



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 18.27

## PROTECTION OF EMPLOYMENT ACT and Subsidiary Legislation

### Revised Edition

showing the law as at 31 December 2017

This is a revised edition of the law, prepared by the Law Commission under the authority of the Law Commission Act, Cap. 1.03.

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## CHAPTER 18.27

### PROTECTION OF EMPLOYMENT ACT

AN ACT TO MAKE CERTAIN PROVISIONS IN RESPECT OF TERMINATION OF EMPLOYMENT, TO PROVIDE FOR THE ESTABLISHMENT OF A SEVERANCE PAYMENTS FUND; AND TO PROVIDE FOR SEVERANCE PAYMENTS TO EMPLOYEES; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

#### PART I

##### PRELIMINARY MATTERS

###### Short title.

1. This Act may be cited as the Protection of Employment Act.

###### Interpretation.

2. In this Act, unless the context otherwise requires—

“casual worker” means any person whose employment is a chance employment based on no contract to employ, even though there could be reasonable expectation of being employed;

*(Substituted by Act 24 of 2001)*

“Commissioner” means the person for the time being holding the office of Labour Commissioner;

“Committee” means the National Tripartite Committee on Labour Standards established by section 43 of this Act;

*(Inserted by Act 12 of 2013)*

“contribution” means a contribution payable to the Fund pursuant to this Act;

“contribution period” means the prescribed period in respect of which a contribution is payable;

“employee” means any person who works with an employer under a contract of service in any capacity whether such contract is expressed or implied, oral or in writing;

“employer” means any person who employs or on whose behalf any other person employs any employee and includes a body of employers (whether such body is a firm, company, statutory corporation or trade union) or any person who, on behalf of any other person, employs any employee but does not include any person acting as agent for a disclosed principal;

“Fund” means the Severance Payments Fund established by subsection (1) of section 12;

“Minister” means the Minister for the time being charged with the responsibility of Labour;

“normal wages” includes any salary or money contracted to be paid or required by law to be paid or given as a recompense, reward or remuneration for any services, work or labour done or to be done;

“prescribed” means prescribed by Regulation under this Act;

“probationary period” means a period not exceeding four weeks in the case of household employment or three months in the case of other employment;

“redundancy” means abolition of a post where the post of the employee is no longer required by the employer because—

- (a) the employer has modernised, automated or mechanised all or part of his or her business;
- (b) the employer has discontinued or ceased to carry on all or part of his or her business;
- (c) the employer has re-organised or relocated his or her business to improve efficiency;
- (d) the employer’s need for the employee in a particular category has ceased or diminished;
- (e) it has become impossible or impracticable for the employer to carry on his or her 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
- (f) 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;

*(Inserted by Act 12 of 2013)*

“seasonal employment” means any employment provided by an employer during a specific part (commencing at approximately the same time each year) of each of three or more consecutive years and “season” shall be construed accordingly;

“serious misconduct” includes fraud, dishonesty or any other conduct of such a nature that it is unreasonable to require the employer to continue employment during the notice period;

“temporary worker” means any person whose period of employment does not exceed the probationary period;

“trade dispute” means a trade dispute as defined under the Trade Unions Act, Cap. 18.36.

### **Application of Act.**

3. This Act shall not apply—

- (a) to employees of the Crown and of statutory corporations in respect of whom special provisions apply both as regards termination notice and retiring benefits;
- (b) to a director of a company incorporated, registered or conducting business under the laws of Saint Christopher and Nevis or to any member of a partnership agreement;
- (c) to an employee who is either husband, wife, father, mother, brother, sister or child of the employer living in the employer’s household;
- (d) to a master or a member of a fishing vessel, if payment is made in respect of the employment by way of a share in the profit of that vessel;

- (e) to a temporary worker, except in respect of maternity leave qualification; and
- (f) to a casual worker, except in respect of maternity leave qualification.

*(Amended by Act 11 of 2014)*

**Terms and conditions of employment to be in writing on request.**

4. (1) The terms and conditions of employment shall be provided in writing by an employer to an employee within fourteen days of a request from the employee.

(2) The Minister shall, by Regulations made under this Act, provide a specimen form indicating the terms and conditions of employment which must be provided in writing pursuant to the preceding subsection.

PART II

TERMINATION OF EMPLOYMENT

**Termination of employment.**

5. (1) Except under paragraph (f) of this section, employment may be terminated in writing by the employer in the following circumstances—

- (a) without notice during the probationary period of the employee except as may otherwise be provided in writing in a contract of employment;
- (b) without notice where the employee is guilty of serious misconduct in or in relation to his or her employment;
- (c) without notice where the employee is guilty of misconduct in or in relation to his or her employment or the employee is no longer performing his or her duties satisfactorily;
- (d) where a medical practitioner certifies that an employee is suffering from infirmity of the mind or body which is likely to be permanent, provided such infirmity has lasted for a period of at least three (3) months;
- (e) where the employee has become redundant for the reason that—
  - (i) the employer has discontinued or ceased to carry on all or part of his or her business;
  - (ii) the employer has modernised, automated or mechanised all or part of his or her business;
  - (iii) the employer has reorganised his or her business to improve efficiency;
  - (iv) the employer finds that it is impossible for him or her to carry on his or her business at the usual rate or level due to shortage of material or a mechanical breakdown or for any cause beyond his or her control;
  - (v) the employer is forced to reduce his or her business due to lack of or change in markets;
- (f) where the employer dies and his or her business ceases to operate; or
- (g) where the business is liquidated by bankruptcy or otherwise.

(2) Subsection (c) of section 5(1) shall apply only when the employer has warned the employee in writing on at least two occasions within the six months preceding the termination of employment, indicating the nature of the misconduct or unsatisfactory performance of duties and in the case of the last warning, the intention of the employer to terminate the services of the employee if similar misconduct is repeated or the unsatisfactory performance of duty persists.

*(Inserted by Act 24 of 2001)*

#### **Sale of business not to affect rights of employee.**

6. (1) The sale or other disposition of a business or part of it shall not affect the rights of an employee and the obligations accruing to any employee at the time of the sale or disposition shall be met by the buyer or the person acquiring the business.

(2) The rights of the employees and the obligations accruing to each employee shall be recorded at the time of the sale or disposition of the business with the Commissioner.

#### **Notice of termination of employment.**

7. (1) Subject to the provisions of section 5 of this Act, an employer shall give an employee notice of termination of services of the employee on the following basis—

- (a) an employee with three months, but less than one year's continuous service, one week;
- (b) an employee with one year, but less than three years continuous service, two weeks;
- (c) an employee with three years, but less than five years continuous service, three weeks;
- (d) an employee with five years, but less than seven years continuous service, four weeks;
- (e) an employee with seven years, but less than ten years continuous service, five weeks;
- (f) an employee with ten years, but less than fifteen years continuous service, six weeks;
- (g) an employee with fifteen years and over continuous service, ten weeks;
- (h) an employee paid on a monthly basis who has completed three months, but less than five years continuous service, one month;
- (i) an employee paid on a monthly basis who has completed five years, but less than ten years continuous service, two months;
- (j) an employee paid on a monthly basis who has completed ten years and over continuous service, three months.

*(Substituted by Act 24 of 2001)*

(2) *In lieu* of notice, the employer may provide the employee wages and other benefits to which the employee is entitled during the period of notice.

(3) Where an employer contemplates laying off or terminating the employment of ten or more employees or 10% or more employees (whichever is less) on any of the grounds specified under section 5(1)(e) at the same time, the employer shall, not less than one month before any proposed lay off or termination, notify the Labour Commissioner in writing of—



- (a) the reasons for the lay off or terminations;
- (b) the number and categories of employees affected;
- (c) the period over which the terminations are intended to be carried out; and
- (d) a summary of the results of any consultations with any trade union representing the employees.

