



CHAMBERS OF  
URMILA BOOLELL SC

# EMPLOYMENT LAW AMENDMENTS

In 2019, the Employment Rights Act 2008 ('ERA') was repealed and replaced by the Workers' Rights Act 2019 ('WRA') to address the deficiencies of the ERA and provide enhanced protection to workers. Since its introduction, the WRA has been amended by the Finance (Miscellaneous Provisions) Act 2020 and the COVID-19 (Miscellaneous Provisions) Act 2020 and more recently by the Finance (Miscellaneous Provisions) Act 2021 to keep pace with the ever-changing landscape of employment laws, mitigate the negative effects of Covid-19 on employment and curb abusive practices which arise from time to time. In this article, we shall look at some of these amendments brought about by the Finance (Miscellaneous Provisions) Act 2021.

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## **Compromise agreements**

It is now mandatory to evidence an employer-worker agreement to resolve a dispute with respect to termination of employment or non-payment/short payment of remuneration through a compromise agreement. Before the amendment, workers had the option of entering into either a transaction agreement under the Mauritian Civil Code or a compromise agreement under the WRA. The WRA provides for a compromise agreement to be vetted by an independent adviser whereas no such requirement exists for transaction agreements. Hence, an employer could get away from the 'independent adviser' condition and make a worker enter into an unfair agreement through the use of a transaction agreement. With this amendment, they will be prevented from doing so. Moreover, an employer would be unable to deviate from the terms of an agreement reached or claim that this was not what was verbally agreed upon, as same would be in writing.

The invalidity of a compromise agreement has been extended to include the situation where a worker has not received advice from a relevant independent adviser regarding the terms of the agreement and the effect of that agreement on his claim before entering into the agreement. Before the amendment, the WRA expressly provided for two circumstances where a compromise agreement would be invalid namely "where the relevant agreement was not vetted by an independent adviser" or "where the independent adviser was a party to the matter for the employer". The term "vetted" did not imply that the worker is receiving useful advice. The new provision, on the other hand, will ensure that the worker is aware of the consequences of signing the agreement.

## **Atypical Worker**

The definition of "atypical worker" has been amended; it is now wider in scope and ensures that people who have different kinds of work agreements also benefit from protection under the WRA. The definition includes a person who – (i) performs work brokered through an online platform or through such other similar services; (ii) performs teleworking; (iii) performs works through an information technology system; or (iv) uses his personal equipment and tools to perform work or provide services. With the advent of Covid-19, there has been an expansion of such work systems.

## **Protective Orders**

The supervising officer's power to apply for a protective order has been extended to situations where payment in lieu of notice, severance allowance or gratuity is due to workers. Before, the supervising officer could only do so where the employer has failed to pay remuneration. Therefore, workers now have the chance to recover any amount owed to them as payment in lieu of notice/severance allowance/gratuity in a more expeditious manner.

## **Light Rail Fare**

Provision for light rail fare has been introduced. The legislation previously limited the refund of transport expenses only to workers travelling by public bus transport. With this amendment, many workers who have adopted the Light Rail Transit (LRT) system as new means of transport will not be penalised.

PART OF



## **End of year bonus**

An employer now has to pay pro-rated end of year bonus to a worker employed on a fixed term contract where he remains in continuous employment with the same employer for only part of the year and his contract of employment comes to an end. The WRA did not previously make provision of end of year bonus for fixed term contracts but only in the circumstances of termination of contract, resignation and retirement. It is now clear that end of year bonus needs to be paid when fixed term contracts come to an end.

## **Disciplinary hearing**

Parties may agree to extend the period of 30 days for the completion of a disciplinary hearing provided that the disciplinary hearing should be completed not later than 60 days of the date of the first oral hearing. The condition that the disciplinary hearing should be completed within the prescribed timeframe is a new one and will avoid unnecessary delay for the completion of the disciplinary hearing such that the worker who is subject to the disciplinary hearing will not have to wait for a long time for a decision.

