

SAINT LUCIA
CONTRACTS OF SERVICE ACT

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CONTRACTS OF SERVICE REGULATIONS
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CONTRACTS OF SERVICE REGULATIONS

AN ACT to regulate contracts of service, including the particulars to be given in written contracts; to provide for a minimum period of notice to terminate the employment of those who have been employed for a qualifying period and, further, to provide for severance payments on the termination of a contract of service in certain cases and for connected matters.

Commencement [1 November 1971]

Short Title

1. This Act may be cited as the Contracts of Service Act.

Interpretation

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

“appointed day” means the day appointed under section 35;

“business” includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporated;

“cease” means either permanently or temporarily and from whatsoever cause;

“diminish” has a corresponding meaning “to cease”.

“employee” means an individual who has entered into or works under (or with reference to a severance payment where a contract has been terminated, worked under) a contract with an employer whether the contract is for manual labour, clerical work or otherwise, is expressed or implied, oral or in writing and whether it is a contract of service or apprenticeship, and cognate expressions shall be construed accordingly;

“member of an employer’s family” means the wife or husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, or half sister, and any person who is wholly or mainly maintained by, and resides with the employer.

“Minister” means the Minister to whom the responsibility for labour has been assigned;

“renewal” includes extension, and any reference to renewing a contract for a fixed term shall be construed accordingly;

“statutory provision” means a provision, whether of a general or a special nature, contained in, or in any document made or issued under any Act, whether of a general or a special nature;

“tribunal” means a tribunal as established under this Act;

“wages” means all remuneration including allowances payable to an employee in respect of work done or to be done or services rendered, or to be rendered under his or her contract of service, but does not include—

- (a) the value of any house accommodation, supply of light, water, medical attention or other amenities supplied at the sole expense of the employer;
- (b) any contribution paid by the employer on his or her own account to any pension or provident fund or scheme;
- (c) any travelling allowances or the value of any travelling concession;
- (d) any sum paid to the worker to defray special expenses incurred by him or her by the nature of his or her employment; or
- (e) any gratuity payable on discharge or retirement from the service of the employer;

“written contract” means a contract of service made between an employee and his or her employer in writing.

Contracts of Service Generally

Employment to be in accordance with this Act

3. A person shall not employ any employee not being a member of an employer's family and an employee shall not be employed under any contract of service except in accordance with the provisions of this Act.

Existing contracts to continue in force

4. All contracts of service valid and in force on the appointed day shall continue to be in force after the appointed day and to the extent that the same are not in conflict with the provisions of this Act shall be considered to be made under this Act and the parties thereto shall be subject to and entitled to the benefit of the provisions of this Act.

Particulars of terms of employment to be included in written contracts and written statements

5. (1) Every written contract shall include the following particulars—

- (a) the names of the parties entering into the contract;
- (b) the date on which the employment began or is to begin and, in the case of a contract for a fixed term, the date on which the contract expires;
- (c) the scale or rate of remuneration and the method of calculating such remuneration;
- (d) the intervals at which remuneration is to be paid;
- (e) any terms and conditions relating to hours of work (including any terms and conditions relating to normal working hours);
- (f) any term and condition relating to—
 - (i) holidays and annual vacation,
 - (ii) payment during illness, or
 - (iii) pensions and pension or Provident Fund Schemes; and
- (g) the length of notice which the employee is obliged to give and entitled to receive to determine his or her contract of service.

5. (2) If there are no particulars to be entered under any of the heads of paragraph (f), or under any of the provisions of the preceding subsection, that fact shall be stated.

5. (3) Any provision in a written contract which contravenes a statutory provision shall be null and void and the corresponding statutory provision shall be substituted therefor and shall have effect as if it had originally been included in the written contract.

However, a statutory provision shall not have effect as a term or condition of employment in any written contract before the date on which that statutory provision first became law.

5. (4) Every employee (not being an employee who is employed under a written contract) shall be entitled to receive and may, by notice in writing to his or her employer, request a written statement of his or her terms and conditions of employment which the employer shall provide not more than one month from the date on which the employee's notice was given.