*(Inserted by Act 24 of 2001)*

**Employee to give Notice of termination of employment.**

**8.** (1) An employee shall give his or her employer notice of termination of employment equivalent to the period such employee is entitled to receive from his or her employer under section 7 for the termination of his or her employment.

(2) Where the contract of employment is not in writing the period of notice of termination of employment by the employee shall not exceed four weeks.

(3) An employee may terminate his or her services without notice if the conduct of his or her employer is of such a nature that the employee cannot reasonably be expected to continue his or her employment and any such termination shall be deemed to be termination by the employer.

(4) The burden of proof in any termination under subsection (3) shall be on the employer.

**Labour Commissioner to be notified.**

**9.** An employer shall not give an employee pay *in lieu* of notice where the employee's services are terminated for mental or physical incapacity or infirmity without prior notification to the Labour Commissioner.

**Continuity of employment not interrupted.**

**10.** The cessation of employment of an employee for the following reasons shall not constitute a break in continuity of a contract of employment—

- (a) a trade dispute;
- (b) accident, sickness, injury or for absence during maternity period as certified by a medical practitioner;
- (c) operation of any other law;
- (d) an Act of God;
- (e) any agreement with the employer;
- (f) absence permitted or condoned by the employer;
- (g) suspension or temporary lay off where there is no severance payment to which an employee would normally be entitled as a result.

**Prohibition against termination of employment.**

**11.** An employer shall not terminate the contract of an employee on any of the following grounds—

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

- (b) seeking office as, or acting or having acted in the capacity of a worker's representative;
- (c) making a complaint or participating in proceedings against an employer involving an alleged violation of laws or regulations;
- (d) race, place of origin, birth out of wedlock, political opinions or affiliations, colour, sex or creed, marital status or family responsibilities;
- (e) absence from work during maternity period as certified by a medical practitioner;
- (f) temporary absence from work due to injury or illness as certified by a medical practitioner and provided that the employee submits the certificate to his employer within 48 hours of his or her absence;
- (g) absence from work in the performance of Jury service as required under the Jury Act, Cap. 3.15;
- (h) absence from work to attend a court hearing in response to a summons, provided prior notice has been given to the employer.

*(Inserted by Act 24 of 2001)*

### PART III

#### SEVERANCE PAYMENT, LONG SERVICE GRATUITY AND SERVICE CHARGE

*(Amended by Act 12 of 2013)*

#### **Severance Payments Fund.**

**12.** (1) For the purpose of this Act there shall be established under the control and management of the Commissioner a fund called "The Severance Payments Fund".

(2) There shall be paid into the Fund—

- (a) all contributions;
- (b) all sums recovered for the Fund under the Act; and
- (c) all sums properly accruing to the Fund under this Act including, without prejudice to the generality of the foregoing, the repayment of benefit or assistance.

(3) There shall be paid or met out of the Fund—

- (a) all claims for benefits or assistance;
- (b) all refunds of contributions paid in error;
- (c) all claims for long service gratuity which become payable by virtue of section 36 of this Act;
- (d) all expenses properly incurred in the administration of this Act.

*(Amended by Act 12 of 2013)*

(4) Regulations shall provide for the form and conduct of the accounts and for the deposit with the Accountant General of all sums collected.

(5) The Director of Audit shall annually conduct an audit of the Fund and his or her annual Report shall be laid before the National Assembly.

**Source of funds.**

**13.** (1) For the purpose of providing the funds required for the payment of severance payment benefits and for making any other payments which under this Act are to be made out of the Fund, contributions shall be payable by employers.

(2) The contributions payable by an employer in respect of an employee shall be at the rate of one per centum of the normal wages of the employee.

(3) Regulations made under the preceding subsection may provide for exempting any employer from liability to pay contribution or reducing or varying any rate of contribution for periods when the employer has over any prescribed period not terminated the employment of any employee under circumstances requiring payment of severance pay in accordance with the provisions of this Act.

**Payment of severance payment contribution.**

**14.** (1) The contribution payable under this Act by any employer in respect of any employee shall be paid by the employer to the Commissioner at the end of every month.

(2) The employer shall pay the contribution within such period as may be prescribed.

(3) Any employer paying a contribution shall furnish to the Commissioner at the time of such payment, a statement stating the wages of every employee in his or her employment and the amount paid in respect of severance payment contribution.

**Social Security Board to administer and collect severance payment contribution on behalf of the Commissioner.**

**15.** The Social Security Board is hereby vested with the responsibility of the administration and collection of the contribution on behalf of the Commissioner and such contribution shall be payable at the office of the Social Security Board.

**Penalties.**

**16.** Where the payment of the contribution is in default, the defaulting employer shall become liable to pay, in addition to such contribution—

- (a) a penalty of a sum equivalent to ten per centum of such contribution; and
- (b) where such contribution is not paid to the Commissioner after a period of thirty days after such contribution has been in default, a penalty of a sum equivalent to one per centum of the contribution in respect of each further period of thirty days:

Provided that a defaulting employer shall not be required to pay the penalty under this section—

- (a) if the defaulting employer proves to the satisfaction of the Commissioner that the failure of payment was due to circumstances beyond his or her control; and
- (b) if the defaulting employer furnishes to the Commissioner a correct return of the emoluments and pays the amount in default.

**Recovery of Severance Payment Contribution.**

17. (1) Subject to sub-section (2) of this section, the provisions dealing with the recovery of income tax as provided in sections 70 to 75 in the Income Tax Act shall apply *mutatis mutandis* to the recovery of any contribution under this Act.

(2) Every reference to the word “collector” and the word “tax” in sections 70 to 75 of the Income Tax Act, Cap. 20.22 shall be read as a reference to the word “Commissioner” and to the word “contribution” respectively for purposes of this Act.

*(Inserted by Act 3 of 1987)*

**Power of Commissioner to call for information.**

18. The Commissioner shall have the power—

- (a) by notice in writing to require any employer to furnish within the period specified in the notice, such information as the Commissioner may by notice require for the purposes of this Act;
- (b) to require any employer to produce for examination within a specified time any book, document, register or record which is under his or her control or in his or her possession and which, in the opinion of the Commissioner contains information useful for the purposes of this Act.

**Power of Commissioner to make any decision or determination.**

19. The Commissioner may, upon good cause adduced by the Social Security Board or of his or her own motion, make any decision or determination in respect of the contribution payable by any employer.

**Appeals.**

20. (1) An employer, if he or she is dissatisfied with any decision or determination made in respect of him or her by the Commissioner under this Act, may appeal against the decision or determination to the Commissioners appointed under the Income Tax Act, Cap.20.22 within the time prescribed for such appeal.

(2) Notwithstanding the provisions of subsection (1) until the determination of any appeal the employer shall pay the contribution amount required to be paid by him or her by reason of any variation, decision or determination by the Commissioner.

(3) The Commissioners shall, before making their decision or determination on any appeal made under subsection (1), give the employer or his or her authorised representative an opportunity to present his or her case to the Commissioners.

(4) Any employer who is aggrieved by the decision of the Commissioners in respect of any appeal made to them under subsection (1) may further appeal against that decision to the High Court.

**Contribution to be a deductible expense under the Income Tax Act.**

21. For the purpose of ascertaining the assessable income of a company under section 9 of the Income Tax Act, Cap. 20.22 the amount of the contribution which a company is liable to pay shall be deemed to be an expense incurred in the production of the income.

**Refunds.**

22. If it is proved to the satisfaction of the Commissioner, by claim to him or her in writing, that any employer has paid in respect of the contribution under this Act an amount in excess of the amount due from him or her, the employer shall be entitled to a refund of the amount paid in excess.

**Forms.**

23. The Minister may from time to time prescribe the forms to be issued and used for the purposes of this Act and may vary and amend such forms from time to time.

**Payment into Fund.**

24. (1) All sums paid to or recovered by the Commissioner by way of the Social Security Board shall be paid into the Severance Payments Fund.

(2) All sums received by the Commissioner by way of penalties under this Act shall be paid by him or her into the Severance Payments Fund.