## **Suspension**

An employer can now suspend a worker pending the outcome of an investigation, as compared to before where the employer could only do so pending the outcome of disciplinary proceedings. The employer has to pay to the worker his basic salary for the period of suspension. This amendment is likely to ensure that the worker does not interfere with the investigation or tamper with potential evidence by being present in the premises of the office.

## **Severance allowance**

Where a worker whose basic wage or salary exceeds 600,000 rupees in a year is paid, at the end of every period of 12 months or at the end of each contract of employment of a determinate duration, a gratuity, compensation or such other payment, by whatever name called, in lieu of pension or in respect of his length of service, the worker shall not be entitled to the payment of any severance allowance on the expiry of each contract or the last contract. In this context, a worker shall not be considered to be in continuous employment where he is employed successively under one or more contracts of a determinate duration. This provision will ensure that workers who are employed on one or more fixed term contracts, drawing a salary of exceeding Rs600,000 annually, and who are paid a gratuity at the end of their contract cannot claim severance allowance on expiry of their contract, thus avoiding double payment.



## **Reduction of workforce**

There are new procedures in place should an employer wish to reduce his workforce on the ground of restructuring for financial reasons. Written notice must be given to the Redundancy Board, at least 30 days before the intended reduction, instead of applying for financial assistance.

This amendment provides for very stringent procedures. For example, an employer opting for this procedure will be required to satisfy the Redundancy Board that – (i) the enterprise is over indebted and not economically viable and any further debt would increase the risk of the enterprise being insolvent; and (ii) the restructuring may enable the enterprise to manage the repayment of its debts without being insolvent and to dispose of adequate cash flow to continue its operations. This amendment will therefore allow organisations in these particular situations to restructure, thus avoiding a massive termination of employment and securing as many jobs as possible.

## **Conciliation and Mediation**

The Redundancy Board may now provide conciliation or mediation services with the consent of the parties. This service did not exist before. This amendment promotes an early settlement of the dispute in the best interests of the parties.

## **Transition Unemployment Benefit (“TUB”)**

A worker will now be entitled to TUB in the additional event where he has failed to register himself with the supervising officer within 60 days following termination of employment and has shown cause, certified by a medical certificate that:

- he was admitted to a hospital or other medical institution in Mauritius or abroad for treatment in connection with an illness or injury before the expiry of the specified period and he was discharged after the expiry of that period;
- he was granted sick leave for convalescence or was on sick leave immediately after his discharge; or
- he was bedridden.

This amendment will ensure that laid-off workers can still benefit from the payment of a TUB easily due to the fact that they could not make their applications within the prescribed delay on account of their state of health. The only condition they have to satisfy is that they have to produce a medical certificate to prove their state of health at the time they could not apply.

A worker who declines a suitable job or training offer which is in accordance with his profile and qualifications for a third consecutive time will stop receiving TUB. This provision would encourage workers to return to the labour market, where jobs relating to their competencies are available instead of refusing job placement offers and benefitting from TUB instead.



## **Refund by Employer**

Where during any period of at least 24 consecutive months or an aggregate period of at least 24 months within a period of 36 months, an employer has terminated the employment of a worker more than once and has re-employed that worker on a new contract after a break of more than 28 days, and the number of days during which the worker was in the employment of the employer during the period of 24 months exceeds the number of days during which the worker was not in employment and was paid the TUB, the employer may be requested to refund to the Workfare Programme Fund, the amount of TUB paid to the worker whose employment was terminated by the employer.

## **Additional offences**

Two additional offences have been introduced. Firstly, if the employer fails to provide conveyance to a worker when he suffers injury or illness at work and secondly, where the employer fails to give to a worker a copy of the minutes of proceedings of the disciplinary hearing within 7 days of the receipt of a written request. This amendment is likely to protect the health and security of workers and enhance the rights of workers for them to be provided with information to prepare their defence in Court.

*Disclaimer:*

*The aforesaid amendments are subject to section 97 of the Finance (Miscellaneous Provisions) Act 2021, which provides for the commencement of the provisions.*

