
- (b) produces written notice issued by the principal of that institution setting out the day and time at which the employee is required to attend and an estimate of the amount of time the employee's presence will be required;

as it applies to an employee who is a parent of a child attending a public school or an assisted private school.

(7) For the purposes of this section, “academic year”, “assisted private school”, “parent”, “private educational institution” and “public school” have the same meaning assigned in the Education Act.

(8) An employer who contravenes this section is liable on summary conviction—

- (a) in the case of a first offence in any academic year, to a fine of \$1,000;
- (b) in the case of a second offence in any academic year, to a fine of \$2,000; and
- (c) in the case of a third or subsequent offence in any academic year, to a fine of \$5,000.

Employee not to be given notice of dismissal while on leave

57. (1) An employer is prohibited from giving a notice of dismissal to—

- (a) a female employee on maternity leave;
- (b) a male employee on paternity leave;
- (c) an employee who is on leave in relation to the adoption of a child; or
- (d) an employee who is on sick leave.

(2) Section (1)(a) and (d) are subject to section 94 (Dismissal for incapacity due to health conditions).

Special leave for jury service and other purposes

58. (1) An employer shall grant leave with full pay to an employee for the duration of jury service that the employee is required to give but that employee shall be required to report to work for duty on those days when he is not required to be in court.

(2) An employer shall grant leave with full pay to an employee who is required to attend any hearing of a Tribunal under this Act.

(3) An employee may be granted leave with half pay for the period when he is representing Anguilla at the national level at any sport or cultural event approved by the Executive Council.

Penalties and employee's right to recover

59. (1) An employer who—

(a) enters into any agreement or gives any remuneration for employment contrary to this Part;

(b) makes any deduction from the wages of an employee or receives any payment from an employee contrary to this Part;

commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 and for each subsequent offence, to a fine not exceeding \$10,000.

(2) An employee shall be entitled to recover by order of the Tribunal so much of his wages as have not been paid to him, including any entitlement under this Part but exclusive of sums lawfully deducted, plus interest at the rate to be determined by the Tribunal.

Division 5

Protection of Wages and Distribution of Service Charge

Payment of wages otherwise than in money, illegal

60. (1) The wages of an employee shall be made payable in Eastern Caribbean currency, United States currency or with the consent in writing of the Commissioner, in any other currency which is accepted in Anguilla.

(2) An agreement to pay wages in any currency or manner that is inconsistent with subsection (1) is illegal and void.

(3) Where an employer pays an employee's wages by cheque drawn on a bank in Anguilla and due to insufficient funds the cheque is dishonoured and not accepted upon presentation for payment, the employer is liable to pay to the employee, in addition to the employee's wages—

(a) $\frac{1}{10}$ of the value of the employee's cheque; and

(b) any charges the employee may have suffered upon presentation of the cheque, whether for the first time or a subsequent time.

Agreement as to place or manner of spending wages, illegal

61. (1) An employer shall not include in a contract of employment a condition, restriction or requirement which imposes any terms as to the place or manner in which the employee is to spend any wages and where the employer purports to do otherwise that action is illegal and void.

(2) An employer shall not compel an employee to purchase goods or services from his place of employment or from a business enterprise associated with the employer.

(3) An employer who breaches this section commits an offence and is liable to a fine not exceeding \$5,000.

Wages to be paid entirely in money and on working day

62. (1) Except where expressly permitted by the Act, wages shall be paid on working days only and at or near the workplace.

(2) Where an employee is paid wages by cheque or money order, the employer shall provide reasonable time off with pay for such employee to conduct bank transactions relating to his pay.

Wages to be paid directly to employee

63. Wages shall be paid directly to the employee to whom they are due or to a person specified by him in writing.

Wages not to be paid on certain premises

64. An employer shall not pay wages within any place that sells liquor except where the employer is the resident owner or occupier paying wages to his employee.

Pay periods

65. (1) An employer shall pay or cause to be paid wages to his employees at regular intervals, or on the agreed pay day, which may be daily, weekly, fortnightly or monthly.

(2) Pay periods may be fixed by contracts, collective agreements, arbitration awards or where the pay period has not been established then the Commissioner may fix that pay period.

Authorised deductions

66. (1) An employer may deduct from remuneration payable to an employee under any contract of employment the following—

- (a) taxes, rates, levies or other deductions imposed by law;
- (b) any cash advance on account of unearned wages or loans;
- (c) the value for property belonging to the employer which the employee failed to return to the employer on the termination of the contract of employment and after being requested to do so by the employer;
- (d) any sum of money which an employee has authorised in writing to be deducted for other purposes but this does not include—
 - (i) obtaining or retaining employment,
 - (ii) payment relating to a fine or negligent or bad work, and
 - (iii) payment for damage to the materials or other property of the employer which has not been ordered by the Tribunal.

(2) The total sum, which may be deducted in any pay period, shall not exceed $\frac{1}{3}$ of the gross wage, excluding the value of any payments in kind, of the employee in the applicable pay period.

(3) Nothing in this section shall prevent an employer from recovering from an employee whose employment has been terminated, the outstanding balance of a loan granted by the employer to the employee, and such amount may be deducted from any accrued gross wages due to the employee.

(4) An employee whose duties include the handling of cash shall not be required to reimburse the employer for any portion of any shortages of cash, unless, upon a thorough internal investigation, such employee was found to be dishonest, negligent or reckless in the performances of his duties or has admitted to theft.

Prohibited deductions and deductions for work permit fees

67. (1) Where an employer has made to an employee an advance on account of unearned wages, he shall not make any deductions by way of discount, interest or any similar charge on such advance.

(2) Except for work permit fees, an employer shall not seek to recover from an employee, whether by way of deduction from wages or otherwise, any sum or fee incurred in relation to the recruitment of the employee, including visa fee or security bond.

(3) Subject to the direction of the Commissioner and after consultation with the employee, an employer may deduct a reasonable amount of wages to cover no more than 50% of the amount of the work permit fee.

(4) The Commissioner may direct the amount of work permit fees to be deducted from the employee's wages if the Commissioner is satisfied that the deductions made by the employer are unreasonable.

(5) Where an employer intends to deduct work permit fees from an employee who is being recruited from overseas, the employer shall inform the employee in writing of the amount of fees to be deducted prior to the employee accepting the contract of employment or departing the overseas jurisdiction.

(6) Nothing in this section precludes an employer from granting a loan with interest to his employee provided that the loan is not an advance on unearned salary.

Payment of wages on termination of employment

68. (1) All wages due to an employee on termination of his contract of employment shall be paid to him immediately or no later than one week after his contract of employment has been terminated

(2) In the case of a casual employee, wages shall be paid immediately on completion of the work.

Employment benefits

69. (1) An employer shall pay to the employee the full amount of wages which shall be payable in cash, by cheque or by directly crediting an employee's account, and any agreement to do otherwise is void.

(2) As part of the overall employment package an employer may, in addition to the payment of wages, pay to an employee employment benefits in cash or kind including—

- (a) accommodation, utilities, health care and other amenities supplied at the sole expense of the employer;
- (b) any sum paid to an employee to defray special expenses incurred by the employee due to the nature of the employment;
- (c) severance benefits, retirement benefits and gratuity;
- (d) shares, stocks, bonds or other corporate benefits; and
- (e) other gifts.

(3) Employment benefits must be—

- (a) of fair and reasonable value and appropriate to the monetary value placed on the benefit;
- (b) of personal benefit and appropriate for the employee or his family; or
- (c) customary or desirable in the particular industry or occupation concerned.

(4) Employment benefits must not—

- (a) be in the form of liquor, tobacco, cigarettes, weapons, noxious drugs or substance; and
- (b) exceed in its cash value $\frac{1}{3}$ of the employee's regular wages for a completed pay period and this refers only to benefits in kind.

(5) The question of whether or not employment benefits are within the meaning of this section shall be decided by the Commissioner and the Commissioner's decision shall be final.

Employee's right to recover

70. Where an employer has paid an employee wages in a manner contrary to this Part, the employee shall, even if he accepted payment in the manner made, be entitled to recover from the Tribunal so much of his wages, exclusive of sums lawfully deducted under this Part, that was not paid to him in legal tender.

Wages to be priority debt

71. Notwithstanding any provision in any other enactment, amounts owed to employees by reason of non-payment of wages and other remuneration shall constitute priority debt and shall have prior claim over all other debts in respect of the property of the employer.

Register of payments to employees

72. (1) An employer shall keep a register of payment of wages, service charge distributions, and all other employment benefits paid to his employees and the register of payments may be made in the form set out in Schedule 1.

(2) Where an employee requests a copy of the register of payments relating to him for any pay period, the employer shall provide him with a copy of this information.

Limitation on attachments or seizure of wages

73. (1) Notwithstanding any provision in any other enactment, the wages of an employee shall be liable to attachment or seizure in execution only within the following limits—

- (a) up to $\frac{1}{2}$ in respect of maintenance payments; and
- (b) up to $\frac{1}{3}$ in respect of all other debts of any kind and however contracted.

(2) Where the employee has more than one attachment or seizure order against him at the same time subsection (1) shall not apply and the guiding principle shall be that an employee's salary shall not be reduced beyond 50% of his wages.

(3) Where the wages of an employee are attached or seized under subsection (2) those sums shall be divided among the claimants in proportion to their established claims.

Employers to issue details of wage payments

74. An employer shall, at the time of paying wages to an employee, provide that employee with a wage slip containing the following written details for the wage period to which the wages relate—

- (a) the name and occupation of the employee;
- (b) the wage rate of the employee;
- (c) the period to which the wage relates;
- (d) in the case of daily paid employees, the number of hours paid for at ordinary rate and at overtime rate;
- (e) the nature and amount of any bonuses or allowance paid;
- (f) the gross wages earned by the employee;
- (g) the amounts and nature of any deductions from gross wages; and
- (h) the amount of the net wage paid to the employee.

Offences under this Part

75. (1) Where the Tribunal finds that an employer has—

- (a) failed to pay wages to an employee when those wages were due and payable;

- (b) paid wages in a form, manner or place contrary to the provisions of this Part;
- (c) made deductions from the wages of an employee or received payment from an employee contrary to the provisions of this Part;
- (d) failed to provide an employee with the details of his wages due to him as required under this Part;
- (e) paid an employee wages in whole or part in the form of intoxicating liquor, tobacco, cigarettes, noxious drugs or substance contrary to this Part;
- (f) failed to distribute a service charge, share of profits or commission contrary to this Part;
- (g) failed to provide the employee with the relevant employment benefits;
- (h) breached any other provision under this Part;

the Tribunal may—

- (i) order the employer to comply with the section that was breached;
- (j) order the employer to pay compensation to the employee; or
- (k) where appropriate, order the employer to pay exemplary damages.