**Expenses of Social Security Board.**

25. There shall be paid to the Social Security Board at such times and at such rate as may be determined by the Minister after consultation with the Minister responsible for Social Security and the Social Security Board, such sums as may be estimated to be the amount of the expenses of the Social Security Board in the administration of this Act.

**Right to severance payment.**

26. (1) Where an employee has been continuously employed for a period of not less than one year and the employer terminates the services of that employee on any grounds specified in paragraph (d), (e), (f) or (g) of section 5(1), or the employee has terminated his or her services in pursuance of section 8(3), the employee shall be entitled to severance payment.

*(Inserted by Act 24 of 2001)*

(2) An employee who has worked for the same employer on a seasonal basis for the three seasons immediately preceding the termination of his or her employment shall be deemed to qualify for severance payment if he or she has worked for the same employer for three-fourths of the number of working days in each season in each of the reckonable years.

(3) An employee entitled to severance payment may claim payment in such manner as may be prescribed.

**No right to severance pay.**

27. Where there is a change of ownership or operation of the business or where the employer dies or where the employee is made redundant under paragraph (e) of section 5, the employee shall not be entitled to severance payment if the contract of employment continues or if he or she is offered a new contract of employment by the new owners or operators of the business or the personal representatives of the deceased employer or the same employer, as the case may be, on terms and conditions of employment and at a place of employment no less favourable than in his or her earlier contract.

**Laid off or suspended employee to claim severance payment.**

28. Where an employer lays off an employee or suspends an employee for a period of at least twelve weeks, the employee may request his or her employer to treat his or her employment as terminated and the employee shall then be entitled to severance payment if he or she has worked for the same employer for at least one year and would be entitled to severance payment under section 26.

**Employment may be treated as terminated.**

29. The services of an employee shall be deemed to be terminated under the preceding section unless the employer is able to offer employment to that employee within twelve weeks from the time of lay-off or suspension and such employment is substantially the same in relation to terms, conditions and place of employment for a period of not less than thirteen weeks.

**Rate of severance payment.**

30. (1) The rate of severance payment shall be two weeks for each year of continuous service for a period of up to five years service, three weeks for a period of five years to ten years service and four weeks for any period of service in excess of ten years calculated backwards from the date of the termination of employment, except in the case of seasonal workers, where the rate shall be one week's pay for each period that such employee qualifies under subsection (2) of section 26.

(2) In the computation of severance payment, a period of a half of a year or more shall be counted as a full year and a period less than half of a year shall be ignored.

(3) In the computation of severance payment, no employee shall be entitled to more than fifty-two weeks' severance payment.

**Determination of claim.**

31. (1) It shall be the duty of the Commissioner to determine, where necessary in consultation with the employer and the employee, the claim of any employee in respect of his or her severance payment.

(2) Where any person disputes the determination or decision of the Commissioner he may appeal that determination or decision to the Commissioners appointed under the Income Tax Act, Cap. 20.22.

**Computation of week's pay.**

32. For the purposes of section 31, a week's pay—

- (a) in the case of an employee not paid on a piece work basis, is equivalent to the aggregate of the employee's normal wages for the fifty-two weeks immediately preceding the termination of employment divided by the number of weeks worked;
- (b) in the case of an employee paid on a piece work basis, is equivalent to the normal wages for a period of fifty-two weeks immediately preceding the termination of employment divided by the number of weeks worked;
- (c) in the case of a seasonal worker, is equivalent to the total of his or her normal wages in the last three seasons preceding the termination of

employment divided by the number of days worked and multiplied by the number of days constituting the working week.

**Seasonal workers.**

**33.** The services of a seasonal worker shall be deemed to have been terminated if he or she offers his or her services and is not re-employed by the same employer within the first four weeks at the beginning of the next season.

**Recovery of severance payment and notice of payment.**

**34.** (1) An employee may recover by civil proceedings in a court of competent jurisdiction the notice payment and severance payment to which he or she is entitled under this Act.

(2) In the event of bankruptcy or liquidation of the business of the employer, or on any other closure of business the amount owing to an employee as payment *in lieu* of notice shall be deemed to be a priority debt under the provisions of the relevant enactments.

**Transitional provision.**

**35.** (1) Notwithstanding anything contained in this Act, where any employee has worked for an employer for more than ten years and within five years from the commencement of this Act, his or her services are terminated in accordance with the provisions of paragraph (e), (f) or (g) of section 5 of this Act the employee shall in addition to any benefits payable under this Act, be entitled to receive severance payment from his or her employer in respect of the termination.

(2) For the purpose of the calculation of severance payment required under subsection (1), a period of five years shall be deemed to be the period in respect of which payment by an employer shall be made.

**Long service gratuity.**

**36.** (1) An employee who—

- (a) retires at the retirement age set out in the Social Security Act, Cap. 22.10;
- (b) opts to retire after at least ten years of service;
- (c) dies, while in the course of his or her employment, after at least ten years' service,

shall, subject to the provisions of this section, be entitled to long service gratuity payable out of the Severance Payment Fund, which gratuity shall be calculated at the same rate as severance payment.

(2) For the purposes of this section, an employee shall qualify for long service gratuity if the employee served the ten years referred to in subsection (1) in one place of employment.

(3) Long service gratuity shall not be payable to an employee who is dismissed in accordance with the provisions of this Act.

(4) An employee whose services are terminated on the grounds of redundancy after having continuously served his or her employer for a period of ten years shall be entitled to severance pay and not to long service gratuity.

(5) Long service gratuity referred to in this section shall be payable within a period of ninety days after the employee retires after ten years of service.

*(Inserted by Act 12 of 2013)*

**Service charge.**

37. An employer shall, in an establishment in which a customer pays a service charge, cause the service charge to be distributed among the employees every four weeks on such basis as may be agreed upon by the employer and the employees, provided that the employer shall retain 10% of the service charge to cover the employer's administrative costs.

*(Inserted by Act 12 of 2013)*

PART IV

MATERNITY LEAVE

**Period for which maternity leave must be granted.**

38. (1) An employee shall be entitled to thirteen weeks' maternity leave, that is to say, at least two weeks up to and including the date of her expected confinement and at least six weeks immediately from that date.

(2) In the case of illness medically certified as arising out of the pregnancy or out of confinement, she shall be entitled to an additional period of leave not exceeding three months.

(3) The benefits to be paid to an employee during maternity leave shall be in accordance with the provisions of the Social Security Act, Cap. 22.10.

(4) Where no benefit is payable under the Social Security Act for any period of maternity leave to which an employee is entitled under subsection (1) of this section, the employer shall pay the employee benefits in respect of that period of maternity leave at the rate payable under the Social Security Act, Cap. 22.10.

**Qualifying period of employment for maternity leave.**

39. (1) No employee shall be entitled to maternity leave unless she has worked for the employer from whom she claims such benefit for not less than one hundred and fifty days within the period of one year immediately preceding the date of her confinement.

(2) For the purposes of reckoning the one hundred and fifty days referred to in subsection (1), an employee shall be deemed to have worked on—

- (a) the days on which she was not provided work by her employer by reason of her pregnancy;
- (b) the holidays to which she was entitled under any written law;
- (c) the days of her absence on leave granted by her employer or allowed by any written law;
- (d) the days of her absence due to any injury or illness medically certified arising out of or in the course of her employment; and
- (e) any period of cessation of work falling under the provisions of section 10.



(3) Where a change of employer occurs in any business, ship, estate, factory or other enterprise in which an employee is employed, service rendered by that employee to the previous employer shall be deemed to be service rendered under the new employer for the purpose of computing the period of employment by virtue of which she may be entitled to maternity leave under subsection (1).

**Notice to employer of confinement or expected confinement.**

**40.** (1) An employee shall, prior to her confinement give notice to her employer that she expects to be confined within six weeks from the date of such notice.

(2) An employee who has been confined shall, within one week of her confinement, give notice to her employer of the date on which she was confined.