5. (5) If after the date on which a written contract is made or a statement given under subsection (4) there is a change in the terms to be included, or referred to in the written contract or statement, the employer shall not more than one month after the change, inform the employee of the nature of the change by a written statement and, if he or she does not leave a copy of the statement with the employee, shall preserve the statement and ensure that the employee has reasonable opportunities of reading it in the course of his or her employment or that the employee has reasonable opportunities of having it read to him or her and explained to him or her, or that it is made reasonably accessible to him or her in some other way.

5. (6) Any written contract or a statement made under this section may for all or any of the particulars to be included in the written contract or given by the statement, refer the employee to some document which the employee has reasonable opportunities of reading in the course of his or her employment or has had reasonable opportunities of having it read or explained to him or her, or which is made reasonably accessible to him or her in some other way.

Rights of Employer and Employee to minimum period of notice

6. (1) Any contract of service of an employee who has been continuously employed for more than 12 weeks shall have effect as if it were for an indefinite period and accordingly, subsections (3) and (4) shall apply to that contract.

6. (2) Despite any agreement to the contrary, the first 12 weeks of any employment under an oral contract of service is probationary employment and may be terminated at will by either party without notice.

6. (3) The notice required to be given by an employer to terminate the employment of an employee who has been continuously employed under a contract of service for an indefinite period shall be not less than—

(a) one week's notice if his or her period of continuous employment is more than 12 weeks but less than 2 years;

(b) two weeks' notice if his or her period of continuous employment is 2 years or more but less than 5 years;

(c) four weeks' notice if his or her period of continuous employment is 5 years or more but less than 10 years; and

(d) six weeks' notice if his or her period of continuous employment is more than 10 years.

6. (4) The notice required to be given by an employee who has been continuously employed for an indefinite period to terminate his or her contract of service shall be not less than—

(a) one week's notice if his or her period of continuous employment is more than 12 weeks but less than 5 years; and

(b) two weeks' notice if his or her period of continuous employment is 5 years or more.

6. (5) Any provision for notice in any contract of service with an employee shall have effect subject to the foregoing subsections, but this section shall not be taken to prevent either party from waiving his or her right to notice on any occasion, or from accepting a payment in lieu of notice.

6. (6) Subject to the provisions of the preceding subsection, any contract which purports to exclude or limit the obligations imposed on an employer by this section is null and void.

Summary dismissal, abandonment of employment for lawful cause, mutual termination of employment, force majeure

7. (1) Despite the provisions of section 6, a contract of service terminated for any of the following reasons shall not give rise to any liability to pay wages (or make payment in lieu of notice)—

(a) any reason for which the employer would be entitled at law to terminate a contract of service without giving due notice (which shall include the following circumstances)

(i) where an employee is guilty of misconduct whether in the course of his or her duties or not, inconsistent with the fulfilment of the express or implied conditions of his or her contract of service,

(ii) for wilful disobedience to lawful orders given by the employer,

(iii) for repeated substantial neglect of his or her duties,

(iv) for absence from work without the permission of the employer or without reasonable excuse,

(v) for lack of skill which the employee expressly or by implication warrants himself or herself to possess;

(b) abandonment of employment by employee for good cause;

(c) by agreement of the parties, in writing, to terminate the contract of service;

(d) where the termination is due to *force majeure*, act of God, civil commotions, riots, destruction of the plant or business by fire not caused by the wilful act or negligence of the employer;

(e) where the employment is terminated at the end of a contract of service for a fixed term or because of the attainment by the employee of the normal age of retirement by virtue of custom, laws, collective agreement, work rules or otherwise.

7. (2) The wages due to an employee up to the date of occurrence of termination of his or her contract of service on account of any of the reasons stated in the preceding subsection, shall be paid to him or her in accordance with the provisions of the Protection of Wages Act.

Offence

8. (1) If a person—

(a) without reasonable excuse fails to comply with any of the requirements of section 5; or

(b) in a written contract or statement under that section or in any document prepared for the purposes of (subsection 6) of that section includes anything which to his or her knowledge is false in a material particular, or recklessly includes anything which is false in a material particular, he or she is liable on summary conviction to a fine not exceeding \$100.