(2) An employer who contravenes any of the provisions under subsection (1) commits an offence and is liable on summary prosecution to a fine not exceeding \$10,000.

Distribution of service charge

76. (1) In an establishment in which a customer pays a service charge, the employer shall pool the service charge and distribute it among his employees every 4 weeks in accordance with this section.

(2) Where the establishment has at least 5 employees, the employer shall establish a service charge committee (in this section called the “Committee”) for the periodic distribution of the service charge.

(3) The Committee shall consist of 4 representatives as follows—

- (a) 2 persons appointed by the employer to represent the employer; and
- (b) 2 persons representing the employees to be elected by the employees.

(4) The election in subsection (3) shall take place within the first 6 weeks of each year and the elected persons shall each serve for a term of one year and the results of such election shall be filed with the Labour Department by the 31 January each year provided that where a person so elected is unable for any reason to serve his full term, the employees may elect another person to represent them in his stead or for the remainder of the term and shall file the result of the election with the Commissioner within 14 days of obtaining that result.

(5) The total amount of service charge accumulated over every period of 4 weeks shall be distributed among employees on such basis as may be decided by the Committee but this sum for distribution shall be reduced by 5% to cover the administrative expenses of the employer associated with the distribution of the service charge.

(6) The employer shall prepare a record showing the total amount of service charge accumulated in each period of 4 weeks (the total amount of Government tax which has been deducted, if applicable), the amount retained by the employer for administrative expenses, the list of employees to whom the balance has been distributed and the amount paid to each employee.

(7) The employer shall provide the record regarding service charge under subsection (6) to the Committee as soon as it is prepared.

(8) Tips or gratuities paid to an employee for his personal service are the sole property of the employee and shall not be pooled with the service charge.

(9) An employer or his agent who fails to distribute service charge in accordance with this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

Prosecution to be instituted within one year of offence

77. No prosecution for any offence under this Part shall be instituted after the expiration of one year from the date of the commission of the offence.

PART 4

MINIMUM WAGES

Fixing of minimum wage

78. (1) The Executive Council may, by Order, published in the Gazette, fix a minimum wage for—

- (a) employees generally; or
- (b) any class of employees in a particular industry or undertaking or trade or occupation, and such minimum wage shall be not less than the minimum wage specified under paragraph (a).

(2) A Minimum Wage Order may contain such provisions as the Executive Council thinks fit and may fix different minimum wages for employees of different categories of undertakings engaged in the same employment.

Establishment of Minimum Wage Committee

79. (1) The Executive Council may at any time appoint a Minimum Wage Advisory Committee to investigate the conditions of employment in such trade or occupation and to make recommendations for the fixing of minimum rates of wages.

(2) The Committee shall include the following members appointed by the Executive Council—

- (a) a Chairperson nominated by the Minister;
- (b) an equal number of members representing employers and employees, of which one member from each group should be from the hotel and tourism industry;
- (c) one member nominated by the Social Security Board;
- (d) the Commissioner or his designee who shall be an *ex officio* Secretary of the Minimum Wage Advisory Committee; and
- (e) any other person the Executive Council deems fit.

(3) The members representing employers and employees shall be appointed by the Executive Council after consultation with representative organisations of the employers and employees concerned and in the absence of such organisations, with the employers and employees concerned.

(4) The same Committee may be appointed in respect of more than one occupation or trade or in respect of all occupations and trades.

(5) Members of the Committee shall be appointed for such period as specified in the instrument of appointment.

Procedure

80. (1) The Committee shall meet at such times as may be necessary or expedient for the discharge of its functions.

(2) A quorum shall consist of one half of the members of the Committee including the Chairperson or, in the Chairperson's absence, the Deputy Chairperson and one member each from the employees and employers groups.

(3) In the case of an equality of votes, the Chairperson shall, in addition to his original vote, have a casting vote.

(4) The Committee shall follow the procedural rules set out in Schedule 2 and additionally shall make further rules for the regulation of its proceedings.

Publication of recommended rates and power of Executive Council to make minimum wages

81. (1) On receipt of the recommendations from the Committee, the Executive Council shall cause the rates recommended to be published in the Gazette and the public shall be given a period of at least one month in which to make any representation thereon in writing.

(2) After consideration of the recommendations of the Committee and the representations of the public, the Executive Council may issue an Order prescribing the minimum rates of wages payable and any other related matters.

Matters for consideration in proposing a minimum wage

82. In considering a proposed minimum wage, the Committee shall have regard to—

- (a) the general level of wages;
- (b) the cost of living;
- (c) the general level of competitiveness of the economy with focus placed on the main industries;
- (d) the need to link wage rates with productivity levels of employees; and
- (e) the protection of employees.

Effect of Minimum Wage Order

83. (1) An employer to whom a Minimum Wage Order applies shall, as from the date of effect of the Minimum Wage Order, pay to the employee wages and such other terms and conditions of employment which are not less than the minimum wage prescribed in the Minimum Wage Order.

(2) Where an employee enjoys wages and terms and conditions of employment that are already more favourable than those prescribed in the Minimum Wage Order, his employer shall not reduce his wages or terms and conditions of employment to those prescribed in the Minimum Wage Order.

Posting of Minimum Wage Order

84. An employer, whose operations are affected by a Minimum Wage Order, shall cause the Order to be displayed on a notice board in a conspicuous place in the establishment.

Offences in relation to this Part

85. An employer who contravenes any provision in this Part commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

PART 5

EMPLOYEE PERFORMANCE

Employee performance

86. (1) All employers, particularly employers in institutions and corporations, must endeavour to establish systems, policies, processes and practices that manage performance in a fair, transparent and effective manner.

(2) Employers are encouraged, where possible, to—

- (a) foster an employment culture that demonstrably supports effective performance;
- (b) clearly communicate the employment principles or standards, expected behaviour and performance duties of each employee;
- (c) provide each employee with clear, honest, objective, timely feedback about the employee's performance;

- (d) provide for the performance of duties by employees to be effectively managed;
- (e) periodically review and benchmark employment policies against local and regional best practices for labour; and
- (f) promptly and actively manage cases of unsatisfactory performance of duties by an employee.

(3) Disciplinary action taken by the employer and the termination of the employment contract shall be measured by the principles in this Act and the manner in which the employer manages their business taking into consideration subsections (1) and (2).

(4) The Commissioner may evaluate and comment on any management or employee performance system implemented by an employer and any comments may be used in assessing any labour dispute or grievance.

PART 6

DISCIPLINARY MEASURES

Disciplinary action

87. (1) Except for gross misconduct, the objective of disciplinary action is to modify unacceptable behaviour or improve performance.

(2) Disciplinary action may be—

- (a) informal which includes counselling, coaching, mandatory training, temporary withdrawal of privileges, reprimands and oral warnings; or
- (b) formal which includes written warnings, transfers, suspensions, demotions or dismissal.

(3) Except for gross misconduct, an employer must endeavour to use informal methods of disciplinary action before progressing to more formal methods.

(4) Disciplinary action may be taken by an employer against an employee for misconduct relating to an employee's breach of an employer's reasonable orders and rules.

Written warnings

88. (1) The objective of a written warning is to strongly signal to the employee to adjust behaviour or to make every effort to change and to indicate the consequences of the failure to adjust behaviour or if the efforts to change are unsuccessful.

(2) Where appropriate, a written warning should be issued before any other method of formal discipline is used.

(3) Before proceeding to dismiss an employee for misconduct, an employer shall issue—

- (a) at least 3 written warnings at reasonable intervals; or
- (b) 1 written warning and 1 suspension within a 12 month period.

Suspensions

89. (1) An employee may be suspended pending the outcome of an investigation if the employer is of the view that the facts of the case warrant this approach but for this type of suspension the employee shall receive full pay.

(2) Suspensions as a disciplinary measure may be with pay or without pay.

(3) Where an employer finds that an employee has committed misconduct of a serious nature or gross misconduct, the employer may—

(a) suspend an employee for a reasonable period with pay; or

(b) suspend an employee for a period not exceeding 2 weeks without pay but the amount of pay deducted shall not exceed half of the employee's wages.

Right of an employer to dismiss for misconduct, etc.

90. (1) Subject to subsection (2), an employer has the right to dismiss an employee if the employer is satisfied that the employee—

(a) engaged in repeated misconduct;

(b) committed misconduct of a serious nature;

(c) has demonstrated that he or she is not performing the work at the standard reasonably expected by the employer.

(2) An employer shall only dismiss an employee after following the procedure under this section and section 88.

Misconduct of a serious nature

91. (1) Misconduct of a serious nature occurs when an employee engages in behaviour that is inconsistent with the contract of employment and that—

(a) is wilful or deliberate and which undermines the trust and confidence that an employer has placed in an employee;

(b) causes serious risk to the health or safety of a person; or

(c) causes serious risk to the viability or profitability of the employer's business.

(2) Where an employer has decided to dismiss in accordance with this section, the employer must provide the employee with notice of the termination of the contract of employment or payment instead of notice.

Dismissal for gross misconduct

92. (1) Gross misconduct occurs when an employee engages in behaviour that is exceptionally serious and which destroys the employer-employee relationship and shows that the employee repudiates the contract of employment.

(2) Where gross misconduct has occurred, an employer may dismiss an employee summarily, that is to say, without notice or without payment instead of notice.

(3) Gross misconduct includes—

- (a) the commission of a criminal offence such as: theft, fraud, possession of an illegal drug, possession of an illegal firearm or ammunition, assault or causing grievous bodily harm;
- (b) gross negligence or repeated negligence;
- (c) wilful damage to the employer's property;
- (d) a series of incidents or where it can be justified on objective grounds, a one-off incident, which causes incapacity due to drunkenness or the abuse of illegal or pharmaceutical drugs;
- (e) the taking of a secret commission or bribe in breach of the employee's duty of fidelity;
- (f) refusal to follow health and safety measures instituted at work thereby endangering the health and safety of employees or members of the public;
- (g) gross insubordination or wilful disobedience of reasonable orders given by the employer; and
- (h) breach of confidentiality except for reports made by the employee to a law enforcement agency or a government regulatory agency.

Dismissal for incapacity due to lack of skill *etc.*

93. (1) An Employer has the right to dismiss an employee for incapacity, that is to say, the inability of the employee to perform duties at the standards required by the employer due to lack of skill, qualifications or aptitude.