(3) The employer shall, on receipt of a notice from an employee under subsection (2), permit that employee to absent herself from employment until the expiry of the remainder of the period of maternity leave for which she is eligible under the provisions of subsection (1) of section 38 calculated from the day of her confinement.

**Employee not to be given notice of dismissal during maternity leave from employment.**

**41.** If an employee absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

**Employment not to be terminated because of pregnancy or confinement or illness consequent hereto.**

**42.** (1) The employment of an employee shall not be terminated by reason only of her pregnancy or confinement or of any illness consequent upon her pregnancy or confinement.

(2) Where an employer is prosecuted for the offence of acting in contravention of the provisions of subsection (1), the burden of proving that the employment of an employee was terminated by reason of a fact other than her pregnancy or confinement or any illness consequent upon her pregnancy or confinement shall be upon the employer.

PART V

NATIONAL TRIPARTITE COMMITTEE ON LABOUR STANDARDS

**Establishment of the Committee.**

**43.** (1) There is established a Committee to be known as the National Tripartite Committee on Labour Standards which shall consist of the following members—

- (a) six persons, nominated by the Minister;
- (b) three persons nominated by the most representative organisation of workers;
- (c) three persons nominated by the Employer's Association; and
- (d) the Labour Commissioner as ex-officio member.

(2) The members of the Committee referred to in subsection (1)(a), (b) and (c) shall be appointed by the Governor-General.

**Tenure of office of members.**

44. A member of the Committee shall be appointed for a term of two years, and may be eligible for re-appointment.

**Vacancies.**

45. If any vacancy occurs in the membership of the Committee, such vacancy shall be filled in accordance with the provisions of section 43.

**Revocation of appointment.**

46. (1) The Governor-General shall, acting on the advice of the Minister, revoke the appointment of a member of the Committee who was nominated by the Minister in accordance with the provisions of subsection (1)(a) of section 43.

(2) The Governor-General shall, acting on the advice of the Minister, revoke the appointment of a member of the Committee upon the request of the representative—

- (a) worker's organisation which nominated the member;
- (b) employer's organisation which nominated the member.

**Functions of Committee.**

47. The Committee shall advise the Minister on all labour matters including the following—

- (a) the formation and implementation of national policies on—
  - (i) basic conditions of employment;
  - (ii) health, environment and safety of workers;
- (b) promotion of collective bargaining;
- (c) proposals for the adoption and amendment of legislation; and
- (d) review of the operation and enforcement of this Act.

**Committee to be consulted on certain matters.**

48. The Committee shall be consulted with respect to matters concerning the activities of the International Labour Organisation and, in particular, on—

- (a) Government replies to questionnaires concerning items on the agenda of the International Labour Conference and Government comments on proposed texts to be discussed by the International Labour Conference;
- (b) proposals to be made to Cabinet in connection with the submission of Conventions and recommendations pursuant to the provisions of Article 19 of the Constitution of the International Labour Organisation;
- (c) re-examination, at the appropriate intervals, of conventions which have not yet been ratified and recommendations to which effect has

not yet been given, and to consider what measures should be taken to promote their ratification and implementation as may be appropriate;

- (d) questions arising out of reports to be made to the International Labour Organisation pursuant to the provisions of Article 22 of the Constitution of the International Labour Organisation;
- (e) proposals for the denunciation of ratified conventions.

#### **Meetings of the Committee.**

**49.** (1) The Committee shall meet at such times as may be necessary or expedient for the transaction of its business, but in any event the Committee shall meet at least once every three months.

(2) The meetings of the Committee shall be held at such times and places and on such days as the Committee may determine.

(3) The Chairperson may, at any time, summon a meeting of the Committee, and shall summon a meeting within fourteen days—

- (a) of a request to that purpose addressed to him or her by three members of the Committee; or
- (b) of a direction to that effect addressed to him or her by the Minister.

(4) The Chairperson of the Committee shall be the Labour Commissioner and in his or her absence the person who would be acting as Labour Commissioner.

(5) Subject to the provisions of this section, the Committee may regulate its own procedure.

#### **Secretary to the Committee and Minutes of the Committee.**

**50.** (1) The Minister shall, on the advice of the Labour Commissioner, appoint a Labour Officer in the Department of Labour to be Secretary to the Committee.

(2) Minutes of the Committee, in proper form, of each meeting of the Committee shall be kept by the Secretary or in his or her absence by such person as the Committee may appoint for the purpose.

(3) A copy of the minutes of every meeting of the Committee shall be submitted to the Minister within a period of fourteen days after the meeting.

#### **Quorum.**

**51.** (1) Seven members of the Committee shall constitute a quorum for meetings at which no fewer than one worker's representative and one employer's representative must be present.

(2) Where a meeting of the Committee is not properly constituted due to lack of quorum, the subsequent meeting will be deemed to be properly constituted irrespective of whether a quorum is lacking.

(3) Notice for meetings of the Committee shall be sent at least seven working days before the scheduled date of the meeting, and all meetings shall be held during working hours as far as it is practicable.

**Allowances and expenses.**

52. The Minister may authorize the payment of allowances to members of the Committee and its Secretary, and shall authorize the reimbursement of any reasonable expenses incurred by the members and the Secretary.

*(Part IVA inserted by Act 12 of 2013 and renumbered as Part V)*

PART VI  
MISCELLANEOUS

**Delegation of functions.**

53. The Commissioner may delegate any function which, by this Act, is to be performed by him or her, to any labour officer of the Department of Labour.

**Powers of the Commissioner.**

54. The Commissioner shall, in addition to and not in derogation of any power conferred on him or her under any other law, have power—

- (a) to enter freely and without previous notice at any reasonable hour of day or night any work place where workers covered by this Act are employed;
- (b) to enter by day any premises which he or she may have reasonable cause to believe that workers covered by this Act are employed;
- (c) to require the production of books, registers or other records as may be necessary for the purposes of this Act;
- (d) to take copies of the whole or any part of such books, registers or other records;
- (e) to interview alone or in the presence of witnesses, the employer, the staff or former employees of any undertaking on any matter for the purpose of this Act;
- (f) to require the employer to provide returns relating to all his or her employees or former employees or any class or description of such employees and any such particulars as he or she may require for the purposes of this Act; and
- (g) to hold such enquiries as he or she may consider necessary for the purposes of this Act.

**Preference to former employees.**

55. Where an employer terminates the services of an employee owing to a reduction of the work force and subsequently intends within a period of twelve weeks following the date of such termination of employment to employ persons to perform similar duties, the employer shall give preference to the former employee whose services have been terminated.

**Proceedings before the Commissioner, Minister and Hearing Officer.**

56. (1) Any employer or employee or any person or organisation acting on his or her behalf, as the case may be, may make a complaint to the Commissioner that the

provisions of this Act have been contravened by an employer or employee and in any complaint made to the Commissioner in accordance with this subsection, the employee and employer shall have the right to be represented.

(2) Upon receipt of a complaint under the preceding subsection, the Commissioner shall forthwith take appropriate steps in accordance with the provisions of the Labour Act, Cap.18.18 to assist the parties to arrive at a settlement.

(3) If within fourteen days after the receipt of a complaint under this section, the Commissioner has failed to achieve a voluntary adjustment or settlement, he or she shall refer the matter, with a full report thereon, to the Minister.

(4) On referral of a matter to him or her the Minister shall seek to settle or adjust the matter or in any case that he or she considers necessary he or she may refer the matter to an officer hereinafter referred to as a Hearing Officer who shall have and enjoy the same powers conferred on the Commissioner under the Labour Act, Cap. 18.18.

(5) The Minister may, by Order, appoint one or more persons to function as Hearing Officer generally or in relation to one or more cases, or authorise any officer to exercise the powers of a Hearing Officer.

(6) The Hearing Officer shall, after issue of notice to all the interested parties, either—

- (a) hold a conference and attempt to narrow down the issues and then adjudicate on the dispute; or
- (b) proceed to hear the matter and make his or her findings on the dispute.

