

AMENDMENTS TO THE WORKERS' RIGHTS ACT

It is brought to the attention of all concerned that section 57 of The COVID-19 (Miscellaneous Provisions) Act 2020 (Act No.1 of 2020), which was passed by the National Assembly on 16 May 2020, has amended sections 2, 3, 22, 23, 45, 64, 67, 70, 72, 84, 94, 95, 123, 127 and inserted new sections 17A, 24A and 72A and a Ninth Schedule in the Workers' Rights Act.

2. An extract of the relevant part of The COVID-19 (Miscellaneous Provisions) Act 2020 is appended.

3. The above amendments shall be deemed to have come into operation on 23 March 2020 except for sections 23, 24A and 123 of the Workers' Rights Act which came into operation as from the date gazetted, i.e 16 May 2020 and section 127 on 01 January 2020.

Date: 22 May 2020

**Extract of the “Amendments to the Workers’ Rights Act by The COVID-19
(Miscellaneous Provisions) Act 2020 – Act No. 1 of 2020”**

57. Workers’ Rights Act 2019 amended

The Workers’ Rights Act 2019 is amended –

- (a) in section 2 –
 - (i) by deleting the definition of “past service” and replacing it by the following definition –

“past service” means service with an employer from the period commencing on the date a worker is employed by the employer up to the date preceding the date prescribed under section 94;
 - (ii) in the definition of “worker”, by deleting the words “sections 5,” and replacing them by the words “sections 5, 17A,”;
- (aa) in section 3, in subsection (2)(d), by inserting, after the words “an atypical worker”, the words “and a worker who works from home”;
- (b) by inserting, after section 17, the following new section –

17A. Work from home

(1) An employer may require any worker to work from home provided a notice of at least 48 hours is given to the worker.

(2) The Minister may, for the purpose of this section, make such regulations as he thinks fit.

- (c) in section 22 –
 - (i) in subsection (1), by adding the words “provided a notice of at least 48 hours is given to the worker”;
 - (ii) in subsection (3), by deleting the words “to care for his child where the child is below school age or the child has an impairment”;
 - (iii) in subsection (7), by deleting the definition of “school age”, the semicolon at the end of the definition of “reasonable business grounds” being deleted and replaced by a full stop;
- (d) in section 23, by adding the following new subsection –

(7) Notwithstanding subsection (6), a worker who is employed on shift work shall, from the commencement of this subsection and until such further period as may be prescribed, not be entitled to any allowance for work performed on night shift.
- (e) by inserting, after section 24, the following new section –

24A. Overtime in connection with COVID-19 period

(1) Notwithstanding any provision to the contrary in section 24, where a worker, other than a watchperson, employed in any of the sectors specified in the Ninth Schedule,

works from the commencement of this section and until such further period as may be prescribed, the worker may be –

- (a) remunerated for any work which is performed –
 - (i) on a public holiday, at not less than twice the basic hourly rate for every hour of work;
 - (ii) in excess of 45 hours or such lesser number of agreed hours of work in any week, not being hours of work referred to in subparagraph (i), at not less than one and a half times the basic hourly rate per hour for every additional hour of work performed; or
- (b) granted in any pay period, in lieu of remuneration under paragraph (a), such number of hours of paid time off calculated in accordance with the rate at which remuneration is paid under that paragraph.

(2) (a) Paid time off in any period may be granted to a worker by the employer or at the request of the worker.

(b) Where a worker has not been granted paid time off wholly or partly under paragraph (a), any outstanding period of time off shall be accumulated up to the date the worker ceases, in any manner whatsoever, to be in the employment of the employer or 31 December 2021 or such other date as may be prescribed, whichever is applicable.

(3) Where a worker cannot avail himself of the total number of hours of time off accumulated under paragraph (2)(b), he shall be paid remuneration in lieu of any time off left at the rate specified in subsection (1)(a) and such payment shall be made at the time the worker ceases, in any manner whatsoever, to be in the employment of the employer or as at 31 December 2021 or such other date as may be prescribed, whichever is applicable.

(4) For the purpose of computing the additional hours of work under paragraph (1)(a), any authorised leave, whether with or without pay, including injury leave, shall be deemed to constitute attendance at work.

(f) in section 45, by adding the following new subsection –

(12) (a) Notwithstanding any provision to the contrary in subsections (7) to (10) and subject to paragraph (b), an employer may, during a period of 18 months following the expiry of the COVID-19 period, withhold up to 15 days' annual leave, or such other number of annual leave as may be prescribed, from the aggregate of the annual leave specified in subsection (1) which accrues to a worker as from the beginning of the year of the COVID-19 period or such further period as may be prescribed.

(b) Paragraph (a) shall not apply to a worker who has, for the COVID-19 period, performed work during such days as required by his employer.

(c) Where the worker is a part-time worker, the employer may withhold from the aggregate of the annual leave referred to in subsection (5), such number of annual leave computed in accordance with the following formula –

$15/W \times Y$, where –

“W” means the number of working days in a week of a comparable full-time worker; and

“Y” means the number of days of work he is required to perform in a week.