8. (2) If an employer has failed to give the statement required under section 5(4) or 5(5) within the time limited by that section then, without prejudice to the bringing of proceedings under the foregoing subsection the employee may by notice in writing to the employer require him or her, within a period of not less than one week from the receipt of the notice, to make good his or her default, and if the default continues after the expiration of that period, the employer is liable on summary conviction in the case of a first offence under this subsection to a fine not exceeding \$100, and in the case of a second or subsequent offence under this subsection within a period of 5 years from the date of the conviction for the first offence to a fine on summary not exceeding \$500.

8. (3) An offence is not committed under this section in respect of any failure by the employer to give the statement required under section 5(4) or 5(5)—

(a) if the employee terminates his or her contract with or without notice; or

(b) if the employee's contract of service is terminated by agreement with the employer in writing within the time limited by that section.

8. (4) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in

any such capacity, he or she as well as the body corporate, commit that offence and are liable to be proceeded against and punished accordingly.

PART 2

Provisions With Regard to Severance Payments

Severance payments to be in accordance with Act

9. Any reference to a severance payment shall be in accordance with this Act and any provision in any agreement (whether a contract of service or not) shall be void in so far as it purports to exclude or limit the operation of any enactment contained in this Part.

General provisions as to right to severance payment

10. (1) Where on or after the appointed day an employee who has been continuously employed for the requisite period is dismissed by his or her employer by reason of the fact that an organisation where he or she is so employed is closed down, or reorganised or amalgamated with another organisation under a new name or change of ownership has taken place then subject to the following provisions of this Part the employer, the person with whom the employer has reorganised or amalgamated or other successor in business or title of the employer are jointly and severally liable to pay to him or her a sum (in this Act referred to as a "severance payment") calculated in accordance with regulations made under this Act.

10. (2) For the purposes of this Part an employee who is dismissed shall be taken to be dismissed by reason of the events mentioned in subsection (1) if the dismissal is attributable wholly or mainly to—

(a) the fact that his or her employer has ceased, or intends to cease, to carry on the business for the purposes for which the employee was employed by him or her, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or

(b) the fact that the requirements of that business for employees to carry out the work of a particular kind, or for an employee to carry out the work of a particular kind in the place where he or she was so employed, have ceased or diminished or are expected to cease or diminish.

10. (3) For the purposes of this Part "the relevant date" in relation to the dismissal of an employee—

(a) where his or her contract of service is terminated by notice given by his or her employer, is the date on which that notice expires;

(b) where his or her contract of service is terminated without notice, whether by the employer or by the employee, is the date on which the termination takes effect;

(c) where he or she is employed under a contract for a fixed term and that term expires as mentioned in section 11(3), is the date on which that term expires; and

(d) where his or her contract of service is terminated by written notice which he or she has given to his or her employer, as mentioned in section 13(1), is the date on which that notice expires.

General exclusion from right to severance payment

11. (1) Subject to the provisions of this Act, an employee is not entitled to a severance payment if immediately before the relevant date the employee—

(a) if a man, has attained the age of 65; or

(b) if a woman, has attained the age of 60.

11. (2) An employee is not entitled to a severance payment by reason of dismissal where his or her employer, being entitled to terminate his or her contract of service without notice by reason of the employee's conduct, terminates it either—

(a) without notice; or

(b) by giving shorter notice than that which, in the absence of such conduct, the employer would be required to give to terminate the contract; or

(c) by giving notice (not being such shorter notice as is mentioned in paragraph (b) of this subsection) which includes, or is accompanied by, a statement in writing that the employer would, by reason of the employee's conduct, be entitled to terminate the contract without notice.

11. (3) An employee is not entitled to a severance payment by reason of dismissal where he or she is employed under a contract of service for a fixed term and that term expires on the relevant date without being renewed under the same contract.

11. (4) An employee is not entitled to a severance payment by reason of dismissal if before the relevant date the employer has offered to renew his or her contract or employment, or to re-engage him or her under a new contract, so that—

(a) the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he or she would be employed, and as to the other terms and conditions of his or her employment would not differ from the corresponding provisions of the contract as in force immediately before his or her dismissal; and

(b) the renewal or re-engagement would take effect on or before the relevant date, and the employee has unreasonably refused that offer.