(7) The Hearing Officer shall, within fourteen days of the closing of the hearing, give his or her decision on the matter in writing.

(8) Any employer or employee who is dissatisfied with any recommendations or findings given or made under this section may appeal to a Judge in Chambers who may in addition to any other remedy, order reinstatement of any employee or make any award of compensation.

#### **Offences and burden of proof.**

57. (1) Any person who—

- (a) makes any false statement knowingly to evade, increase or decrease the payments under this Act;
- (b) produces or furnishes or knowingly allows to be produced or furnished any document or information which is false in any material respect; or
- (c) misrepresents or fails to disclose any material fact,

commits an offence and on summary conviction shall be liable to a fine not exceeding three thousand dollars or a term of imprisonment not exceeding six months or to both such fine and imprisonment.

(2) Any employer who fails to comply with any of the provisions of this Act other than the offences specified in the above subsection commits an offence and on summary conviction shall be liable to a fine not exceeding two thousand dollars.

(3) The burden of proof in all matters of termination of employment under this Act shall be on the employer.

**Regulations.**

**58.** The Minister may make regulations for carrying out the provisions and purposes of this Act.

**Order by Minister.**

**59.** Where any difficulty arises in the interpretation of the provisions of this Act, the Minister may make any order, not inconsistent with the purposes of this Act to remove the difficulty.

**More favourable terms and conditions.**

**60.** Nothing in this Act is to be interpreted to prevent any employer from providing in respect of any employee terms and conditions more favourable than those required by this Act.

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**FIRST SCHEDULE**

*(Section 58)*

**PROTECTION OF EMPLOYMENT (WRITTEN TERMS AND  
CONDITIONS OF EMPLOYMENT) REGULATIONS**

**Citation.**

1. These Regulations may be cited as the Protection of Employment (Written Terms and Conditions of Employment) Regulations.

**Terms and Conditions of Employment.**

2. For the purposes of subsection (2) of section 4 of the Act, the terms and conditions of employment which must be provided in writing shall be as follows—

- (a) the name and address of the employer;
- (b) the name and address of the business or establishment at which the employee is to be assigned, (if different from (a));
- (c) the name and address of the employee;
- (d) the commencing date of employment;
- (e) the post or position in which the employee is engaged;
- (f) a brief description of the duties and responsibilities of the post/position;
- (g) the rate of pay and the intervals (not exceeding one month) at which payment will be made;
- (h) the hours of work and the times for completing such hours;
- (i) the rate of overtime and premium pay (if any);
- (j) the duration of any probationary period;
- (k) the length of notice which either party must give to the other to terminate the contract if different from provisions under the Act;
- (l) leave entitlement (sick, vacation, and in the case of a female, maternity) if better than the provisions under the Act.

**Work Rules.**

3. At the commencement of his or her employment, every employee shall be instructed by his or her employer, in such manner as may be appropriate, in the work rules of the establishment, including the legal and other provisions regarding safety, health and welfare, which the employee will be required to observe in the course of his or her employment.

**Transitional and Savings Arrangements.**

4. (1) Nothing in these Regulations shall be interpreted as implying or permitting any change in the date of commencement of the employment of any employee whose employment began before the appointed day.

(2) Any written terms and conditions of employment provided by the employer in contravention of the preceding sub-section shall be invalid and ineffectual.

(3) In this Regulation the term “appointed day” means the day on which, by declaration, the Act is brought into force.

#### **Miscellaneous.**

5. (1) Nothing in these Regulations shall be interpreted to prohibit the employer from committing additional terms and conditions of employment to writing.

(2) The written statement of the terms and conditions of employment may be amended from time to time with the consent of the employer and any trade union representing the employee, or where there is no such trade union, with the consent of the employee:

Provided however that nothing in this Regulation shall be interpreted to permit the introduction of any term or condition of employment less favourable than that provided in, or which would be in conflict with the provisions of any law.

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## **SECOND SCHEDULE**

*(Section 58)*

### **PROTECTION OF EMPLOYMENT (SEVERANCE PAYMENTS) REGULATIONS**

#### **PART I**

#### **PRELIMINARY**

#### **Citation.**

1. These Regulations may be cited as the Protection of Employment (Severance Payments) Regulations.

#### **Interpretation.**

2. In these Regulations, unless the context otherwise requires—

“Board” means the Social Security Board;

“Commissioner” means the person for the time being holding the office of the Labour Commissioner;

“Contribution Month” means one of the twelve calendar months of the year;

“Director” means Director of Social Security;

“Fund” means the Severance Payments Fund established under section 12 of the principal Act;

”Minister” means the Minister for the time being charged with the responsibility of Labour.



PART II

PAYMENT OF CONTRIBUTIONS

**Liability for Contribution.**

3. (1) Subject to the provisions of Section 3 of the principal Act, a contribution for severance payments shall be paid by the employer in respect of every employee and no deduction shall be made by the employer from the wages of the employee on that account.

(2) Any question as to whether an employer is liable to pay contributions in respect of the wages paid or to be paid to any employee employed by him or her shall be determined by the Commissioner.

**Rate of Contribution.**

4. (1) In respect of each period of one month beginning on the 1st day of September, 1986 for which an employee is paid wages, his or her employer shall pay a contribution equal to one percent of the wages paid or payable to the employee during the month, or such other proportion of the wages of the employee as may from time to time be prescribed.

(2) The wages of an employee for the purposes of paragraph (1) shall consist of the same gross earnings received by such employee for purposes of computing the contribution payable by the employee under the Social Security Act, Cap. 22.10.

**Calculation of Contribution.**

5. Every employer shall record in such form as may be authorised by the Commissioner the following particulars regarding every payment of wages which he or she makes to every employee, namely—

- (a) the date of commencement of employment;
- (b) the gross amount of wages, determined in accordance with Regulation 4(2);
- (c) the contribution which is payable by the employer in respect of the wages;
- (d) date of termination of employment:

Provided, however, that where the employer submits similar particulars to the Social Security Board in fulfilment of the requirements of the Social Security Act, Cap. 22.10 and the Housing and Social Development Levy Act, Cap. 20.21, the Commissioner, after consultation with the Director, shall take those particulars into account and waive or vary the requirements under this Regulation accordingly.

**Payment of Contributions.**

6. (1) At the end of every month in which wages are paid, or within one month thereafter, the employer shall pay, by means acceptable to the Director, the contributions payable by the employer under these Regulations in respect of wages paid by him or her to each employee for that contribution month.

(2) The payment shall be accompanied by a statement of wages and contributions in such form and showing such particulars as the Director may from time to time require.

(3) After consultation with the Commissioner, the Director may, if he or she thinks fit and subject to such terms and conditions as may be imposed by the Board, approve any arrangement whereby contributions are paid at times and in a manner other than those prescribed by these Regulations, and any such arrangements may include provision for the payment of such fees as may be determined by the Board to represent the estimated additional expense in administration costs to the Board.

(4) As a condition of authorising payment of any contribution on a date later than that upon which the contribution would, apart from any authorisation under paragraph (1), be due to be paid, the Director may require the making of such deposits of money by way of security as the Director may approve.

(5) Paragraphs (3) and (4) shall, subject to the terms and conditions of any such arrangements, apply to any person affected by such arrangements, and any contravention of, or failure to comply with, any requirement of any such arrangements shall be deemed to be a contravention of, or failure to comply with, these Regulations.

(6) All amounts received by the Director by way of contributions or otherwise shall be forwarded by him or her through the Commissioner, to the Accountant General for deposit in the Fund.