(2) An employee's incapacity as it existed at the time of dismissal must be of such a nature and quality as to justify dismissal.

(3) Where appropriate an employer must provide an employee with a reasonable opportunity to improve on performance before dismissing that employee for incapacity.

Dismissal for incapacity due to health conditions

94. (1) Where an employee has been absent from work for 3 months or more because of incapacity due to health conditions and the employee has not submitted a medical report, the employer may request that the employee undergoes a medical examination and submits a medical report from a registered medical practitioner.

(2) Subject to subsection (5), where an employee fails to undergo a medical examination and submit a medical report as requested by an employer, the employer may take disciplinary action against the employee.

(3) Subject to subsection (5), where an employer determines that the incapacity of the employee due to health conditions seriously affects the ability of the employee to carry out his duties in a manner consistent with the contract of employment, the employer may dismiss the employee with notice or provide payment instead of notice.

(4) Where an employer is considering dismissing an employee for incapacity due to physical or mental health conditions, the employer must consult with the employee and must consider—

- (a) proper medical information;
- (b) the employee's past and likely future service;
- (c) the likely duration of the illness;
- (d) flexible work options;
- (e) the hardship caused to the business as a result of the employee's absence;
- (f) whether reasonable alternative employment is available with the business; and
- (g) any ill-health retirement or early retirement scheme that covers the employee.

(5) An employer shall not dismiss an employee who has not exceeded 6 months of absence from work due to incapacity for health conditions.

Abuse of sick leave

95. (1) An employer may discipline an employee for frequent absences from work due to health conditions where the employer objectively and reasonably determines that the absences are not genuine.

(2) Before an employer takes any disciplinary action in accordance with subsection (1), the employer shall provide the employee with the evidence that he is relying on and allow that employee a reasonable opportunity to respond.

Constructive dismissal

96. (1) Where an employer behaves in a manner which is not in accordance with good employer-employee relations or which signals that the employer repudiates or intends to repudiate the contract of employment and as a consequence of this behaviour the employee resigns then the employee can file a claim for constructive dismissal.

(2) The conduct of the employer may be one incident or a series of incidents.

(3) Notwithstanding any contractual or statutory provisions for notice when terminating the contract of employment, where an employee claims constructive dismissal it is a matter for that employee to determine whether to resign with notice or without providing the statutory or contractual amount of notice required.

Automatically unfair dismissals

97. (1) It is unlawful for an employer to institute disciplinary action against an employee based on—

- (a) the employee's race, colour, sex, religion, ethnic origin, nationality, social origin, political opinion or affiliation, trade union affiliation or activity, disability, sexual orientation, gender identity, HIV status, marital status, or, except for purposes of retirement and restrictions on work and employment of young persons and children, age;
- (b) the employee's age, subject to any other enactment in force or collective bargaining provisions or contractual provisions regarding retirement;
- (c) a female employee's maternity leave or benefits, pregnancy or a reason connected with her pregnancy;
- (d) a male employee's paternity leave or benefits or for a reason connected with paternity leave;
- (e) an employee's leave in relation to the adoption of a child;
- (f) the employee's rights to join a trade union of his choice;
- (g) the employee's temporary absence from work due to illness or injury taken in accordance with the Act;
- (h) the employee's absence from work due to compulsory military or paramilitary service, national service, public duty or other civil obligation in accordance with law;
- (i) the exercise or proposed exercise of the right of the employee to remove himself from a work situation which he reasonably believes presents an imminent or serious danger to life, health or safety;
- (j) the employee's participation, or proposed participation, in legitimate industrial action, including strikes;
- (k) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of the Act.

(2) An employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

PART 7**TERMINATION OF THE CONTRACT OF EMPLOYMENT OTHER THAN DISMISSAL****Termination of contract of employment other than dismissal**

98. In addition to dismissal, the contract of employment may be terminated by—

- (a) notice of termination;

- (b) agreement or mutual consent;
- (c) by the operation of law or supervening event; and
- (d) redundancy.

Notice of termination of contract of employment

99. Where an employer or an employee wishes to terminate the contract of employment the requirements for notice to terminate shall be—

- (a) for an employee paid at intervals of less than one month who has—
 - (i) less than one year's service, one week,
 - (ii) one year or over and less than 5 years' service, 2 weeks, and
 - (iii) 5 years' service and over, 4 weeks;
- (b) for an employee paid at monthly intervals who has—
 - (i) less than one year's service, one month,
 - (ii) one year or over and under 5 years' service, 2 months, and
 - (iii) 5 years' service and over, 3 months; and
- (c) for an employee who is paid at monthly intervals and who is a supervisor, manager or where the employee concerned is at the professional, higher technical or managerial level, the period of notice shall not be less than 3 months irrespective of length of service.

Payment in lieu of notice

100. (1) A party who desires to terminate the contract of employment may provide payment instead of the notice period.

(2) The payment under subsection (1) shall be calculated based on the amount of notice the person was responsible for providing and shall include any other benefits the employee was entitled to receive.

Employee's failure to give required notice

101. Where an employee fails to give the notice required in section 99, the employer may deduct from the wages due to the employee at the time of the termination of employment the sum equivalent to the wages due to the employee over the period of notice had he been employed during that period.

Waiver of notice

102. (1) An employer and employee may waive or adjust the notice period if both parties consent in writing to doing so.

(2) Where a dispute arises in relation to subsection (1) and cannot be settled, section 99 applies.

Termination by the operation of law or supervening event

103. The employment of an employee may be terminated by his employer without notice by the operation of law or by a supervening event when the—

- (a) contract is for a fixed term or to undertake a specific task, on the expiration of the period or completion of the task
- (b) employee reaches the age at which he becomes entitled to a retirement benefit;
- (c) employer dies and the business ceases to operate as a result; or
- (d) business goes into liquidation by way of bankruptcy or otherwise and the business ceases to operate as a result;
- (e) company is under compulsory winding up;
- (f) receiver has been appointed; and
- (g) employer's business has been permanently closed.

Termination by agreement or mutual consent

104. (1) An employer and an employee may agree to terminate the contract of employment based on the mutual consent of the parties.

(2) The agreement to terminate must be genuine and free from duress or fraud on the part of the employer or the employee.

(3) Notwithstanding that an employee tenders a resignation, that employee may be unfairly dismissed where the facts of the case indicate that the employee's resignation may not have been free and fair.

(4) A statement in a contract indicating that termination was in the mutual interest of both parties does not prevent a determination that the termination was unfair.

Termination due to redundancy

105. (1) An employee whose contract of employment has been terminated due to redundancy is entitled to be paid wages which represent compensation for service rendered.

(2) Redundancy payment is not unemployment pay and it is not payment in relation to unfair dismissal.

(3) The performance of the employee, that is, the employee's conduct, skills, qualifications, hours of work and any other matter pertaining to performance is irrelevant to the employer's decision relating to redundancy.

(4) An employer has the right to terminate the contract of employment for reasons due to redundancy.

Reasons for redundancy

106. Redundancy may occur when an employer decides that the job performed by an employee has diminished or would no longer be available because—

- (a) the employer has modernised, automated or mechanised all or part of his business;
- (b) the employer has discontinued to carry on all or part of his business;
- (c) the employer has sold or otherwise disposed of all or part of the business;
- (d) the employer has reorganised or relocated his business to improve efficiency;
- (e) the employer's need for employees in a particular category has ceased or diminished;
- (f) it has become impossible or impracticable for the employer to carry on his business at its usual rate or level or at all, due to a shortage of material, a mechanical breakdown, a *force majeure* or an act of God; or
- (g) a reduced operation in the employer's business has been made necessary by economic conditions including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

Consultation with Commissioner

107. (1) Where an employer is contemplating redundancy for 3 or more employees the employer must, before taking any decision, consult with the Commissioner.

(2) The objective of the consultation is to determine—

- (b) the reasons for the proposed redundancy;
- (c) the positions affected by the proposed redundancy;
- (d) possible alternatives to redundancy;
- (e) the strategy for managing the negative impact of redundancy on employees to be affected; and
- (f) any matter pertaining to management of the labour force that the Commissioner considers to be relevant.

(3) Until such time that the employer takes the decision to terminate employment on the basis of redundancy, the discussions under this section remain confidential.

Decision to terminate based on redundancy

108. Where an employer decides to terminate the contract of employment because of redundancy, the employer shall—

- (a) inform the recognised trade union or, if none exists, the employee's representative and the employee as early as possible stating—

- (i) the number and categories of employees to be terminated,
 - (ii) the reasons for the termination, and
 - (iii) the period over which the termination is to take place;
- (b) consult as early as possible with the recognised trade union, or if none exists, the employees' representative, and the employee on—
- (i) the possible measures that could be taken to avert or minimize the adverse effects of such situations on employment, and
 - (ii) the possible measures that could be taken to mitigate the adverse effects of any terminations on the employees concerned;
- (c) notify the Commissioner as early as possible but not less than 4 weeks before the intended date of redundancy, giving relevant information, including a written statement of—
- (i) the reasons for the termination,
 - (ii) the number and categories of employees to be terminated,
 - (iii) the period over which the termination is to take place, and
 - (iv) whether there has been any consultation with a trade union, any other representative of the employees or with the employees themselves to mitigate the effects of the redundancy and the results of that consultation.

Criteria for selection of employees to be terminated due to redundancy

109. The employer in selecting employees for termination on grounds of redundancy shall be guided primarily the need for the efficient operation of the business and shall also consider the following criteria—

- (a) ability, experience, skill and occupational qualifications of individual employees;
- (b) length of service of employees;
- (c) age of employees; or
- (d) other criteria as may be appropriate having regard to the circumstances.

Redundancy payment (severance pay)

110. (1) Subject to subsection (5), where an employee is terminated due to redundancy that employee shall be entitled to the following minimum redundancy payment—

- (a) one week's wage for each completed year of service up to the first 5 years; or
- (b) 2 weeks wages for each completed year of service in excess of 5 years.

(2) The payments under subsection (1) do not prevent the employer from offering to the employee a more generous redundancy payment package.

(3) For the purpose of subsection (1), the amount of a week's pay would be calculated on the basis of the highest wage earned by the employee over the last year preceding his termination.

(4) Redundancy payment shall not affect the employee's entitlement to payment in lieu of notice, outstanding wages, wages in lieu of accrued annual holiday, remuneration for work performed by the employee or any other termination benefits.

(5) Where an employer invites employees to terminate the employment contract because of redundancy, the employer shall offer an increased redundancy package than that provided for under subsection (1) to an employee who agrees to do so.

(6) This section shall come into effect on 31 August, 2019.