11. (5) An employee is not entitled to a severance payment by reason of dismissal if before the relevant date the employer has made to him or her an offer

in writing to renew his or her contract of employment, or to re-engage him or her under a new contract so that in accordance with the particulars specified in the offer the provisions of the contract as renewed, or of the new contract as the case may be, as to the capacity and place in which he or she would be employed, and as to the other terms and conditions of his or her employment, would differ (wholly or in part) from the corresponding provisions of the contract as in force immediately before his or her dismissal, but—

(a) the offer constitutes an offer of suitable employment in relation to the employee; and

(b) the renewal or re-engagement would take effect on or before the relevant date or not later than 4 weeks after that date, and the employee has unreasonably refused that offer.

11. (6) Where the relevant date falls on a Friday, Saturday or Sunday,

(a) the reference in subsection (4)(b) to the relevant date shall be construed as a reference to the next Monday after that date; and

(b) the references in subsection (5)(b) to 4 weeks after the relevant date shall be construed as a reference to the fifth Monday after that date.

Dismissal by Employer

12. (1) For the purposes of this Part an employee shall, subject to the following provisions of this Part be taken to be dismissed by his or her employer if, but only if—

(a) the contract under which he or she is employed by the employer is terminated by the employer whether it is so terminated by notice or without notice; or

(b) the employee terminates that contract without notice in circumstances such that he or she is entitled so to terminate it by reason of the employer's conduct.

12. (2) An employee shall not be taken for the purpose of this Part to be dismissed by his or her employer if his or her contract of service is renewed or he or she is re-engaged by the same employer under a new contract of service and—

(a) in a case where the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he or she is employed, and as to the other terms and conditions of his or her employment, do not differ from the corresponding provisions of the previous contract, the renewal or re-engagement takes effect immediately on the ending of his or her employment under the previous contract, or

(b) in any other case, the renewal or re-engagement is under an offer in writing made by his or her employer before the ending of his or her employment under the previous contract, and takes effect either

immediately on the ending of that employment or after an interval of not more than 4 weeks thereafter.

12. (3) For the purposes of the application of the last preceding subsection to a contract under which the employment ends on a Friday, Saturday, or Sunday—

(a) the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous contract if it takes effect on or before the next Monday after that Friday, Saturday or Sunday; and

(b) the interval of 4 weeks mentioned in paragraph (b) of that subsection shall be calculated as if the employment had ended on that Monday.

Employee anticipating expiry of employer's notice

13. (1) If, after an employer gives notice to an employee to terminate his or her contract of service that employee gives notice in writing to the employer to terminate the said contract of service on a date earlier than the date on which the employer's notice is due to expire, and the employer accepts the employee's notice, then—

(a) the employee shall be taken to be dismissed by the employer on the date on which the employer's notice expires; and

(b) the employee is entitled to a severance payment subject to the provision of this Part.

13. (2) Where, under subsection (1) an employer refuses to accept an employee's notice, referred to in the preceding subsection the employer shall notify that fact, in writing, to the employee with all reasonable despatch and unless the employee complies with the employer's notice, the employee shall not be entitled to a severance payment.

However, an employee who does not comply with an employer's notice referred to in the preceding subsection, may refer the matter to a tribunal (in accordance with section 26) and, if it appears to the tribunal, having regard both to the reasons for which the employee seeks to leave the employment and those for which the employer requires him or her to continue in it, to be just and equitable that the employee receive a severance payment, the tribunal may determine that the employer is liable to pay the employee an amount, not being greater than the whole of the severance payment to which the employee would otherwise have been entitled under the preceding subsection, as a severance payment.

Continuous Employment for the requisite period

14. (1) For the purposes of section 10(1) the requisite period is the period of 104 weeks ending with the relevant date, excluding any week which began before the employee attained the age of 16.

14. (2) Where by virtue of section 12(2) an employee is treated as not having been dismissed by reason of a renewal or re-engagement taking effect

after an interval, then, in determining for the purposes of section 10(1) whether he or she has been continuously employed for the requisite period, the period of that interval shall count as a period of employment.

