

**Amendments brought to the Workers' Rights Act by the Finance  
(Miscellaneous Provisions) Act 2020  
(Act No.7 of 2020)**

It is brought to the attention of all concerned that section 71 of The Finance (Miscellaneous Provisions) Act 2020 (Act No.7 of 2020), which was passed by the National Assembly on 4 August 2020 and published in the Government Gazette on 7 August 2020, has, in the Workers' Rights Act –

- (i) amended sections 2, 3, 5, 15, 16, 32, 35, 42, 54, 64, 72, 72A, 77, 78, 84, 95, 96, 114;
- (ii) inserted a new section 33A;
- (iii) repealed and replaced the Sixth Schedule;
- (iv) amended the Eighth Schedule; and
- (v) inserted new Tenth and Eleventh Schedules;

2. An extract of the relevant part of the Finance (Miscellaneous Provisions) Act 2020 (Act No.7 of 2020) is appended.

3. The above amendments shall be deemed to have come into operation as from the date gazetted, i.e 7 August 2020 except for sections 33A and 72(8) which came into operation on 01 January 2020 and 2 June 2020 respectively.

Date: 11 August 2020

## **EXTRACT OF THE FINANCE (MISCELLANEOUS PROVISIONS) ACT 2020**

**(Act No. 7 of 2020) – Government Gazette of Mauritius No. 98 of 7 August 2020**

### **71. Workers' Rights Act 2019 amended**

The Workers' Rights Act 2019 is amended –

- (a) in section 2 –
  - (i) in the definition of “basic wage or salary” –
    - (A) in paragraph (a), by deleting the words “, excluding any allowance by any name called,” and replacing them by the words “excluding payment for overtime, any bonus or allowance, by whatever name called, paid over and above the wage or salary”;
    - (B) in paragraph (b), by deleting the words “excluding any bonus or overtime” and replacing them by the words “excluding payment for overtime, any bonus or allowance, by whatever name called”;
  - (ii) in the definition of “earnings”, by repealing paragraph (b) and replacing it by the following paragraph –
    - (b) includes –
      - (i) wages earned pursuant to sections 24, 27(5), 30 and 40;
      - (ii) wages paid under sections 14, 17, 21, 22, 23, 28, 31, 32, 33, 45, 46, 47, 48, 49, 50, 51, 52(1), (4), (5) and (6) and 53;
      - (iii) any sum of money, by whatever name called, including commission and any productivity payment, paid to a worker, in respect of any work performed by him, in addition to the basic wages agreed upon between him and the employer; and
      - (iv) any payment made under any Remuneration Regulations or Wages Regulations in respect of extra work, public holidays, additional remuneration, leave taken or refunded, wages for replacing another worker drawing higher remuneration, or wages paid to a parttime or atypical worker, and any allowance paid under the Remuneration Regulations or Wages Regulations;

- (iii) in the definition of “seed capital”, by deleting the words “and for partial payment of contribution for SMEs or otherwise as may be prescribed” and replacing them by the words “, for partial payment of contributions for SMEs and for any other purpose as may be prescribed”;
- (iv) in the definition of “worker” –
  - (A) by deleting the words “subject to sections 17” and replacing them by the words “subject to sections 17, 54,”;
  - (B) in paragraph (c) –
    - (I) in subparagraph (iii), by deleting the words “ sections 5, 17A, 26, 32, 33, 34, 49, 50, 52, 53, 54” and replacing them by the words “sections 5, 17A, 26, 32(1), (1A), (4), (5), (6) and (7), 33, 34, 49, 50, 52, 53, 57”;
    - (II) in subparagraph (iv), by inserting, after the words “atypical work”, the words “whose basic wage or salary exceeds 600,000 rupees in a year”;
- (b) in section 3(2) –
  - (i) in paragraph (b)(i), by deleting the words “55, 118, 119, 120 and 123(1)(f), (2), (3) and (4)” and replacing them by the words “118, 119, 120 and 123(1)(f), (2), (3) and (4), in so far as they relate to that worker”;
  - (ii) by repealing paragraph (c) and replacing it by the following paragraph –
    - (c) a worker who is employed on terms and conditions specified in a report of the Pay Research Bureau, except in relation to –
      - (i) sections 5, 26(1), 118, 119, 120 and 123(1)(f), (2), (3) and (4), in so far as they relate to that worker; and
      - (ii) Parts VI and XI;
- (c) in section 5(5)(a), by inserting, after the words “sexual orientation,”, the words “gender,”;
- (d) in section 15 –
  - (i) by inserting, after subsection (1), the following new subsection –
    - (1A) Notwithstanding subsection (1), where a full-time worker enters into an agreement referred to in subsection (1) during the period starting on 1 June 2020 and ending on 31 December 2020 or such other