(7) To avoid doubt, note that redundancy pay shall only apply in respect of the service of the affected employee rendered after the commencement of this Part.

Re-employment of employee after redundancy

111. Where, within 6 months after redundancy, an employer intends to re-instate a position that was the same or similar to the position held by an employee that was made redundant, the employer shall provide the former employee with a reasonable opportunity to resume the position.

Protection of redundancy payments on insolvency or bankruptcy

112. An employee shall be treated as a protected preferential creditor where an employer becomes insolvent or bankrupt and ranks to be paid redundancy payment in full or on a pro rata basis before ordinary creditors.

PART 8

RIGHTS AND REMEDIES OF EMPLOYEES

Rights of employee in disciplinary action

113. An employee has the right—

- (a) to be treated fairly in any disciplinary action taken by the employer;
- (b) to receive a written statement explaining the reasons for any formal disciplinary action taken by the employer; and
- (c) not to be unfairly dismissed.

Written reasons for disciplinary action

114. (1) Where an employee requests that written reasons be provided for any formal disciplinary action taken, the employer shall provide those reasons within 14 days of the request.

(2) An employee has the right to complain to the Labour Department if there has been—

- (a) an unreasonable refusal by the employer to provide written reasons for the disciplinary action taken; or
- (b) the reasons given are untrue or inadequate.

(3) Where an employer is found to be in breach of their obligation under this section or where it is found that the employer provided untrue or inadequate reasons the Tribunal must award compensation to the employee which amounts to no more than 2 weeks wages.

Rights on termination of the contract of employment

115. (1) An employee has the right to complain to the Labour Department if he believes that his contract of employment was improperly terminated or was not terminated in accordance with Part 7 (termination of the contract of employment other than dismissal).

(2) Where it is found that an employee's contract of employment was improperly terminated or was not terminated in accordance with Part 7, that employee may be determined to have been unfairly dismissed.

Right to representation

116. (1) Where an employer invites an employee to attend a disciplinary meeting or hearing, the employee has the right to be accompanied and represented at the meeting or hearing by a member of a trade union or another employee.

(2) Where a member of a trade union or another employee is unavailable or given the context of the case it is inappropriate for one of them to attend then the employee has the right to be represented by any other representative which suits the justice of the case.

(3) In setting the date and time for the meeting or hearing and in conducting the meeting or hearing, the employer must be reasonable.

Time off to seek alternative employment

117. Where an employer gives an employee notice of termination of his employment contract, the employer must provide the employee with reasonable time off with pay to seek alternative employment if the employee requests this time off.

Certificate of employment

118. (1) Where on the termination of an employee's employment contract the employee requests a certificate of employment, the employer shall provide the employee with that certificate.

(2) The certificate of employment referred to in subsection (1) shall include—

- (a) the name and address of the employer;
- (b) the nature of the employer's business;
- (c) the length of the employee's continuous service;
- (d) the duties upon which the employee was employed during the employment contract; and

- (e) the wages and other remuneration payable at the date of termination of the contract.

(3) A certificate of employment shall not contain the reason for termination of the employment contract or an evaluation of the employee's work, unless requested by the employee.

Fairness of the disciplinary action

119. (1) Notwithstanding any internal disciplinary system utilised by the employer, the fairness of a disciplinary action is essentially a question of fact for the Commissioner and the Tribunal to resolve using its employment experience and knowledge of local conditions.

(2) In considering the fairness or reasonableness of the employer's disciplinary action, regard must be given to the overall circumstances of the case including—

- (a) the employer's conduct meaning: the nature of the violation, the nature of the order or instructions; an assessment of the nature and impact of any damage incurred, the procedure followed by the employer, the appropriateness of the disciplinary action, the employer's management policies and practices; and
- (b) the employee's conduct meaning: the duties to be performed, the manner in which those duties should be performed, the employees understanding of the instructions or duties, the previous work record of the employee, the length of employment.

(3) Any determinations made about the fairness or unfairness of the termination of the contract of employment must be made in accordance with equity and must be based on the substantial merits of the case.

Re-engagement

120. (1) After being dismissed, an employee may be re-engaged by the employer or a successor or associated employer in comparable or other suitable employment to that from which he or she was dismissed.

(2) Where an employee is re-engaged that employee shall be entitled to receive—

- (a) the payment of any benefits which the employee might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reengagement;
- (b) the restoration of any rights and privileges (including seniority and pension rights); and
- (c) where appropriate, a compensatory award which is just and equitable having regard to the loss suffered as a result of the dismissal so far as that loss is attributable to the actions taken by the employer.

Reinstatement

121. After being dismissed, an employee may be reinstated, that is to say, treated as if he had not been dismissed and this includes—

- (a) the payment of any benefits which the employee might reasonably be expected to have had but for the dismissal (including arrears of pay) for the period between the date of termination of employment and the date of reinstatement;
- (b) the restoration of any rights and privileges (including seniority and pension rights); and
- (c) where appropriate, a compensatory award which is just and equitable having regard to the loss suffered as a result of the dismissal so far as that loss is attributable to the actions taken by the employer.

Re-engagement or reinstatement inappropriate remedy

122. Re-engagement or reinstatement shall not be used as a remedy where it is not practicable or appropriate for the employment relationship to continue.

Compensation

123. (1) An employee who has been unfairly dismissed may receive a compensatory award instead of or in addition to being re-engaged or reinstated.

(2) In determining a compensatory award the following factors must be considered—

- (a) any annual paid holiday pay earned, but not taken;
- (b) any wages lost by the employee, on account of the dispute, up to the date of determination of the issue by the Tribunal;
- (c) loss of benefits including loss of pension and loss of other fringe benefits;
- (d) the termination notice to which the employee would have been entitled;
- (e) the employment category of the employee, his seniority and the ease or difficulty with which he can secure alternative employment;
- (f) the duty of the employee to seek to mitigate his losses; and
- (g) any loss suffered by the employee as a result of the dismissal so far as that loss is attributable to the actions taken by the employer.

PART 9

CONTINUITY IN EMPLOYMENT AND CHANGE OF OWNERSHIP

Winding up of employer's business, etc.

124. (1) The winding up of or appointment of a receiver with respect to an employer's business shall cause the employment contract of any employee to terminate one month from the date of winding up or the appointment of a receiver.

(2) This section shall not apply where, notwithstanding the winding up or appointment of a receiver, the business continues to operate or is transformed.

(3) Notwithstanding any enactment to the contrary, on the winding up of, or appointment of a receiver with respect to, an employer's business, the claim of an employee, or those claiming on his behalf, to the following payments to which he is entitled under the Act or any contract shall have priority over other creditors, including the Government and the social security system—

- (a) wages, overtime pay, commissions and other forms of remuneration including service charge relating to work performed during the 26 weeks preceding the date of winding up or appointment of a receiver;
- (b) holiday pay due;
- (c) amounts due in respect of other types of paid absence accrued during the 12 months preceding the date of winding up or appointment of a receiver; and
- (d) compensation for unfair dismissal and other payments due to employees upon termination of their employment.

Death of employer

125. When the employer's personal or legal position formed the basis of the contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death.

Continuity of employment

126. A temporary cessation of work on any of the following grounds shall not constitute a break in an employee's continuity of employment—

- (a) an industrial dispute;
- (b) illness for 2 days or illness certified by a qualified medical practitioner where the absence from work exceeds 2 days;
- (c) occupational injury;
- (d) maternity leave certified by a medical practitioner;
- (e) the operation of any law;
- (f) an act of God or *force majeure*;
- (g) absence permitted or condoned by the employer;
- (h) temporary lay-off;
- (i) suspension; and
- (j) leave without pay.

Rights of employees on change of ownership

127. (1) Where there is a change of ownership of a business or undertaking and the successor-employer offers any or all employees continued employment with the business, the employees shall carry forward their service and accrued rights to the successor-employer.

(2) Where the employee accepts continued employment with the successor-employer, the arrangements made at the time of the change of ownership in respect of the employee, including details of employee's length of service and accrued rights, shall be notified to the Commissioner by the successor-employer in a statement signed by the employee and jointly by the predecessor-employer and successor-employer.

(3) Where the employer is a body corporate and there is a change in its corporate identity due to a merger or acquisition, amalgamation, restructuring, change of ownership or other similar circumstance affecting the rights of employees, the employer is deemed to have changed ownership for purposes of this section.

(4) Where there is a change of ownership, the predecessor-employer shall pay to those employees who have not been offered continued employment with the successor-employer their outstanding wages, vacation pay, and any other entitlement due to them, including severance pay.

(5) Where there is a change of ownership of a business or undertaking, the predecessor-employer shall, where practicable, give at least one month's notice of that change in ownership to the employees.

Effect of sale of business

128. Where a person for any reason sells or disposes of a business, all of the obligations under the Act of the person selling or otherwise disposing of the business are binding on the person acquiring the business.

PART 10

DISPUTE SETTLEMENT MECHANISMS

Division 1*Introduction***Interpretation**

129. (1) In this Part—

“Alternative dispute resolution services” mean conciliation, facilitative mediation and evaluative mediation.

“Court procedures” mean the Labour Tribunal process and the Supreme Court process.

“Conciliation” means an informal process in which a conciliator acts as a neutral third party to assist in resolving specified employment disputes.

“Facilitative mediation” means a semi-formal process in which a certified mediator acts as a neutral third party to facilitate communication between parties in an employment dispute with a view to assisting them in reaching a voluntary agreement.

“Evaluative mediation” means a formal process in which the Commissioner takes an interventionist approach and seeks to settle an employment dispute based on his view of the strengths and weaknesses of a party’s case and the possible legal outcome of a dispute.

(2) The dispute settlement mechanisms used under this Part are alternative dispute resolution services and court procedures.

Principles of the Ministry

130. (1) The Ministry recognises that successful employer-employee relationships are vital towards the success of any business, trade, job or work which in turn leads to stable, developed and successful communities.

(2) The Ministry recognises that unresolved employer-employee disputes hinder progress and development and therefore the Ministry supports the establishment of dispute resolution services as a pillar for successful employer-employee relationships.

The employer and alternative dispute resolution services

131. (1) The Ministry encourages employers to develop and establish fair and effective arrangements in keeping with this Act and international best practices for dealing with grievances or disputes.

(2) In this regard, these arrangements should, where possible—

- (a) be in writing which is disseminated to all employees;
- (b) seek, in the first instance, to settle the matter fairly and speedily;
- (c) be discussed first with the employee and their immediate supervisor before any disciplinary action is taken;
- (d) provide the employee with the right to be accompanied or assisted by a representative including a representative of a trade union; and
- (e) contain a right of appeal.