14. (3) The preceding provisions of this section shall have effect subject to sections 18 and 22 in cases to which those sections apply respectively.

14. (4) Subject to the preceding provisions of this section, the regulations made under this Act (computation of period of employment) have effect for the purposes of this Part in determining whether an employee has been continuously employed for the requisite period.

Change of ownership of business

15. (1) The provisions of this section have effect where—

(a) a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of a business for the purposes of which a person is employed, or of a part of such a business; and

(b) in connection with that change the person by whom the employee is employed immediately before the change occurs (in this section referred to as “the previous owner”) terminates the employee’s contract of service, whether by notice or without notice.

15. (2) If, by agreement with the employee the person who immediately after the change occurs is the owner of the business or of the part of the business in question as the case may be (in this section referred to as “the new owner”) renews the employee’s contract of service (with the substitution of the new owner for the previous owner) or re-engages him or her under a new contract of service, section 12(2) has effect as if the renewal or re-engagement had been a renewal or re-engagement by the previous owner (without any substitution of the new owner for the previous owner).

15. (3) If the new owner offers to renew the employee’s contract of service (with the substitution of the new owner for the previous owner) or to re-engage him or her under a new contract of service, but the employee refuses the offer, section 11(4) or (as the case may be) section 11(5) has effect, subject to the next following subsection, in relation to that offer and refusal as it would have had effect in relation to the like offer made by the previous owner and a refusal of that offer by the employee.

15. (4) For the purposes of the operation, in accordance with the last preceding subsection, in section 11(4) or section 11(5) in relation to an offer made by the new owner—

(a) the offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the dismissal by reason only that the new owner would be substituted for the previous owner as the employer; and

(b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable.

15. (5) The preceding provisions of this section have effect (subject to the necessary modifications) in relation to a case where—

(a) the person by whom a business, or part of a business is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change; or

(b) the persons by whom a business, or part of a business is owned immediately before a change (whether as partners, trustees or otherwise) include the person by whom, or include one or more of the persons by whom, it is owned immediately after the change,

as those provisions have effect where the previous owner and the new owner are wholly different persons.

15. (6) This section shall not be construed as requiring any variation of a contract of employment by agreement between the parties to be treated as constituting a termination of the contract.

Exclusion or reduction of severance payment on account of pension rights

16. (1) The Minister shall by regulations make provision for excluding the right to a severance payment, or reducing the amount of any severance payment, in such cases as may be prescribed by the regulations, being cases in which an employee has (whether by virtue of any statutory provision or otherwise) a right of claim (whether legally enforceable or not) to a periodical payment or lump sum by way of pension, gratuity or superannuation allowance which is to be paid, or to begin to be paid, at the time when he or she leaves that employment or within such period thereafter as may be prescribed by the regulations.

16. (2) Provision shall be made by any such regulations for securing that the right to a severance payment shall not be excluded, and that the amount of a severance payment shall not be reduced, by reason of any right or claim to a periodical payment or lump sum, in so far as that payment or lump sum represents such compensation as is mentioned in section 23(1) and is payable under a statutory provision, whether made or passed before, on or after the appointed day.

16. (3) In relation to any case where, under any provision contained in this Part, a tribunal determines that an employer is liable to pay part (but not the whole) of a severance payment, any reference in this section to a severance payment, or to the amount of a severance payment, shall be construed as a reference to that part of the severance payment, or to the amount of that part, as the case may be.

Excluded classes of employees

17. (1) Section 10 does not apply where the employee is a member of the employer's family.

17. (2) Without prejudice to any exception or immunity of the Crown section 10 does not apply to any person in respect of any employment which—

(a) is employment in the public service for the purposes of the Pensions Act; or

(b) for the purposes of that Act or otherwise is treated for the purposes of pensions and other benefits as service in the public service of the State.

17. (3) Without prejudice to any exemption or immunity of the Crown section 10 does not apply to any person in respect of his or her employment in any capacity under the Government of an overseas territory.

Employment wholly or partly abroad

18. An employee is not entitled to a severance payment unless his or her contract of employment is governed by the law of Saint Lucia though it is intended to be performed wholly or partially outside Saint Lucia.