(d) For the purpose of computing the aggregate annual leave accruing to a worker under this section, any annual leave entitlement for a period of less than 12 consecutive months shall be prorated, to the next round figure, in accordance with the following formula—

$N/12 \times Y$, where –

“N” means the number of annual leave under subsection (1) or (5), as the case may be; and

“Y” means the number of months in the period of less than 12 consecutive months.

(g) in section 64, by inserting, after subsection (1) the following new subsection –

(1A) (a) Subject to subsection (2), an agreement shall not be terminated by an employer during any month in respect of which the employer is in receipt of financial assistance.

(b) In this subsection –

“financial assistance” includes –

(a) the allowance payable under the Wage Assistance Scheme pursuant to section 150B of the Income Tax Act; or

(b) such other financial assistance which is paid to an employer by the State or an agent of the State, as the case may be, under any other enactment or otherwise.

(h) in section 67, by adding the following new subsection –

(6) The Minister may, by regulations –

(a) exempt an employer who provides services in the sectors specified in the Third Schedule to the Employment Relations Act from the application of section 67; and

(b) make provisions for the terms and conditions on which a worker may be offered employment by a new employer following a transfer of undertaking or taking over of the trade or business of his former previous employer.

(i) in section 70, in subsection (1)(b), by inserting, after the words “section 64(1),”, the words “(1A),”;

(j) in section 72 –

(a) in subsection (1) by deleting the words “An employer” and replacing them by the words “Subject to section 72A, an employer”;

(b) by repealing subsection (10) and replacing it by the following subsection –

(10) Where the Board finds that the reasons for the reduction of the workforce or the closing down are unjustified, the Board shall, subject to subsection (11), order the employer to pay to the worker severance allowance at the rate of 3 months’ remuneration per year of service.

- (k) by inserting, after section 72, the following new section –

72A. Reduction of workforce in certain enterprises in the services sector

(1) The Minister may, by regulations, exempt an employer who provides services in the sectors specified in the Third Schedule to the Employment Relations Act from the application of section 72.

(2) Where an employer who has been exempted pursuant to subsection (1) intends to reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise, the employer shall give written notice to the Board, together with a statement showing cause for the reduction or closure at least 15 days before the intended reduction or closing down, as the case may be.

(3) Notwithstanding section 75(8) and (9), the Board shall complete its proceedings within 15 days from the date of notification by the employer.

(4) (a) Where the Board finds that the reasons for the reduction of the workforce or the closing down are justified, the Board shall order that the worker shall be paid 30 days' wages as indemnity in lieu of notice.

(b) Where the Board finds that the reasons for the reduction of the workforce or the closing down are unjustified, the Board shall order the employer to pay to the worker severance allowance at the rate of 3 months' remuneration per year of service.

(5) Where the Board finds that the reasons for the reduction of the workforce or the closing down are justified under subsection (4)(a), the Board shall, in lieu of the termination of employment, at the request of the employer and subject to the consent of the worker concerned, order that the worker, or such category of workers as the employer may designate, shall proceed on leave without pay for such period as the employer may specify in his notification subject to the condition that the resumption of employment be on such new terms and conditions, including pension benefits, as the employer may, prior to resumption of work, offer to the worker.

(6) Where the Board makes an order under subsection (4) or (5), the order shall be enforced in the same manner as an order of the Industrial Court.

- (l) in section 84, in subsection (1) –

(i) in subparagraph (a)(ii), by inserting, after the words “section 64(1),” the words “(1A),”;

(ii) by inserting, after paragraph (b), the following new paragraph –

(ba) where he proceeds on leave without pay pursuant to an order made by the Board under section 72A(5) and he has not taken any other employment during that period of leave without pay;

- (m) in section 94, in subsection (1), by deleting the words “on the commencement of this Act” and replacing them by the words “on such date as may be prescribed”;

- (n) in section 95, in subsections (1) and (3)(a), by deleting the words “this Act” and replacing them by the words “this Part”;

(o) in section 123, in subsection (1), by adding the following new paragraph, the comma at the end of paragraph (f) being deleted and replaced by a semicolon –

(g) contravenes sections 5, 8, 16, 24, 26, 27, 33, 54 and 118(4),

(oa) in section 127, by inserting, after subsection (6), the following new subsection –

(6A) (a) Where a worker retires or dies on or after 1 January 2020 and where no contribution is made in respect of the worker by his employer under section 94, 95, 96 or 97, as applicable, any gratuity to the worker or to his legal heirs shall, notwithstanding any provision to the contrary, be paid by his employer and the amount of such gratuity shall be calculated in such manner as may be prescribed.

(b) Where a worker resigns, or the employment of a worker is terminated, on or after 1 January 2020, and where no contribution is made in respect of the worker by his employer under section 94, 95, 96 or 97, as applicable, any contribution to be made by his employer to the Portable Retirement Gratuity Fund shall be calculated at such rate as may be prescribed.

(p) by adding the Ninth Schedule set out in the Fourth Schedule to this Act.

FOURTH SCHEDULE

[Section 57(p)]

NINTH SCHEDULE

[Section 24A]

SECTORS

Blockmaking, construction, stone crushing and related industries

Manufacturing sector governed by the Factory Employees (Remuneration) Regulations 2019