(3) The Commissioner and a trade union reserve the right to evaluate and comment on any dispute resolution system implemented by an employer and any comments may be used in assessing any labour dispute.

Right of employee to seek redress

132. (1) An employee has the right to seek redress for any dispute or grievance arising from their employment which relates to a breach of the employment legislation notwithstanding any dispute resolution system implemented by the employer and in this regard an employee may contact the Labour Department.

(2) An employer shall not victimise or discriminate against an employee for pursuing subsection (1).

Right of employer to seek assistance

133. An employer has the right to contact the Labour Department to gain assistance in conciliating or mediating an issue pertaining to the employer-employee relationship which relates to the employment legislation.

Division 2

Alternative dispute resolution services

Alternative dispute resolution services

134. (1) The objectives of alternative dispute resolution services are where possible to—

- (a) support successful employment relationships and the good faith obligations that underpin them;
- (b) recognise that employment relationships are more likely to be successful if problems in those relationships are resolved promptly by the parties themselves;
- (c) recognise that, if problems in employment relationships are to be resolved promptly, expert problem-solving support, information and assistance needs to be available at short notice to the parties to those relationships;
- (d) recognise that the procedures for problem-solving need to be flexible.

(2) With the exception of evaluative mediation, alternative dispute resolution is voluntary and cannot be imposed on parties.

(3) No alternative dispute resolution services may be challenged or called in question in any proceedings on the ground that the nature and content of the services were inappropriate or the manner in which the services were provided was inappropriate.

(4) Alternative dispute resolution services are confidential and the provider of the service shall keep all information arising out of or in connection with the service confidential unless compelled by the court, legislation or public policy to do so.

The role of the Commissioner

135. (1) In utilising alternative dispute resolution services the Commissioner must—

- (a) comply with the principles of natural justice;
- (b) aim to promote good faith behaviour;
- (c) support successful employment relationships; and
- (d) generally further the objects of this Act.

(2) The Commissioner is responsible for—

- (a) providing conciliation services using labour officers or for coordinating the provision of conciliation services using other entities that the Commissioner considers to be fit and proper;
- (b) coordinating the assignment of an employment dispute to a certified mediator;
- (c) conducting evaluative mediation;
- (d) facilitating the assignment of files to the Tribunal;
- (e) maintaining a register of all determinations and judgements from the court procedures; and
- (f) reporting to the Ministry for the conduct of alternative dispute resolution services.

Application for dispute resolution services

136. (1) Where there is an employment dispute alleging a breach of the employment legislation, the employer or the employee may apply to the Labour Department for the provision of dispute resolution services.

(2) Where an application has been received by the Labour Department, the Commissioner must determine the nature of the dispute and the best mechanism to be used to resolve the dispute but alternative dispute resolution services must be considered before resorting to court procedures.

(3) Where conciliation or facilitative mediation has failed to resolve a dispute then the Commissioner may provide evaluative mediation.

(4) The Commissioner may determine that a file is not suitable for alternative dispute resolution services and may refer the matter to the Tribunal.

Conciliation services

137. (1) Conciliation services include—

- (a) providing general information about employment rights and obligations and the court procedures;
- (b) identifying the dispute and suggesting ways in which it may be resolved or discussing any proposal either party has for a resolution;
- (c) passing information between the parties;
- (d) providing information about services that may assist persons to resolve any employment problems; and
- (e) encouraging the use of internal disciplinary and grievance procedures, if available.

(2) Conciliation services may be provided in the manner and at the time and place that are most likely to resolve the dispute and may be provided by telephone, facsimile, internet or email.

(3) Conciliation is a confidential process that can only result in a non-binding agreement or an understanding between the parties and the conciliator is forbidden from giving evidence on the content of the non-binding agreement or process.

Conciliators

138. (1) For the purpose of resolving employment disputes, labour officers working under the direction of the Commissioner in the public service are conciliators.

(2) The Commissioner shall maintain a register of conciliation services provided to the public.

Facilitative mediation

139. (1) Facilitative mediation may be used to resolve employment disputes where the Commissioner determines that the dispute may be suitably resolved using this service and the parties have given their written consent.

(2) Facilitative mediation must focus on the real interests and concerns of the parties that underpin the dispute rather than the strict legal merits of the dispute.

(3) Facilitative mediation is a confidential process that may result in a binding agreement voluntarily entered into by the parties.

(4) The certified mediator shall file a report with the Labour Department about the outcome of the facilitative mediation and attach a copy of any resulting agreement.

Certified mediators

140. (1) For the purpose of resolving employment disputes a certified mediator is a person who has been trained in mediation by the Eastern Caribbean Supreme Court and who has attained training in employment relations to the satisfaction of the Commissioner.

(2) The Commissioner shall maintain a register of certified mediators.

Evaluative mediation

141. The Commissioner may try to resolve a dispute using evaluative mediation where the Commissioner determines that—

- (a) the relevant facts are not in dispute;
- (b) one or both of the parties to the dispute are unrepresented by a lawyer or representative of a trade union;
- (c) conciliation and facilitative mediation has failed to bring about a resolution to the matter; or
- (d) the facts are such that the Commissioner considers that the matter may be best resolved using evaluative mediation.

Powers of the Commissioner during evaluative mediation

142. (1) In order to conduct evaluative mediation, the Commissioner may direct an employer, employee, union member, interested party or witness to the Labour Department for the purposes of facilitating an investigation into any dispute arising from employment legislation.

(2) During an investigation the Commissioner may—

- (a) examine the person requested to attend the Labour Department;
- (b) request any prescribed employment records that the Commissioner determines to be relevant to the matter;
- (c) take into account the evidence and information as in equity and good conscience the Commissioner considers to be fit and proper whether strictly legal evidence or not;
- (d) allow the questioning of a party or a person to the extent that is consistent with paragraph (c).

(3) During an evaluative mediation the Commissioner may refer any question of law to the Tribunal where—

- (a) one or both of the parties involved have requested the Commissioner to refer a point of law to the Tribunal;
- (b) there is a dispute about the quantum of damages; or
- (c) the Commissioner is of the view that there is a point of law that should be determined by the Tribunal.

(4) Evaluative mediation may proceed while awaiting a determination of the Tribunal but cannot come to an end until the decision of the Tribunal has been received.

Statement of Findings

143. (1) A Statement of Findings must be produced by the Commissioner at the conclusion of the investigation and must contain a summary of the dispute, the issues arising, an evaluation of the strengths and weaknesses of each party's case and any of recommendations made under subsection (2)—

(2) In the Statement of Findings the Commissioner may make any of the following recommendations—

- (a) the payment of a sum of money equal to the loss of remuneration sustained from the date of dismissal;
- (b) the reinstatement or re-engagement of any employee, where appropriate;
- (c) that the act, conduct or omission found to be unlawful cease or is not repeated or both;
- (d) the payment of remuneration where due;

- (e) that an employee repays any loan advanced as wages;
 - (f) the payment of—
 - (i) any severance or redundancy payment due,
 - (ii) any vacation, notice or other benefits;
 - (g) the taking of vacation leave or maternity leave when due; or
 - (h) any other suggestion that is fair and equitable.
- (3) A Statement of Findings need not—
- (a) detail all of the evidence heard or received;
 - (b) detail all of the submissions made by the parties;
 - (c) detail the process followed in investigating and determining the matter; and
 - (d) indicate why it made or did not make specific findings as to the credibility of any evidence or person.
- (4) The Statement of Findings may be a binding agreement if the parties agree to be bound by the document but before any agreement is made each party who is unrepresented must be advised to obtain the advice of legal counsel, a representative of a trade union or any person who has wide experience in trade disputes or trade unionism.
- (5) The Commissioner may adjust the recommendations of the Statement of Findings if the parties agree to do so and the Commissioner is of the view that the adjustment is fair.
- (6) Where the Statement of Findings is not accepted by both parties the Commissioner shall refer the matter to the Tribunal.
- (7) A Statement of Findings may be used during any court procedure as evidence.
- (8) The Commissioner shall maintain a register of all Statement of Findings.

Division 3

Court Procedures

Alternative dispute resolution services before court procedures

144. Court procedures may be pursued only after the parties have demonstrated some effort to use the alternative dispute resolution services unless the Commissioner certifies that the matter is such that alternative dispute resolution services were unsuitable.

The role of the Commissioner in relation to the Tribunal

145. The Commissioner is responsible for—

- (a) coordinating labour disputes to the Tribunal;

- (b) pursuing a written determination from the Tribunal; and
- (c) maintaining a file of written determinations and judgments emanating from the Tribunal.

Referral of matter to the Tribunal

146. The Commissioner must refer a matter to the Tribunal where—

- (a) any of the alternative dispute resolution services have failed to resolve the matter;
- (b) the facts are complex or the law is complex;
- (c) there is an urgent need for the powers of the court to grant interim or other orders needed to preserve the rights or benefits of the claimant;
- (d) the Tribunal already has before it proceedings which are between the same parties and which involve the same or related issues;
- (e) on assessment of the file at any time the Commissioner is of the view that the issues arising are best resolved using court procedures;
- (f) one or both of the parties involved have requested the Commissioner to refer a point of law to the Tribunal;
- (g) the Commissioner is of the view that there is a point of law that should be determined by the Tribunal; or
- (h) there is a dispute about the quantum of damages.

Establishment of Tribunal

147. (1) The Tribunal is established.

(2) The Tribunal shall have an official seal which shall be judicially noticed.

Composition of Tribunal

148. (1) The Tribunal shall comprise of a pool or panel of 3 members appointed by the Minister in the following manner—

- (a) the Chairperson, acting after consultation with the Judge of the Supreme Court; and
- (b) 2 other members appointed by the Minister acting after consultation with the Chairperson.

(2) The Chairperson of the Tribunal shall be a barrister or solicitor of the Supreme Court who has practiced for at least 10 years.

(3) The 2 other members shall each be a barrister or solicitor of the Supreme Court who has practiced for at least 5 years.

(4) The Chairperson of the Tribunal shall be appointed for no more than 5 years and shall be eligible for reappointment.

(5) The other 2 members shall each be appointed for no more than 3 years and shall be eligible for reappointment.

(6) Notwithstanding subsection (1), any act, proceeding or determination of the Tribunal shall not be called into question or invalidated by reason of a vacancy regarding the members appointed under subsection (3).

(7) In the event that a member of the panel cannot sit to hear and determine a matter then the Minister may, following the guidelines in this section, appoint a temporary member to hear a specific matter.