Domestic servant

19. For the purposes of the application of the provisions of this Part to an employee who is employed as a domestic servant in a private household, those provisions (except section 15) apply as if the household were a business and the maintenance of the household were the carrying on of that business by the employer.

Claims for severance payments

20. Despite anything in the preceding provisions of this Part, an employee is not entitled to a severance payment unless, before the end of the period of 6 months beginning with the relevant date—

(a) the payment has been agreed and paid;

(b) the employee has made a claim for the payment by notice in writing given to the employer; or

(c) a question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to a tribunal.

Implied or constructive termination of contract

21. (1) Where in accordance with any enactment or rule of law—

(a) any act on the part of an employer; or

(b) any event affecting an employer (including in the case of an individual, his or her death),

operates so as to terminate a contract under which an employee is employed by him or her, that act or event shall for the purposes of this Act be treated as a termination of the contract by the employer, if apart from this subsection it would not constitute a termination of the contract by him or her.

21. (2) Where the preceding subsection applies, and the employee's contract of employment is not renewed, and he or she is not re-engaged under a new contract, as mentioned in section 12(2), he or she shall for the purposes of this Act be taken to be dismissed by reason of the events mentioned if the circumstances in which the contract is not renewed and he or she is not re-engaged as mentioned in the said section 12(2) are wholly or mainly attributable to one or other of the facts specified in section 10(2)(a) and 10(2)(b).

21. (3) For the purposes of the last preceding subsection, section 10(2)(a), in so far as it relates to the employer ceasing or intending to cease to carry on the business, shall be construed as if the reference to the employer included a reference to any person to whom, in consequence of the act or event in question, power to dispose of the business has passed.

21. (4) In this section any reference to section 12(2) includes a reference to the said section 12(2) as applied by section 15(2).

Modification of right to severance payment where previous severance payment has been paid

22. (1) The provisions of this section have effect where—

- (a) a severance payment is paid to an employee, in respect of dismissal;
- (b) the contract of employment under which he or she was employed (in this section referred to as "the previous contract") is renewed, whether by the same or another employer, or he or she is re-engaged under a new contract of employment, whether by the same or another employer; and
- (c) the circumstances of the renewal or re-engagement are such that, in determining for the purposes of section 10(1) or the calculation of severance payments by the regulations under this Act, whether at any subsequent time he or she has been continuously employed for the requisite period, or for what period he or she has been continuously employed, the continuity of his or her period of employment would, apart from this section, be treated as not having been broken by the termination of the previous contract and the renewal or re-engagement.

22. (2) Where the conditions mentioned in the preceding subsection are fulfilled, then in determining, for the purposes of section 10(1) or the calculation of severance payments by the regulations under this Act, whether at any subsequent time he or she has been continuously employed for the requisite period, or for what period he or she has been continuously employed, the continuity of the period of employment shall be treated as having been broken at the date which was the relevant date in relation to severance payment mentioned in paragraph (a) of the preceding subsection, and accordingly no account shall be taken of any time before that date.

22. (3) For the purposes of this section a severance payment shall be treated as having been paid if—

(a) the whole of the payment has been paid to the employee by the employer; or

(b) in a case where a tribunal has determined that the employer is liable to pay part (but not the whole) of the severance payment, that part of the severance payment has been paid in full to the employee by the employer.

Statutory compensation schemes

23. (1) This section applies to any statutory provision (not contained in this Act) which is in force immediately before the appointed day, whereby the holders of such situations, places or employments as are specified in that provision are, or may become, entitled to compensation for loss of employment or for diminution of emoluments or of pension rights, in consequence of the operation of any other statutory provision referred to therein.

23. (2) The Minister may make provision by regulations for securing that where apart from this section a person is entitled to compensation under a statutory provision to which this section applies, and the circumstances are such that he or she is also entitled to a severance payment, the amount of the severance payment shall be set off against the compensation to which he or she would be entitled apart from this section; and any statutory provision to which any such regulations apply has effect subject to the regulations.