#### **Employer Failing to pay Contributions Due.**

7. (1) If, within the time prescribed by regulation 6(1)—
- (a) an employer has not paid any contribution which he or she is liable to pay to the Director for that month and the Director is unaware of the amount, if any, which the employer is liable to pay; or
  - (b) the employer has tendered in payment an amount which the Director has reasonable cause to believe is less than the employer is liable to pay in respect of any month,

the Director may give notice to the employer requiring him or her to render within the time specified in the notice (not being less than five days), a written return showing the name of every employed person to whom he or she made any payment of wages in or in respect of whom wages were payable for the period from the preceding first day of January or such other date as the Director may specify, to the last day of the previous month, together with the following particulars regarding such employee—

- (i) every payment of wages made during that period;
- (ii) the total amount of contributions which was payable by the employer,
- (iii) such other details and information as will enable the Director to ascertain the correctness or otherwise of the amounts.

(2) Where an employer fails or neglects to render a written return within the period specified in the Notice, the Director shall, based on the employer's record or from information received from employees, estimate the wages paid or payable in respect of each month for which no return was made.

(3) The Director shall certify the amount of contributions so ascertained under paragraph (2) which the employer is liable to pay in respect of the period in question.

(4) The certificate of the Director under paragraph (3) shall be good and sufficient evidence in any court of law and shall be final and conclusive as to the amount an employer is liable to pay to the Director until the contrary is proved.

**Nil Returns.**

8. An employer, who does not pay to the Director any contributions on the date due because that employer did not employ any employee or because that employer has ceased to operate a business during that period relevant to that date shall instead send to the Director a statement to that effect.

**Register of Employers.**

9. For the purpose of these Regulations, the Commissioner, in consultation with the Director, shall compile and maintain a register of employers who are liable to pay a contribution under these Regulations.

**Refund of Contributions paid in Error.**

10. (1) Contributions paid by an employer under the erroneous belief that the contributions were payable by him or her shall be refunded by the Commissioner if application to that effect is made in writing to the Commissioner within the appropriate time specified in paragraph (2) of this Regulation.

(2) An application for the return of any contribution paid under an erroneous belief as aforesaid shall be made in such form and in such manner as the Commissioner may from time to time determine and any such application shall be made—

- (a) if the contribution was paid at the due date, within two years from the date on which that contribution was paid; or
- (b) if the contribution was paid at a later date than the due date, within two years from the due date or within twelve months from the date of actual payment of the contributions, whichever period ends later.

(3) In its application, this Regulation shall have effect subject to the following provisions—

- (a) the time within which the application shall be made by an employer desiring to apply for the return of any such contribution paid under an erroneous belief as aforesaid, shall be two years from the due date or such longer time as the Commissioner may allow if he or she is satisfied the employer had good cause for not applying within those two years; and
- (b) the provisions of this paragraph shall apply to any part of a contribution as they apply to the contribution.

**Inspection of Employers Records.**

11. (1) An employer whenever called upon to do so by an Inspector designated under section 35 of the Social Security Act, Cap. 22.10 or by any other authorized officer of the Board shall supply such information with respect to the wages of persons who are or have been employed by that employer as may be requested, and shall produce all wage sheets and other documents and records whatsoever of the wages of such persons in respect of the period specified by the Director or any other authorised officer of the Board in relation to the payment of contributions by the employer in respect of such wages.

(2) The Director, by reference to the information obtained from an inspection of the documents and records produced under paragraph (1), may on the occasion of

each inspection, prepare a certificate in accordance with the provisions of Regulation 7(3).

**Notice or other Documents sent by Post.**

12. Any notice or other document required or authorised to be given or sent to any person under the provisions of these Regulations shall be deemed to have been given or sent if it was sent by post to him or her at his or her ordinary or last known address.

**Death of Employer.**

13. If an employer dies, anything which he or she would have been liable to do under these Regulations shall be done by his or her personal representatives.

PART III  
ACCOUNTING RECORDS

**Receipts.**

14. Upon receipt of each cheque from the Director, the Commissioner shall issue a receipt for the amount so received and thereafter transmit the amount to the Accountant General.

**Statement of Wages.**

15. (1) Upon receipt of a copy of each statement of wages and contributions from the Director, the Commissioner shall forthwith record in his or her account book the amounts returned by the employer.

(2) The Commissioner shall ascertain the correctness of the contribution based on the statement of wages reported by the employer and any amount unpaid shall be notified to the Director for appropriate action.

**Financial Year.**

16. The first financial period shall be the first day of September, 1986 to the thirty first day of December, 1986 and thereafter the financial year shall be the first day of January to the thirty first day of December.

**Books of Accountant General.**

17. The Accountant General shall cause to be shown in the books kept by him or her—

- (a) the amount received from the Commissioner;
- (b) the interest credited to the Fund;
- (c) the form in which the investments are held and their rate of yield.

**Books of Commissioner.**

18. The Commissioner shall show in the books kept by him or her—

- (a) the amount received by him or her from the Director for the Fund;

- (b) the amount notified to him or her by the Accountant General in regard to investments and interest earned thereof;
- (c) any amount paid or met out of the Fund.

**Reconciliation of Accounts.**

19. Within one month of each financial year, the Commissioner shall—
- (a) prepare a statement reconciling his or her accounts with that of the Accountant General;
  - (b) forward a copy of each of such documents to the Director of Audit.

**Receipt of Statement.**

20. (1) The Director of Audit shall, within three (3) months of receipt of the statement of the Commissioner submit to the Minister the accounts certified by him or her together with his or her report.

(2) The Minister shall cause a copy of the report of the Director of Audit to be laid before the National Assembly.

**PART IV****INVESTMENT OF FUNDS****Investment Committee.**

21. For the purpose of such investment, the Minister shall appoint an Investment Committee consisting of—
- (a) the Permanent Secretary in the Ministry of Finance – Chairperson;
  - (b) the Accountant General or his or her nominee;
  - (c) the Labour Commissioner;
  - (d) the Director of Social Security.

**Quorum.**

22. The attendance of all members shall be required for the transaction of any business by the Committee.

**Action by Accountant General.**

23. (1) The investment decisions of the Committee shall be acted upon by the Accountant General.

(2) All interests accruing from such investment are to be paid by the Accountant General into the Fund and notified to the Commissioner in such form and at such intervals as may be agreed.

**Investment of Funds.**

24. (1) Any Funds not required for the payment of claims may be invested in Fixed Deposits, Treasury Bills, Government Stock or other gilt edge securities on the local or overseas money markets.

(2) The Investment Committee shall not invest in any securities outside the Federation of Saint Christopher and Nevis without the general or special directions of the Minister obtained in consultation with the Minister in charge of the subject of finance.

## PART V

### CLAIMS AND PAYMENT

#### **Claims to be in Writing.**

**25.** (1) A Claim for severance pay shall be made in writing to the Commissioner in the form provided by the Commissioner or in such other manner, being in writing, as the Commissioner may accept as sufficient in the circumstances of any particular case or class of cases.

(2) Claim Form shall be supplied by the Commissioner without charge.

#### **Amendment of Claims.**

**26.** (1) If a claim is defective when it is received by the Commissioner, the Commissioner may refer the claim to the claimant and if the form is returned properly completed within one month from the date on which it was so referred, the claim shall be treated as if it had been duly made in the first instance.

(2) A claimant who has made a claim in accordance with these Regulations may amend the claim at any time before a decision is given thereon by notice in writing delivered or sent to the Commissioner and any claim so amended shall be treated as if it had been duly made in the first instance.

#### **Time for Claiming.**

**27.** The time for claiming severance payment under these Regulations shall be six months from the date such claim is due.

#### **Determination of Claim.**

**28.** (1) Any claim duly made to the Commissioner shall be determined by him or her within a period not exceeding four weeks from the date of the claim unless the claim presents particular difficulty, in which event it shall be determined as expeditiously as possible within a period not exceeding three months:

Provided, however, that in exceptional circumstances this latter period may be exceeded.

(2) For the purposes of paragraph (1) the date of receipt of the claim at the office of the Commissioner shall be deemed to be the date of the claim.