Jurisdiction of Tribunal

149. (1) The Tribunal has jurisdiction to hear and determine all matters that have been referred to it in accordance with this Act including—

- (a) preparing written determinations without a hearing;
- (b) entering any premises of an employer where work is being or has been done and make any necessary enquiries; and
- (c) matters pertaining to trade disputes, strikes or lockouts.

(2) Except for contempt of court matters, the Tribunal does not have jurisdiction to hear and determine criminal matters which shall be dealt with by the criminal justice system.

(3) Where in any proceedings before the Tribunal it appears that a crime as stipulated by this Act may have occurred the Chairperson may refer the matter to the Attorney-General.

Sittings of the Tribunal

150. (1) The Tribunal shall sit in the following manner—

- (a) the Chairperson acting alone; or
- (b) the Chairperson sitting with both members.

(2) The Tribunal may sit with the Chairperson acting alone to determine questions of law referred by the Commissioner or to hear and determine matters which the Chairperson considers to be uncomplicated.

(3) The Tribunal may sit with the Chairperson and both members to hear and determine cases where the facts are complex or the law is complex or the Chairperson believes that the justice of the case would be met with the sitting of the full tribunal.

(4) Where the Tribunal sits in accordance with subsection (3) its decision shall be according to the opinion of the majority of members.

(5) The Tribunal may sit at such times as are necessary for the settlement of a dispute.

(6) The Tribunal and parties to the proceedings shall not disclose information pertaining to the proceedings unless the consent of the Chairperson is given.

Role of the Chairperson

151. The Chairperson of the Tribunal shall be responsible for administering the tribunal process including—

- (a) preparing written determinations and judgments;
- (b) in cases of conflict or unavailability, assigning case files to members of the Tribunal to prepare written determinations or to conduct hearings;
- (c) scheduling hearings;
- (d) preparing written reports for the Ministry;
- (e) working with the Ministry to ensure that members of the Tribunal and any support staff are skilled to conduct Tribunal matters efficiently and effectively; and
- (f) maintaining a catalogue of all determinations and judgments.

Determination of matter without a hearing

152. (1) The Tribunal may proceed to determine a matter without a hearing where both parties consent in writing to this procedure or the respondent—

- (a) has presented no response in the proceedings; or
- (b) does not contest the case.

(2) During a determination of any matter without a hearing, the Chairperson may order further and better particulars from any party relevant to the proceedings.

Tribunal and alternative dispute resolution

153. (1) Subject to subsection (2), where any matter comes before the Tribunal for a hearing the Chairperson must, before proceeding with the hearing, consider whether an attempt has been made to resolve the matter using any form of mediation and may direct that mediation or further mediation takes place.

(2) The Tribunal shall not direct that mediation in accordance with subsection (1) takes place where—

- (a) there is great animosity between the parties;
- (b) it will not contribute constructively to resolving the matter;
- (c) it will not be in the public's interest; or
- (d) it will undermine the urgent or interim nature of the proceedings.

(3) Where the recommendations proposed by the Commissioner during evaluative mediation were rejected by one or both of the parties, the Tribunal may—

- (a) accept the recommendations by the Commissioner and deem it a binding award of the Tribunal; or
- (b) substitute the recommendations for an appropriate award of its own; and
- (c) if the Tribunal considers that it is just and equitable to do so, impose a penalty on a party or both parties where the—
 - (i) behaviour was not in good faith, or
 - (ii) rejection of the recommendations of the Commissioner was unreasonable.

Tribunal proceedings

154. (1) In the hearing or determination of any matter before it, the Tribunal shall—

- (a) where it appears appropriate, seek to avoid formality in its proceedings;
- (b) be guided by but not bounded by any written law or rule of law relating to the admissibility of evidence in proceedings before courts;
- (c) make enquiries of persons appearing before it and witnesses as it considers appropriate;
- (d) where it appears appropriate, allow the presentation of evidence in written briefs from any party and, if necessary, seek clarification or elaboration of the briefs in writing;
- (e) make appropriate use of technological advances to ensure that matters are dealt with expeditiously including email, fax, electronic meetings and teleconferences and in this regard, the Tribunal must, wherever possible, deal with matters without requiring the physical attendance of parties at a hearing;
- (f) Where it is appropriate to do so, dispense with the taking of the oath or affirmation; and
- (g) conduct the hearing in a manner that it considers appropriate for the clarification of the issues before it and generally to the just handling of the proceedings.

(2) Where a written document, record or information is required to be submitted to the Tribunal that requirement may be met by submissions made in electronic form.

(3) The Tribunal may, for the purposes of any proceedings, direct or allow a person to make a written submission or a submission by way of video link, audio link, email or other appropriate technological means.

(4) During any proceedings the Tribunal may hear and receive evidence—

- (a) by a party directly or a representative of that party;

- (b) by a trade union who represents either party;
- (c) by any person having wide experience in trade disputes or trade unionism; or
- (d) by the counsel of a person who has demonstrated that he or she has a viable interest in the matter including matters of public policy.

Appointment of experts

155. The Tribunal may appoint persons who are experts in a particular subject area of relevance to a particular dispute to act as a special advisor to the Tribunal.

Powers of Tribunal

156. In addition to any power assigned to it under this Act, the Tribunal has the power to—

- (a) summon and enforce the attendance of any person before it to give evidence on oath or otherwise;
- (b) hear and determine any matter in the absence of any party who has been summoned to appear before the Tribunal and has failed to do so;
- (c) request the production of documents by any person to meet the justice of the case including documents pertaining to: pay and benefits, conditions of service, manpower, performance or appraisal systems, financials and any other information that the Tribunal considers to be relevant to the case but information disclosed shall not include—
 - (i) cash flow information,
 - (ii) commercial information about the market share of products,
 - (iii) government assistance, and
 - (iv) information that would cause substantial injury to the employer's business;
- (d) abridge or enlarge the time for instituting proceedings or for doing any act, filing any document or presenting any evidence in connection with the proceedings;
- (e) amend or permit the amendment of any document filed in connection with the proceedings;
- (f) declare the rights of the parties in any matter arising out of this Act;
- (g) direct any person to comply with any duty imposed on him or her by this Act;
- (h) subject to conditions as the Tribunal may determine—
 - (i) remit an issue to mediation, or
 - (ii) direct the parties to enter into negotiations if the parties are represented by counsel or highly skilled persons;

- (i) make an order or award including a provisional or interim order or award relating to any of the matters in dispute;
- (j) dismiss any matter or refrain from hearing any matter where it appears that the matter is trivial or vexatious or that further proceedings are unnecessary or not in the public's interest; and
- (k) generally issue any order that is necessary for the expeditious and just resolution of the dispute or any other matter before it.

Orders bind successor or assignee of employer

157. (1) The Tribunal may, during the course of any dispute pending before it, direct that any successors to, or any assignees of the employer who are parties to the dispute shall be joined or substituted as parties to the dispute and any order or award of the Tribunal in such a dispute shall, be binding on the successors or assignees of that employer.

(2) For the purposes of subsection (1), the Tribunal shall determine whether a person is the successor to or assignee of another in accordance with the principles of good industrial relations practice.

Orders may be retroactive

158. Any order or award may be made operative from a date that the Tribunal considers to be just and fair having regard to all the circumstances of the case.

Recovery and protection of awards

159. (1) Any monetary award of the Tribunal shall be recoverable as a liquidated civil debt.

(2) An award by the Tribunal shall be included amongst the debts which under the relevant law are in the distribution of the property or assets of a bankrupt, or in the winding-up of a company and shall rank on equal footing with taxes upon the bankrupt company where application to the Tribunal has been made before the date of the receiving order of the commencement of the winding up of the company as the case may be.

Contempt of the Tribunal

160. (1) The Tribunal has jurisdiction under this section to find a person guilty of contempt of Tribunal if that person—

- (a) breaches any order or direction of the Tribunal;
- (b) having been summoned by the Tribunal refuses or neglects without sufficient cause to attend;
- (c) being examined as a witness or being present at proceedings and being required to give evidence, the person refuses to swear or affirm or to answer any lawful question or, without sufficient excuse, to produce any document or thing that the person is required to produce;

- (d) immediately prior to, during or within a reasonable time after Tribunal proceedings insults the members of the Tribunal, any witness or any other officer of the Tribunal; or
 - (e) wilfully interrupts the proceedings of the Tribunal or otherwise misbehaves during proceedings.
- (2) Where the Tribunal finds that a person is in contempt of the Tribunal, the Tribunal may—
- (a) order a police officer to arrest the offender and bring him before the Tribunal;
 - (b) issue a warrant for the arrest of the offender and bring him before the Tribunal; or
 - (c) where the issue of contempt occurs in the precincts of the Tribunal, proceed to deal with the matter immediately.
- (3) When a person is before the Tribunal for the offence of contempt of Tribunal, the Tribunal shall cause the person to be informed of the contempt with which the person is charged and provide that person with an opportunity to be heard.
- (4) Where the Tribunal finds that a person is guilty of contempt of Tribunal, the Tribunal may order that the person be sentenced to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding one month or to both.
- (5) If a person found guilty of contempt of Tribunal is ordered to be imprisoned and that person makes an apology to the Tribunal and the Tribunal accepts that apology then the Tribunal shall—
- (a) order the discharge of the person before the end of the term; or
 - (b) reduce the term of imprisonment as the Tribunal sees fit.
- (6) To avoid doubt, a finding of guilty of contempt of Tribunal does not suspend, terminate or in any other way interfere with any order made by the Tribunal.

Appeals to Supreme Court

161. (1) A party to the proceedings may appeal to the Supreme Court on any of the following grounds—
- (a) subject to subsection (2), that the Tribunal had no jurisdiction in the matter;
 - (b) that the Tribunal has exceeded its jurisdiction in the matter;
 - (c) that the order or award has been obtained by fraud;
 - (d) that any finding or decision of the Tribunal in any matter is erroneous on a point of law;
 - (e) that the order or award of damages is inordinately high or inordinately low; or

- (f) that some specific illegality occurred during the course of the proceedings which substantially affected the merits of the matter.

(2) The Supreme Court shall not entertain the ground under subsection 1(a) unless objection to the jurisdiction of the Tribunal had been formally taken at some time during the progress of the matter before the making of the order or award at the Tribunal.

(3) The Supreme Court shall have the power to—

- (a) confirm, modify or reverse the order or award appealed against;
- (b) set aside the order or award appealed against and order that a new hearing be held;
- (c) order a new hearing on any question without interfering with the finding or decision upon any other question; or
- (d) dismiss the application.