Associated companies

24. (1) Where the employer is a company, any reference in this Part to re-engagement by the employer shall be construed as a reference to re-engagement by that company or by any associated company, and any reference in this Part to an offer made by the employer shall be construed as including a reference to an offer made by an associated company.

24. (2) The preceding subsection shall not affect the operation of section 15 in a case where the previous owner and the new owner (as defined by that section) are associated companies; and where that section applies, the preceding subsection shall not apply.

24. (3) Where an employee is dismissed by his or her employer and the employer is a company (in this subsection referred to as "the employing company") which has one or more associated companies, then if—

(a) neither of the conditions specified in section 10(2)(a) and 10(2)(b) is fulfilled; but

(b) one or other of those conditions would be fulfilled if the business of the employing company and the business of the associated company (or, if more than one, each of the associated companies) were treated as together constituting one business,

that condition shall for the purposes of this Part be taken to be fulfilled in relation to the dismissal of the employee.

24. (4) For the purposes of this section 2 companies shall be taken to be associated companies if one is a subsidiary of the other, or both are subsidiaries of a third company, and “associated company” shall be construed accordingly.

PART 3

Tribunal and Determination of Severance Payment

Tribunal

25. (1) The Governor General may, by order published in the Gazette, appoint a tribunal consisting of not more than 9 persons, as are provided for in this section.

However this section shall not be considered to invalidate the constitution of a tribunal in case of any vacancy in its membership.

25. (2) Under the preceding subsection any person or persons (not being more than 3 in number at any one time) who are assigned the duties of chairperson of a tribunal shall be appointed by the Governor General for a period of 4 years, acting in accordance with the recommendation of the Prime Minister after the Prime Minister has consulted with the Saint Lucia Bar Association, from among persons who are qualified to practice the legal profession in the State and are ordinarily resident in the State and, further, who have had no less than 5 years experience in the practice at the Bar since his or her entitlement to engage in the calling was first recognised in the State or any other approved Commonwealth Country, State, or territory.

25. (3) The other members shall be appointed by the Governor for a period of 2 years, acting in accordance with the recommendations of the Prime Minister after the Prime Minister has consulted such bodies as appear to him or her to represent organisations of employers and employees respectively.

25. (4) An appointment in accordance with the foregoing provisions of this section, shall be confirmed in the Gazette, and where any vacancy occurs whether through absence from the State, infirmity or other cause rendering any such member unable to perform his or her functions as a member, the Governor General shall cause an acting appointment to be made in accordance with the foregoing provisions of this section and such appointment and its duration shall be published in the Gazette.

25. (5) For the purposes of determining any reference in accordance with this Part, a tribunal may consist of 3, but not more than 5 members, so that—

(a) the chairperson shall be a person appointed under subsection (2);
and

(b) the persons representing respectively workers and employers are appointed under subsection (3) of this section and always equal in number.

25. (6) For the purposes of this Part, subject to the provisions of subsection (2) and subsection (3) a tribunal may be so constituted as to determine more than one reference at the same time at different places within the State.

25. (7) The Minister may out of moneys provided by the Legislature pay to members of a tribunal established in accordance with this section such fees and allowances as he or she may with the consent of Cabinet determine.

Reference of questions to tribunal

26. (1) Any question arising under this Part as to the right of an employee to a severance payment, or as to the amount of severance payment or to determine whether an employee has complied with an employer's notice, shall, in accordance with the regulations made under this Part be referred to and determined by a tribunal.

26. (2) For the purposes of any such reference—

(a) a person's employment during any period shall, unless the contrary is proved, be presumed to have been continuous;

(b) an employee who has been dismissed by his or her employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of the events mentioned in section 10.

Procedure of tribunals

27. (1) The Minister shall by regulation make such provision as appears to him or her to be necessary or expedient with respect to proceedings under a reference—

(a) as to the right of an employee to a severance payment;

(b) as to the amount of a severance payment; or

(c) to determine whether an employee has failed to comply with an employer's notice,

and the Arbitration Act shall not apply to any such proceedings.