(3) Where, in respect of any claim under this Act or these Regulations, any employer fails or refuses to sign any form, if the Commissioner determines that such claim for payment is valid, he or she may, with the approval of the Minister, effect such payment.

*(Inserted by S.R.O. 5/1991)*

**Manner of Payment.**

**29.** (1) Subject to the provisions of these Regulations, payment of a claim shall be made by crossed cheque or by serially numbered payment voucher.

(2) Notwithstanding the foregoing, the Commissioner may in any particular case or class of cases, arrange for the payment of the claim otherwise than by the means stipulated in paragraph (1).

**Time from which Claim Due.**

**30.** A claimant shall be entitled to severance payment from the date of termination of his or her employment.

## PART VI

## MISCELLANEOUS

**Administrative Arrangements.**

**31.** The Commissioner may provide further administrative directions in regard to accounting records, contributions, investments and claims and payments to supplement details not provided in the Regulations.

**Penalties.**

**32.** If any employer fails to comply with any of the provisions of these Regulations or any direction or requirement of the Commissioner, and that failure does not constitute an offence under the principal Act for which a penalty therein is provided, he or she commits an offence and shall be liable, on summary conviction, to a fine not exceeding five hundred dollars.

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**THIRD SCHEDULE***(Section 58)***LONG SERVICE GRATUITY AND SERVICE CHARGE REGULATIONS****PART I****PRELIMINARY MATTERS****Citation.**

1. These Regulations may be cited as the Long Service Gratuity and Service Charge Regulations.

**Interpretation.**

2. In these Regulations, unless the context otherwise requires—

“Act” means the Protection of Employment Act, Cap. 18. 27;

“continuous service” means, subject to Regulation 4(3) of these Regulations, service rendered by an employee in the same workplace for a period amounting to ten years and beyond;

“long service gratuity” means gratuity payable to an employee for services rendered by the employee to an employer for a period of ten years or more on a continuous basis;

“retirement”, in relation to a person to whom these regulations apply, means retiring from employment after the employee has served the same employer continuously for a period of ten or more years;

“small business owner” means an owner of a small business enterprise as defined in section 3 of the Small Business Development Act, Cap. 20.61.

**Application of Regulations.**

3. (1) Subject to subregulation (2) of this Regulation, these Regulations shall apply to the following categories of employees—

- (a) an employee who retires at the retirement age set out in the Social Security Act, Cap. 22.10;
- (b) an employee who opts to retire after at least ten years or more of continuous employment with the employer;
- (c) an employee who dies, while in the course of his or her employment, after at least ten years or more of continuous service with the employer.

(2) These Regulations shall, initially, only apply to the manufacturing and hospitality sectors.

**Entitlement to long service gratuity.**

4. (1) In accordance with the provisions of section 36 of the Act, and subject to the provisions of these Regulations, an employee who—



- (a) retires at the retirement age set out in the Social Security Act, Cap. 22.10;
- (b) opts to retire after at least ten years or more of continuous employment with the employer;
- (c) dies, while in the course of his or her employment, after at least ten years or more of continuous service with the employer,

shall be entitled to long service gratuity to be paid as provided in the Act and these Regulations.

(2) Subject to the provisions of subregulation (3), an employee shall qualify for long service gratuity if he or she served the ten years continuously in one place of employment.

(3) An employee who had been laid off during his or her period of employment and is recalled to work within a period of twelve weeks of the lay off, then the lay off period shall not be construed as a break in employment.

(4) Payment of long service gratuity of a deceased employee referred to in subregulation (1)(c) shall be made to the estate of the deceased or to a named beneficiary of the deceased employee.

**Non- entitlement to long service gratuity.**

5. An employee who would otherwise qualify for long service gratuity shall not so qualify in any of the following cases—

- (a) if the employee is dismissed from the service of the employer in accordance with the provisions of the Act;
- (b) if the employer retires from his or her employment in order to avoid lawful dismissal;
- (c) if the employee is terminated on the grounds of redundancy in accordance with the provisions of the Act, in which case that employee shall be entitled to severance payment.

## PART II

### PAYMENT OF LONG SERVICE GRATUITY

**Procedure for claiming long service gratuity.**

6. (1) A claimant for long service gratuity shall, before making any claim, obtain from his or her employer a certificate of—

- (a) termination of service;
- (b) lay off; or
- (c) retirement,

which certificate shall be signed by both the employee and employer, and which certificate shall be in the Form set out in Schedule 1 to these Regulations.

(2) Where the employer signs the certificate referred to in subregulation (1), the employer shall send to the Commissioner and the Director of Social Security a

copy of the duly completed and signed certificate within a period of five working days from the date the certificate was issued to the concerned employee.

(3) Where the employer refuses to sign the certificate referred to in subregulation (1), the employer shall inform the Commissioner and the Director of Social Security within a period of five working days from the date of the employee's retirement, giving reasons for the refusal to sign the certificate.

(4) Where an employee dies' and for that reason he or she could not obtain the certificate from his or her employer, then the employer shall—

- (a) notify the Commissioner and the Director of Social Security, in writing, of the death of the employee;
- (b) complete and sign the certificate and submit the same to the Commissioner with a copy to the Director of Social Security, which certificate shall be accompanied with a death certificate.

(5) The Commissioner shall, upon being advised by an employer as provided by subregulation (3), investigate the matter and make recommendations to the Minister as to what should be the appropriate action to be taken.

(6) If, after the Commissioner has concluded investigating a matter pursuant to the provisions of subregulation (5), determines that the claim for payment is valid, the Commissioner may, with the approval of the Minister, effect the payment.

(7) A claimant for long service gratuity who complies with the requirements set out in these Regulations may apply to the Labour Commissioner to be paid long service gratuity by filling a Form set out in Schedule 2 to these Regulations.

(8) Upon receipt of the claim made in accordance with the provisions of subregulation (7), the Commissioner shall proceed to verify the contents of the claims for purposes of paying the claimant.

(9) In determining the claim of an employee the Commissioner may, where necessary, consult the employee and the employer or a Committee, where there is one.

#### **Payment of the long service gratuity.**

7. After the Commissioner is satisfied that the claim is in order and appropriate he or she shall immediately authorise the payment of the long service gratuity, and ensure that the payment is made within a period of ninety days as provided by section 36(5) of the Act.

#### **Computation of long service gratuity.**

8. (1) Long service gratuity shall, as provided by section 36(1) of the Act, be calculated at the same rate as severance payment.

(2) Without prejudice to the generality of subregulation (1), in calculating long service gratuity the average earnings or last drawn wage or salary, whichever is more beneficial to the employee, shall be used.

(3) Where the employer signs the certificate referred to in subregulation (1) of Regulation 6, the employer shall send to the Commissioner and the Director of Social Security a copy of the duly completed and signed certificate within a period of five working days from the date the certificate was issued to the concerned employee.

PART III

PROCEDURE RELATING TO PAYMENT OF SERVICE CHARGE

**Pooling of service charge.**

9. (1) For the purposes of section 37 of the Act, the provisions of this Regulation and Regulations 10 and 11 shall have effect in relation to the payment of service charge.

(2) In an establishment in which a customer pays a service charge, which is a specified percentage of the customer's bill, the employer shall cause the service charge to be pooled and distributed among his or her employees in a period of four weeks in accordance with the provisions of this Regulation.

**Establishment of Service Charge Committee.**

10. (1) Where an establishment to which this Part applies has at least ten employees or more, the employer shall establish a Service Charge Committee (hereinafter called the "Committee") for the purpose of monitoring and providing supervisory inputs regarding payment of service charge to the employees.

(2) The Committee shall be constituted as follows—

(a) one person appointed by the employer to represent the employer;

(b) two persons elected by the employees to represent the employees.

(3) The two persons referred to in subregulation (2)(b) shall be elected within the first six weeks of each year and shall serve for a term of one year, and the results of the election shall be filed with the Labour Department as soon as the election is completed.