(4) Where the Supreme Court confirms the order or award appealed against, it may order that there be included in the sum which is the subject of the appeal, interest at a rate of 10% on the whole or any part of the sum from the date of the order or award appealed against.

Tribunal to regulate its own procedure

162. Where this Act is silent, the Tribunal shall regulate its own procedure.

Commencement of this Part

163. Part 10 (Dispute Settlement Mechanisms) shall come into force on 31 August, 2019.

PART 11 WORK PERMITS

Principles governing work permits

164. (1) The Minister is responsible for ensuring that belongers of Anguilla are engaged in gainful employment as a paramount consideration to all matters pertaining to work permits and the administration and interpretation of this Part shall be guided by this principle.

(2) In considering an application for the grant of a work permit, the Minister shall be guided by the necessity to maintain high levels of employment throughout the island and firstly among persons who are belongers of Anguilla and secondly among persons who are lawfully resident on the island.

(3) The Ministry recognises the invaluable contribution to the development of Anguilla by persons who engage in employment on work permits and the Ministry, through a balancing act, shall develop policies that attract and foster the talent of persons who are non-belongers and the administration of any labour legislation shall be guided by this principle.

(4) The Ministry recognises that persons employed on work permits represent a group of persons with special vulnerabilities and will endeavour to ensure that such persons are treated fairly and are protected in accordance with labour laws and policies.

Work Permit not a right

165. (1) No person is entitled to a work permit as of right.

(2) It is exclusively within the discretion of the Minister to—

- (a) grant a work permit with or without conditions;
- (b) refuse to grant a work permit;
- (b) revoke a work permit with or without notice; or
- (c) vary, renew or extend a work permit.

(3) The Minister may refuse to grant a work permit or revoke a work permit after the Minister has consulted with the Executive Council.

(4) The grant, variation, renewal or extension of a work permit in accordance with subsection (2) does not give rise to any right to or any expectation of a right to any further work permit.

Categories of work permits

166. (1) There are 3 categories of work permits—

- (a) a general work permit;
- (b) a temporary work permit; and
- (c) a self-employment work permit.

(2) The Minister may by Regulations restrict the issuance of work permits to specified sectors or to specified trades if the Minister is of the view that—

- (a) the skill set is no longer necessary for the development or advancement of that kind of business;
- (b) businesses owned by belongers of Anguilla may be economically undermined; or
- (c) there is a need to develop the talent of persons who are belongers of Anguilla in that business.

(3) The Permanent Secretary responsible for issuing business licences shall provide the Minister with quarterly statistics concerning applications for and the grants of businesses licences.

(4) Before a business licence is issued the Permanent Secretary responsible for issuing business licences shall consult with the Ministry.

Role of Commissioner

167. (1) The Commissioner shall assist the Ministry to perform its functions under this part by—

- (a) processing all applications for work permits;
- (b) advising the Minister as to whether an application satisfies the ministerial policies; and
- (c) performing any other function delegated to the Commissioner.

(2) The Minister shall not take any action regarding a work permit until the application for a work permit has been processed by the Commissioner.

Engagement in employment

168. (1) Subject to subsection (2), a person shall not—

- (a) engage in employment or occupation unless he or she is a believer of Anguilla; and
- (b) employ another person who is a non-belonger of Anguilla.

(2) A person who is a non-belonger of Anguilla may work in Anguilla if that person is—

- (a) authorised to do so by a work permit; or
- (b) exempt from obtaining a work permit.

Exemptions

169. (1) The following persons are exempt from obtaining a work permit—

- (a) the judges, support staff and consultants of the Eastern Caribbean Supreme Court;
- (b) members of Her Majesty's regular navy, military or air force;
- (c) contract workers employed in the Public Service;
- (d) diplomatic representatives accredited to Anguilla or to the United Kingdom by or under the authority of Her Majesty;
- (e) representatives of the United Nations or any of its specialised agencies or of any similar international organisation of which the United Kingdom is a member;
- (f) representatives of any regional organisation of which Anguilla is a member;
- (g) persons performing unpaid voluntary work or persons working for non-profit or charitable organisations;
- (h) children born in Anguilla but who are not considered to be believers of Anguilla;

- (i) the spouse of a believer of Anguilla; and
- (j) persons as the Minister may exempt by Order.

(2) The Minister may exempt classes of persons from obtaining a work permit in the manner prescribed.

Application for a work permit

170. (1) A person who seeks to be self-employed or a prospective employer may apply for a work permit in the manner prescribed.

(2) An applicant who requires a visa to enter Anguilla shall, unless an exemption is granted by the Chief Immigration Officer, attach a notarised copy to the application for a work permit.

Matters to be considered on application for work permit by prospective employer

171. (1) In considering an application from a prospective employer, the Ministry shall take into consideration the following matters—

- (a) that the prospective employer has demonstrated a genuine need to engage the services of the prospective worker;
- (b) subject to subsection (2), that the prospective employer has sought by advertising for at least 2 consecutive weeks in a media outlet approved by the Commissioner to ascertain the availability of any one or more of the following in the order in which they are listed—
 - (i) a believer of Anguilla,
 - (ii) the spouse of a believer of Anguilla, and
 - (iii) a person legally and ordinarily resident on Anguilla who is qualified and willing to fill the position.
- (c) the reasons why the prospective employer is not employing a believer of Anguilla or any of the other persons listed under paragraph (b).

(2) The Minister may exempt a prospective employer from the requirement to advertise under subsection(1)(b) if the Minister is satisfied that the skill set necessary to perform the work is not available in Anguilla or given the context of the application it would be unreasonable for the prospective employer to advertise.

(3) Where an employer has been granted work permits for a professional, managerial or skilled occupation the Minister may impose the following conditions and restrictions—

- (a) that the employer develop and submit an employee training programme or an employee understudy programme which is satisfactory to the Ministry but any understudy programme applies only to believers of Anguilla;
- (b) establish a scholarship programme or contribute to a scholarship fund which is managed in a manner satisfactory to the Ministry; or

- (c) notify the employer that a work permit or group of work permits shall not be renewed after a specified period.

(4) In considering whether to grant a prospective employer a work permit the Minister shall consider whether the employer has complied with any other legal and policy obligations.

Matters to be considered for self-employed worker and prospective employee

172. (1) The self-employed worker or the prospective employee shall provide the Ministry with the following information—

- (a) evidence of their character, reputation and health, and where relevant, the character, reputation and health of any dependants;
- (b) their professional and technical qualifications and their experience or competence to undertake the position applied for;
- (c) the economic and social benefits which he or she may bring to Anguilla;
- (d) the sufficiency of their financial resources and their ability to maintain their dependants without recourse to public funds;
- (e) his ability to use the English language;
- (f) the location, type and suitability of the accommodation available for the worker and his dependants, if any, throughout the term of the work permit; and
- (g) for a prospective employee the terms of the proposed employment contract.

(2) In considering whether to grant a self-employed worker or a prospective employee a work permit the Minister shall consider whether this person has complied with any other legal or policy obligations.

Grant of a work permit and the employment contract

173. (1) Subject to subsection (2), the Minister may grant a work permit for a term that the Minister considers necessary but any term shall not exceed one year.

(2) The Minister may, by Regulations, determine the duration of a work permit according to the category of work permit or the kind of business but the duration of any work permit shall not exceed 2 years.

Obligation on applicant to inform of all relevant facts

174. (1) It is the responsibility of an applicant for a work permit to ensure that all information, evidence and submissions that the applicant wishes to have considered in support of the application are provided when the application is made.

(2) The Ministry is not obliged to seek any further information, evidence, or submissions and may determine the application on the basis of the information, evidence, and submissions provided.

Change of employer

175. Where a change of employer is contemplated the Minister may—

- (a) vary the work permit if the employer and the prospective employer agree; or
- (b) cancel the work permit.

Expiration or cancellation of work permit

176. Unless permission has been granted by the Chief Immigration Officer for an extension of stay in accordance with the Immigration Act and immigration policies the holder of a work permit must leave Anguilla when it has been cancelled or expired.

Rights of work permit holder

177. (1) A work permit holder, where recruited from abroad, shall be informed of his terms and conditions of employment, arrangements for accommodation and return travel to his home country or country of recruitment prior to his arrival in Anguilla.

(2) Except for domestic workers, a work permit holder shall not be compelled to live with his employer.

(3) A work permit holder who is employed as a domestic worker is not obliged to remain in the household of his employer during periods of weekly rest and holidays.

(4) A work permit holder shall have the right to keep in his possession his travel and identity documents.

(5) A work permit holder is entitled to all the rights and benefits conferred by the Act and any condition of employment that is inconsistent with the Act is void.

Replacement

178. A work permit holder may apply to the Ministry in the prescribed manner for the replacement of a work permit.

Fees

179. (1) The Minister may waive the payment of work permit fees in the prescribed manner.

(2) The Minister shall specify in the prescribed manner the fee and security deposit to be paid solely by the employer for every application for grant, renewal or extension of a work permit under this Part.

Offences

180. (1) An employer or any other person who contravenes this Part commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(2) A person who makes a false statement in an application for a work permit or work permit renewal, whether in the prescribed forms or in response to any queries put to him in the course of an investigation during the work permit application process, commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(3) Any person not belonging to Anguilla who is convicted of an offence under this Part may be deemed a prohibited immigrant under the Immigration Act and be dealt with as such.

(4) On the trial of any person for an offence under this section it shall be presumed that the person alleged to have been engaged for profit or reward or to have been employed for a wage or other remuneration is not a person belonging to Anguilla unless the contrary is proved.

PART 12
MISCELLANEOUS

Labour clause in public employment contract

181. (1) Every public employment contract shall be deemed to include and to incorporate the provisions, conditions or stipulations contained in the rules set out in Schedule 3, to all intents and purposes as if it were expressly set out as conditions or covenants therein to be observed and performed on the part of either or both of the parties to the contract.

(2) Every contractor shall keep displayed in a conspicuous place in his establishment and workplaces for the information of the employees a notice containing the conditions of their work and so printed that it may easily be read by all employees.

Limitation upon prosecution

182. Prosecution for an offence under the Act shall not be commenced after the expiration of one year from the date on which the Commissioner becomes aware of the offence.

Regulations

183. (1) The Minister may make regulations for giving effect to any of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

- (a) prescribing matters required or permitted to be prescribed by this Act;
- (b) providing for matters as may be—
 - (i) contemplated by or necessary for giving full effect to this Act and for its administration, or
 - (ii) incidental to or consequential upon any provision of this Act;
- (c) prohibiting smoking in the workplace; and
- (d) providing for the imposition of a fine not exceeding \$5,000.