period as may be prescribed, the agreement shall –

- (a) be in writing and for a period not exceeding 3 months; and
  - (b) provide an option to the worker to revert to full-time work –
    - (i) at the expiry of the period of 3 months; or
    - (ii) before the expiry of the period of 3 months with the consent of his employer.
- (ii) by adding the following new subsections –

(3) (a) An employer shall not require a full-time worker to enter into an agreement to perform part-time work, except –

- (i) where the agreement is in writing and for a specified period of time and provides an option to the worker to revert back to full-time work at the expiry of the specified period; and
- (ii) with the approval of the supervising officer.

(b) The supervising officer may grant his approval under paragraph (a) on such terms and conditions as he may determine.

(4) (a) Where the employment of a worker referred to in subsection (1A) is terminated during the period where he is working on a part-time basis, the Court may, where it finds that the termination of the employment of the worker was unjustified, order that the worker be paid severance allowance at the rate specified in section 70(1).

(b) Where the employment of a worker referred to in subsection (3) is terminated in breach of the terms and conditions of the approval granted under that subsection, the termination shall, subject to section 64, be unjustified and the Court may order that the worker be paid severance allowance at the rate specified in section 70(1).

(c) For the purpose of computing severance allowance payable under this subsection, a month's remuneration shall be –

- (i) the remuneration drawn by the worker for the last complete month of his employment on a full-time basis; or

- (ii) an amount computed in the manner as is best calculated to give the rate per month at which the worker was remunerated over a period of 12 months before the termination of his agreement, including payment for extra work, productivity bonus, attendance bonus, commission in return for services and any other regular payment,

whichever is higher.

(5) Where the employment of a worker is terminated under subsection (4) –

- (a) any contribution due to be made to the Portable Retirement Gratuity Fund by the employer shall, notwithstanding section 87, be made; and
- (b) any payment to which the worker is entitled under this Act or any other enactment shall be computed,

on the basis of the remuneration drawn by the worker for the last complete month of his employment on a full-time basis.

(e) in section 16, by inserting, after subsection (3), the following new subsection –

(3A) Subject to subsection (2), where a compromise agreement concerning termination of employment is made between a worker and an employer under subsection (1), the employer may deduct the contributions payable to the Portable Retirement Gratuity Fund from the amount payable under the compromise agreement.

(f) in section 32, by inserting, after subsection (1) the following new subsection–

(1A) Where, during a period of extreme weather conditions, including, but not limited to heavy or torrential rainfall, an order is issued by the National Crisis Committee under section 16 requiring any person to remain indoors, or a state of disaster is declared and any direction for the purpose of assisting and protecting the public is issued under section 37 of the National Disaster Risk Reduction and Management Act –

- (a) an employer shall not require a worker to report to work, or to continue to work, where he is exposed to the weather conditions, as the case may be; and
- (b) the employer shall pay to the worker –
  - (i) a full day's remuneration where –

- (A) no work can be performed owing to the weather conditions; or
- (B) the worker resumes work for 2 hours or more;
- (ii) a half day's remuneration where –
  - (A) work has been stopped before the worker has completed 2 hours of work; or
  - (B) the worker resumes work for not more than 2 hours.

(g) in Part V, in Sub-part II, by inserting, after Section E, the following new Section –

### **Section EA – Special allowance**

#### **33A. Payment of special allowance**

(1) The Director-General may pay to a worker such special allowance, as may be prescribed.

(2) The category of the worker referred to in subsection (1), the monthly basic salary of the worker and the period for which the allowance is payable shall be prescribed.