(4) Where any person so elected is unable for any reason to serve his or her full term, the employees may elect another person to represent them in his or her stead for the remainder of his or her term, and the results of the election shall be filed with the Labour Department within a period of five working days of obtaining the results.

(5) In any establishment where there is less than ten employees, such establishment shall have regard to the provisions of Schedule 3 to these Regulations.

**Distribution of service charge.**

11. (1) From the total amount of service charge accumulated over every two or four weeks there shall be deducted by the employer all compulsory statutory deductions on the service charge.

(2) After the deduction referred to in subregulation (1), the employer shall retain 10% of the accumulated service charge for the purpose of covering the employer's administrative costs, and the employer shall distribute the remaining 90% of the service charge among the employees of the establishment on such basis as may be agreed upon, in writing, from time to time, by the employer and employees or if there is a Committee, by the Committee.

(3) Without prejudice to the provisions of subregulation (2), when agreeing on the basis to be used in the distribution of the service charge the employees and the employer shall take into account the guidelines set out in Schedule 3 to these Regulations.

(4) The employer shall prepare a record showing the—

- (a) total amount of service charge accumulated in each period of four weeks;
  - (b) total amount of Government tax which has been deducted from the service charge;
  - (c) amount retained by the employer for administrative costs;
  - (d) list of employees to whom the balance of the service charge has been distributed, and the amount paid to each of those employees.
- (5) Within seven days after the close of the period to which the record relates, one copy, along with the amount of tax deducted, shall be forwarded by the employer to the Comptroller of Inland Revenue who shall issue a receipt for the amount received, and one copy shall be sent by the employer to the Commissioner for his or her information.
-

**SCHEDULE 1 TO THE REGULATIONS**

(Regulation 6(1))

**FORM**

**PROTECTION OF EMPLOYMENT ACT, CAP. 18.27**

**TERMINATION OF SERVICES/LAY-OFF/RETIREMENT CERTIFICATE**

PARTICULARS to be completed by Employer and given to Employee on date of termination

EMPLOYER DETAILS	CLAIMANT DETAILS
Employer Registration No. <input type="text" value=""/> Name: _____ Address: _____ Email: _____ Telephone: _____ Fax: _____	Employee Social Security No: <input type="text" value=""/> Name: _____ Address: _____ Email: _____ Telephone: _____ Fax: _____

**EMPLOYMENT DETAILS**

Date employment commenced: \_\_\_ / \_\_\_ / \_\_\_ Occupation: \_\_\_\_\_  
Day Month Year

Was employment terminated by: Resignation  Retirement  Lay off  Dismissal   
If yes, state reason for termination:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date of Termination of Employment: \_\_\_ / \_\_\_ / \_\_\_  
Day Month Year

Gross Amount of Holiday Pay \$ \_\_\_\_\_  
Gross Amount of Notice Pay \$ \_\_\_\_\_  
Any other entitlement? \$ \_\_\_\_\_

If Claimant receiving or entitled to a pension from you?

If yes, state the date pension begins: \_\_\_ / \_\_\_ / \_\_\_  
Day Month Year

Give any other relevant details.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Termination of Services**

Where an employer terminates the employment of an employee or where an employee leaves his employment, the employer MUST give a Termination of Services/Lay-off/Retirement Certificate to the employee and send a copy to the Department of Labour within five (5) days of the date of termination. An employee who wishes to claim Retirement Benefit MUST submit the Certificate with his claim. A Termination of Services/Lay-off/Retirement Certificate must be given to the employee even if he/she was only employed for a day or part thereof.

**Penalty**

Failure to provide an employee with a Termination of Services/Lay-off/Retirement Certificate within five (5) days of termination will result in a penalty.

**DECLARATION**

I declare that the information given in this form is to the best of my knowledge and belief, true and accurate.

Signature of Employer: \_\_\_\_\_ Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Day Month Year

**Warning:**

Any person who knowingly makes a false statement or representation commits an offence and is punishable by a fine or imprisonment or both.

*For Official Use Only*

Received by \_\_\_\_\_

Date \_\_\_\_\_

**SCHEDULE 2 TO THE REGULATIONS**

*(Regulation 6(7))*

**FORM**

**PROTECTION OF EMPLOYMENT (LONG SERVICE GRATUITY)  
REGULATIONS**

**CLAIMS AND PAYMENTS**

**LONG SERVICE GRATUITY PAYMENT CLAIM FORM**

*(To be completed by or on behalf of the claimant)*

**PART I**

M:  F:  D.O.B: \_\_\_\_/\_\_\_\_/\_\_\_\_

1 Name of Claimant.....

2 Address.....  
.....

3 Social Security No. .... Telephone No. ....

4 Name of Employer.....

5 Employer's Address.....  
.....

Telephone No. ....

6 Name of Business/Establishment (If different from 4 above)  
.....

7 Address (If different from 5 above)  
.....  
.....

8 Position Held .....

9 Rate of Pay .....

10 Date of commencement of employment with above-named employer  
.....

11 Date of termination of employment  
.....

12 Basis of Claim  
.....

Retirement/Resignation (Section 36 of Act)

I certify that I have been in continuous/uninterrupted employment with

.....

..... noted at 4, 5, 6 and 7 and that the information given above is to the best of my knowledge and belief, true and accurate.

Signature of Claimant/Agent ..... Date .....

Witness to mark ..... Date .....

Signature of Employer/Agent ..... Date .....

<b>For Official Use Only</b>	
Received by.....	Date.....

**PART II**

*(To be completed by or on behalf of the Employer)*

13 Name of Employer .....

14 Address of Employer .....

Telephone No. ....

15 Briefly outline the circumstance which gives rise to this claim. (use additional page if necessary)

.....  
.....  
.....

16 Last position held by Claimant .....

17 Date of commencement of employment of Claimant

.....

18 Date of termination of employment of Claimant .....

19 Total normal wages\* earned for the past fifty-two weeks immediately preceding the date of termination of employment

\$ ..... (\*“normal wages” consist of the same gross earnings received by such employee for purposes of computing the contribution payable by the employee under the Social Security Act, Cap. 22.10)

20 Number of weeks worked in the past fifty-two weeks (include periods of paid, sick or vacation leave)

..... Rate of pay .....



21 Was the employment of the claimant continuous/uninterrupted with his/her employment with the previous operator of the business? (Section 26 of the Act)

Yes  No

22 Was the claimant in seasonal employment with the employer? Yes  No

I certify that \_\_\_\_\_ has worked continuously/uninterrupted for a period of \_\_\_\_\_ years as per attached Certificate of Employment/Termination of Employment.

Signature & Stamp of Employer/Agent .....

Date .....

In accordance with the Long Service Gratuity and Service Charge Regulations. Where in respect of any claim for Long Service Gratuity the Employer fails or refuses to sign any form, if the Commissioner determines that said claim for payment is valid, he/she may with the approval of the Minister, effect such payment

Employer: Unavailable to sign refuses to sign Death of Employer

Signature & Stamp of Labour Commissioner .....

Date .....

Signature & Stamp of Minister of Labour

..... Date .....

SCHEDULE 3 TO THE REGULATIONS

(Regulations 10(5) & 11(3))

GUIDELINES ON DISTRIBUTION OF SERVICE CHARGE

The employees and the employer or Committee, where one exists may use any one or in combination of the guidelines set out in this Schedule.

- 1. Pool Split: This is where all service charges are combined and divided between the employees based on the length of service or the complexity of their jobs, or amount of direct involvement with guests or direct selling ability.
2. Department Split: This is where service related employees split the service charge generated by their department.
3. Points (Pool) System: This is where all monies collected are placed in a common pool, and each position in the establishment is awarded a point in value, for instance, Waiter = 3 points, Cook = 2 points, and a Maid = 1 point.

Points are earned for hours or days worked and the pool is divided at the end of the month : equation pool divided by (points x days x number of staff), and employers may alter an employee's points position, provided that the reason for such change shall be communicated to the employee in advance.

(Inserted by S.R.O. 31/2014)