(3) All regulations must be laid before the House of Assembly as soon as they are made and, if within 21 days beginning with the day on which such regulations are laid, the House of Assembly resolves that the regulations be annulled, they shall cease to have effect but without prejudice to anything previously done thereunder or to the making of new regulations.

(4) In determining the period of 21 days specified in subsection (3), no account shall be taken of any time during which the House of Assembly is dissolved or prorogued.

Repeals and savings

184. (1) Sections 15 to 22 of the Labour Department Act shall be repealed when Part 10 (Dispute Settlement Mechanism) comes into force on 31 August, 2019.

(2) Subject to subsection (3), the following Acts are repealed—

- (a) Fair Labour Standards Act; and
- (b) Control of Employment Act.

(3) The Work Permit Regulations made under the Control of Employment Act are saved until regulations are made under this Act.

(4) The repeal of the sections under subsection (1) and the repeal of an Act under subsection (2) do not affect the validity of an order or determination made, a certificate or licence issued or a permit granted and which was in force immediately before the repeals took effect.

(5) Every application made under the repealed sections and enactments under subsections (1) and (2) which were received by the Labour Department or the Ministry and which were pending when this Act comes into force is to be taken to be an application made under this Act and this Act is to apply accordingly.

(6) Every labour dispute that arose under the repealed sections of the Labour Department Act in accordance with subsection (1) and which has—

- (a) been wholly or partly heard by the Tribunal when this Act comes into force is to be continued and completed as if the repealed enactments were still in force; or
- (b) not been wholly or partly heard by the Tribunal when this Act comes into force is to be taken to be a labour dispute made under this Act and this Act is to apply accordingly.

Consequential amendments

185. (1) Section 24(1) of the Social Security Act is amended by inserting after paragraph (b) the following paragraph—

“(ba) paternity benefit, that is to say, a payment of periodical payments to an insured man who is the father of the baby or the husband of an insured wife;”.

(2) The Benefits Regulations made under the Social Security Act is amended as follows—
in Part 2, section 7—

- (a) (1)(b)(i) replace the number “13” with “14”;
- (b) (2)(c), insert the following paragraph, “(2)(ca) paternity benefit up to 16 weeks after confinement;” and

(c) (4)(a) insert the word “paternity,” immediately after the word “maternity”;

in Part 3, Division 2—

(d) in the Division heading insert the phrase “and Paternity Benefit”;

(e) in section 15 insert—

(i) “(1)” at the beginning of the sentence, and

(ii) the following subsection—

“(2) Paternity benefit shall consist of a paternity allowance which shall be payable to the father of the baby or the husband of the baby’s mother on the basis of his insured employment.”;

(f) by repealing and replacing section 16 as follows—

“16. A claim for maternity benefit or paternity benefit shall be supported by evidence that the Director requires for establishing the pregnancy or confinement or for proving paternity and—

(a) the claim for maternity benefit shall include the certificate of a medical practitioner or a midwife in accordance with Schedule 1;
or

(b) the claim for paternity benefit shall include the information under paragraph (a) and the birth certificate of the child.”;

(g) in section 17 insert the following subsection—

“(3) Paternity allowance shall be payable to the father of the baby or the husband of the baby’s mother who has been in insurable employment for a total of 26 weeks.”;

(h) in section 19—

(i) in the marginal note after the word “maternity” insert the phrase “and paternity”,

(ii) insert “(1)” at the beginning of the sentence,

(iii) by replacing the number “13” with the number “14”, and

(iv) insert the following subsection—

“(2) Paternity allowance shall be payable for any period of 2 consecutive weeks beginning with the date of confinement and ending not later than 16 weeks from the birth of the child.”;

(i) in section 20 insert the following subsection—

“(3) The weekly rate of paternity allowance shall be 60% of the average weekly insurable earnings of the insured person in the 26 weeks immediately preceding confinement and the daily rate shall be the weekly rate divided by 6.”;

in Part 5—

- (j) in section 45(3) replace the word “or” with a comma and insert “or paternity benefit” after the phrase “maternity benefit”;
- (k) in section 51(1)(b) at the end of that sentence insert “and paternity benefit”; and
- (l) in section 51(2)—
 - (i) insert the word “paternity” immediately after the word “maternity,” where it first appears, and
 - (ii) insert the phrase “or paternity benefit” immediately after the phrase “or maternity benefit”.

Commencement

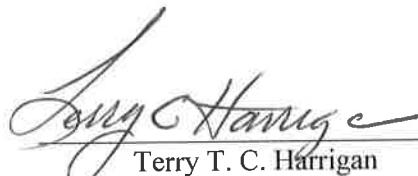
186. Except for—

- (a) section 46 (Annual holiday terms and conditions);
- (b) section 110 (Redundancy payment (severance pay)); and
- (c) Part 10 (Dispute Settlement Mechanism);

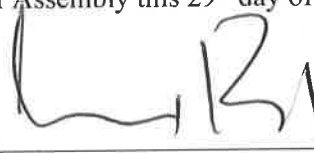
which each comes into force on 31 August, 2019 this Act comes into force upon assent.

Citation

187. This Act may be cited as the Labour (Relations) Act, 2018.


Terry T. C. Harrigan
Speaker

Passed by the House of Assembly this 29th day of November, 2018


Lenox J. Proctor
Clerk of the House of Assembly

SCHEDULE 2

(Section (80))

PROCEDURES OF MINIMUM WAGE ADVISORY COMMITTEE

1. The Committee shall investigate the conditions of employment in respect of the particular occupation or trade which necessitated its appointment and make recommendations to the Executive Council as to the minimum rates of wages which should be payable in such occupation or trade.
2. If it considers that course appropriate, the Committee shall hold public sittings before which it shall by public notice invite employers and employees likely to be affected by its recommendations to appear and make submissions.
3. Any person may, by notice in writing signed by the chairman, be required—
 - (a) to attend any meeting of the Committee and—
 - (i) give evidence on oath or otherwise before the Committee, and
 - (ii) produce any document which in the opinion of the Committee is relevant to the subject matter of investigation, without being bound by the rules of evidence in civil or criminal proceedings; and
 - (b) to furnish in such a manner as may be specified, such particulars as may be required by the Committee; but, if any witness objects to answer any question or to produce any document on the ground that it will tend to incriminate him or on any other lawful ground, he shall not be required to answer such questions or to produce such documents, nor shall he be liable for any penalties for refusing to do so.
4. The Committee may at any time if it deems it expedient to do so—
 - (a) enlist the aid of one or more assessors, specially qualified in the opinion of the Committee to give assistance to the Committee in the matter under investigation, or in any matter relevant to such investigation; and
 - (b) conduct such survey in such manner as it may deem fit.
5. The Committee may continue to act notwithstanding any vacancy which for any reason may occur in its membership.
6. (1) The report of the Committee shall be in writing and shall be addressed to the Executive Council.
 - (2) Such report shall be signed by the members of the Committee who concur therein.
 - (3) Such report shall be forwarded to the Executive Council as soon as conveniently possible after the conclusion of the investigation or, if the Executive Council has requested an interim report, as soon as conveniently possible after the receipt of such request.
 - (4) The rates recommended by the Committee may be time rates, piece rates and overtime rates or any one or more of them.

SCHEDULE 3

(Section 181)

PUBLIC EMPLOYMENT CONTRACTS RULES

1. The contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than those established in the trade or industry in the district where the work is carried out, by agreement, machinery of negotiation or arbitration to which the parties are organisations of employers and trade unions representative respectively of substantial proportions of the employers and employees engaged in the trade or industry in the district (hereinafter referred to as “established rates and conditions”), or failing such established rates and conditions in the trade or industry district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.
2. In the absence of any such agreement or established rates and conditions as defined in section 1, the contractor shall pay rates and wages and observe hours and other conditions of labour not less favourable than those which are or would be paid and observed by Government in the trade in the district where the work is carried out.
3. Before being placed on any list of Government contractors, the contractors shall certify that to the best of his knowledge and belief the wages, hours of work and conditions of labour of all employees employed by him in the trade or industry in which he is offering himself as a contractor are fair and reasonable having regard to section 1.
4. In the event of any difference or dispute arising as to what wages ought to be paid or what hours or other working conditions ought to be observed in accordance with the requirements of section 1, it shall, if not otherwise disposed of, be referred by the Commissioner to the Minister who may, if he thinks fit, refer the matter to the Tribunal in accordance with the provisions of this Act. In arriving at its decision, the Tribunal, in the absence of any established rates and conditions in the trade or industry concerned as specified in section 1, shall have regard to any agreement, custom, practice or award that may be brought to its notice relating to the wages, hours or conditions of labour of persons employed in a capacity similar to that of the persons to whom the difference or dispute relates in trade or industries carried on under similar general circumstances.
5. The contractor shall keep proper wages books and time sheets showing the wages paid to and time worked by the employees in and about the execution of the contract, and he shall be bound, whenever required, to produce such wages books and time sheets for the inspection of any person authorised by the Commissioner.
6. (1) A subcontractor shall be bound in all cases to conform to the conditions of the main contract and the main contractor shall be responsible for the observance of all contract conditions on the part of the subcontractors.

(2) The contractor shall not transfer or assign a contract or any portion thereof without the written permission of the Commissioner.

(3) No portion of the work to be performed on a contract shall be done at the homes of the employees, except in so far as work is so performed by practice or custom.
7. Contractors and subcontractors shall recognise the freedom of their employees to be members of registered trade unions.
8. A contractor shall not be entitled to payment of any money which would otherwise be payable under the terms of contract in respect of the work and labour performed in the execution of the contract unless and until he has filed, together with his claim for payment, a certificate showing—
 - (a) the rates of wages and hours of labour of the various classes of employees employed in the execution of the contract;

- (b) whether any wages in respect of the work and labour remain in arrears; and
- (c) that all the labour conditions of the contract have been duly complied with.

9. The contractor shall also from time to time furnish to the Commissioner such further detailed information and evidence as the Commissioner may deem necessary in order to satisfy him that the conditions of these rules have been complied with.

10. In the event of default being made in payment of any money in respect of wages of any employee employed on the contract and, if a claim thereafter is filed with the Commissioner and proof thereof satisfactory to the Commissioner is furnished, the Commissioner may, failing payment by the contractor, arrange for the payment of such claim out of the money at any time payable under the contract and the amount so paid shall be deemed payments to the contractor.

11. Any contractor or subcontractor who fails to comply with any of these rules shall cease to be approved as a contractor or subcontractor for such period as the Commissioner may determine.