(3) Where a worker is entitled to and is paid the allowance referred to in subsection (1), the worker shall not be eligible to the Negative Income Tax allowance payable under section 150A of the Income Tax Act.

(4) The Minister may, after consultation with the Minister to whom responsibility for the subject of finance is assigned, make such regulations as he thinks fit for the purpose of this section.

(5) In this section –

“basic salary” includes any additional remuneration payable under section 33.

(h) in section 35, by adding the following new subsection –

(3) In this section –

“remuneration” –

(a) has the same meaning as in section 2; and

- (b) includes any severance allowance or compensation payable pursuant to an order made by the Redundancy Board under section 72 or 72A, as the case may be.
- (i) in section 42(6), by inserting, after the words “supervising officer”, the words “of the Ministry responsible for the subject of social security”;
- (j) in section 54(4), by inserting, in the appropriate alphabetical order, the following new definition –

“worker” means a person drawing a monthly basic wage or salary of not more than 100,000 rupees;
- (k) in section 64(1)(a), by inserting, after the words "sexual orientation,", the word “gender”;
- (l) in section 72 –
  - (i) in subsection (1), by deleting the words “Subject to section 72A” and replacing them by the words “Subject to subsection (1A) and section 72A”;
  - (ii) by inserting, after subsection (1), the following new subsection –
    - (1A) (a) Subject to paragraph (b), an employer shall, during such period as may be prescribed, not reduce the number of workers in his employment either temporarily or permanently or terminate the employment of any of his workers.
    - (b) Paragraph (a) shall not apply to –
      - (i) an employer specified in section 72A; or
      - (ii) an employer who has applied for any of the financial assistance schemes set up by the institutions listed in the Tenth Schedule for the purpose of providing financial support to an enterprise adversely affected by the consequences of the Covid-19 virus and his application has not been approved.
    - (c) In this subsection –

“Covid-19 virus” means the novel coronavirus (2019-nCov).
- (iii) in subsection (7), by inserting, after the words “(1),”, the words “(1A),”;
- (iv) by repealing subsection (8) and replacing it by the following subsection –

(8) Where the employment of a worker is terminated in breach of subsection (1), (1A), (5) or (6), the worker may apply to the Board for an order directing his employer –

- (a) to reinstate him in his former employment with payment of remuneration from the date of the termination of his employment to the date of his reinstatement; or
- (b) to pay him severance allowance at the rate specified in section 70(1),

and the Board may make such order as provided for in subsection (10) or (11).

- (v) in subsection (10), by deleting the words “at the rate of 3 months’ remuneration per year of service” and replacing them by the words “at the rate specified in section 70(1)”;
- (vi) by inserting, after subsection (11), the following new subsection –

(11A) Where a worker is paid severance allowance under subsection (8) or (10), the employer may deduct the contributions payable into the Portable Retirement Gratuity Fund from the amount of severance allowance paid to the worker.

(m) in section 72A –

- (i) in subsection (1), by deleting the words “Third Schedule to the Employment Relations Act” and replacing them by the words “Eleventh Schedule”;
- (ii) in subsection (4) –

(A) in paragraph (b), by deleting the words “at the rate of 3 months’ per year of service” and replacing them by the words “at the rate specified in section 70(1)”;

(B) by adding the following new paragraph –

(c) Where a worker is paid severance allowance under paragraph (b), the employer may deduct the contributions payable to the Portable Retirement Gratuity Fund from the amount of severance allowance paid to the worker.

(n) in section 77(d), by deleting the words “as the Minister may determine” and replacing them by the words “as may be prescribed”;

- (o) in section 78(2)(d), by deleting the words “as the Minister may determine” and replacing them by the words “as may be prescribed”;
- (p) in section 84 –
  - (i) by inserting, after subsection (2), the following new subsection –

(2A) Notwithstanding subsections (2) and (10), but subject to subsection (7), where, following the expiry of the COVID-19 period, the employment of a worker is terminated for any reason and the worker reckons at least 30 days’ and less than 180 days’ continuous employment with the same employer as at the date of the termination of his employment, whether on a fixed term agreement or not, the worker shall be entitled to the payment of a transition unemployment benefit of 5,100 rupees per month for the period starting on 1 July 2020 and ending on 31 December 2020.
  - (ii) by inserting, after subsection (8), the following new subsection –

(8A) Upon notification received from a worker under subsection (8), the supervising officer shall, within 7 days from the notification, inform the supervising officer of the Ministry responsible for the subject of social security.
- (q) in section 95(3), by deleting the word “salary” and replacing it by the word “remuneration”;
- (r) in section 96(4) –
  - (i) by inserting, after paragraph (a), the following new paragraph –

(aa) in the case of a worker, other than a part time worker who reckons service with his employer for a period of less than 12 months, a sum equal to the sum referred to in paragraph (a)(ii);
  - (ii) in paragraph (b), by deleting the words “paragraph (a)” and replacing them by the words “paragraph (a) or (aa), as the case may be,”;
- (s) in section 114 –
  - (i) in subsection (1), by deleting the words “a worker, in the course of or as a result of his work” and replacing them by the words “a worker, including any person undergoing training under any training scheme, in the course of or as a result of his work or training”;

- (ii) in subsection (4), by deleting the words “the worker” and replacing them by the words “the worker not later than 15 days after the case is reported to him or he becomes aware of the case”;
- (iii) in subsection (5), by deleting the words “subsection (1) or (2)” and replacing them by the words “subsection (1), (2) or (4)”;
- (iv) in subsection (7), in the definition of "harassment", by inserting, after the words "sexual orientation", the word “gender,”;
- (t) by repealing the Sixth Schedule and replacing it by the Sixth Schedule set out in the Eighth Schedule to this Act;
- (u) in the Eighth Schedule, by deleting the words “paragraph 1” and replacing them by the words “paragraph 2”;
- (v) by adding the Tenth and Eleventh Schedules set out in the Ninth and Tenth Schedules to this Act, respectively.

**74. Commencement**

(1) Sections 3(f), 32(c)(iv), 56(b) and (e) insofar as it relates to item 40, 69(a) and (b) insofar as it relates to item (6)(b) and 71(l)(iv) shall be deemed to have come into operation on 2 June 2020.

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(23) Section 71(g) shall be deemed to have come into operation on 1 January 2020.

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## **EIGHTH SCHEDULE**

[Section 71(t)]

## **SIXTH SCHEDULE**

[Sections 78(2)(a) and 84(2)]

### **PART I – TRANSITION UNEMPLOYMENT BENEFIT**

**FOR PERIOD STARTING ON 1 APRIL 2020 AND ENDING ON 31 MARCH 2021**

| <b>Period after termination of employment or registration with supervising officer</b> | <b>Rate of benefit per month</b> |
|--|----------------------------------|
| First 6 months   | 90% of basic wage or salary      |
| From 7 <sup>th</sup> month to end of 12 <sup>th</sup> month                            | 60% of basic wage or salary      |

### **PART II – TRANSITION UNEMPLOYMENT BENEFIT**

**FOR ANY PERIOD OTHER THAN PERIOD SPECIFIED IN PART I**

| <b>Period after termination of employment or registration with supervising officer</b> | <b>Rate of benefit per month</b>                           |
|--|--|
| First 3 months   | 90% of basic wage or salary                                |
| From 4 <sup>th</sup> month to end of 6 <sup>th</sup> month                             | 60% of basic wage or salary                                |
| From 7 <sup>th</sup> month to end of 12 <sup>th</sup> month                            | 30% of basic wage or salary but not less than 3,000 rupees |

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**NINTH SCHEDULE**

[Section 71(v)]

**TENTH SCHEDULE**

[Section 72]

Development Bank of Mauritius Ltd

Mauritius Investment Corporation Ltd

State Investment Corporation Limited

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## **TENTH SCHEDULE**

[Section 71(v)]

## **ELEVENTH SCHEDULE**

[Section 72A]

1. Air traffic control
  2. Air transport services, or any airline and aviation related services
  3. Civil Aviation and airport, including ground handling and ancillary services
  4. Port and other related activities in the ports including loading, unloading, shifting, storage, receipt and delivery, transportation and distribution as specified in section 36 of the Ports Act
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