27. (2) The regulations to be made under this section may, in particular include provision—

(a) for requiring persons to attend to give evidence and produce books and documents and for authorising the administration of oaths to witnesses;

(b) for granting to any person such discovery or inspection of documents as might be granted by the High Court;

(c) for prescribing the procedure to be followed on any reference before a tribunal;

- (d) for the award of costs, if any, in prescribed circumstances;
- (e) for taxing or otherwise settling any such costs and enabling such costs to be taxed as if it were incurred in summary proceedings in the High Court and for the enforcement of any such award as is mentioned in the last preceding paragraph; and
- (f) for proof of decisions of a tribunal.

27. (3) Any person who without reasonable excuse fails to comply with any requirement imposed by regulations under this section in accordance with subsection (2)(a) and (2)(b) commits an offence and is liable on summary conviction to a fine not exceeding \$500 or imprisonment for a term not exceeding 3 months or both.

Appeal and hearing

28. (1) Where the employer or employee disagrees with the decision of a tribunal as being erroneous, he or she may within 30 days of the determination lodge with the tribunal a notice of appeal to a judge of the High Court stating the grounds of his or her objection.

28. (2) The employer and employee shall attend before the judge on the day fixed for the hearing and either party may be represented by counsel or a solicitor.

28. (3) The judge shall determine such matter and shall forward a notice of his or her decision to the tribunal.

28. (4) The costs of the appeal shall be in the discretion of the judge and shall be a sum fixed by the judge.

28. (5) The Chief Justice may make rules governing such appeals and provide for tendering evidence and presenting the procedure to be followed.

28. (6) The employer or employee may within 28 days appeal from the judgments of the High Court to the Court of Appeal.

Recovery of severance payment

29. Subject to the provisions of section 28, a decision of a tribunal in accordance with the provisions of this Part shall be treated as a judgment of the High Court and be registrable as such and when so registered if the High Court so orders, shall be enforceable by execution issued from the High Court.

Notices

30. (1) Any notice which under this Act is required or authorised to be given by an employer to an employee may be given by being delivered to the employee, or left for him or her at his or her usual or last known place of residence or sent by post addressed to him or her at that place.

30. (2) Any notice which is required to be given by an employee himself or herself or by a person authorised by him or her to act on his or her behalf and

whether given by or on behalf of the employee, may be given by being delivered to the employer, or sent by post addressed to him or her at the place where the employee is or was employed by the employer.

30. (3) Subject to the preceding provisions of this section any reference to the delivery of a notice shall in relation to a notice which is not required by this Act to be in writing, be construed as including a reference to the oral communication of the notice.

30. (4) Any notice which in accordance with any provision of this section is left for a person at a place referred to in that provision shall, unless the contrary is proved, be presumed to have been received by him or her on the day which it was left there.

30. (5) Subsection (1) or subsection (2) shall not be construed as affecting the capacity of an employer to act by a servant or agent for the purposes of any provision of this Act, including either of those subsections.

Orders

31. The Minister has power by order published in the Gazette—

(a) to provide that all or any of the foregoing sections of this Act shall not apply to persons or to the employment or employments of such classes as may be prescribed by the order subject to such exceptions and modifications as may be so prescribed.

(b) vary or revoke any of the provisions of any such order as the circumstances may require.

Regulations

32. (1) The Minister may make regulations—

(a) ascertaining the length of an employee's period of employment and whether that period of employment has been continuous;

(b) for prescribing the rights of an employee in the period of notice required by section 6(3) and 6(4);

(c) for the calculation of severance payments;

(d) for determining the position as regards the contract and severance payment occasioned by the death of an employer or an employee.

32. (2) The Minister may vary or revoke any provision of the regulations made under the preceding subsection.

32. (3) Every regulation made under this section shall be subject to negative resolution of the House of Assembly within 6 weeks.

Contracts of Service Regulations

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CONTRACT OF SERVICE REGULATIONS – Section 32

(Statutory Instruments 26/1972, 38/1985 and 21/1995)

Commencement [1 November 1971]

PART 1 Preliminary

Citation

1. These Regulations may be cited as the Contracts of Service Regulations.

Interpretation

2. In these Regulations—

“Act” means the Contracts of Service Act;

“trade dispute” means any dispute or difference between employers and employees or between employees and employees in connection with the employment or non-employment or the terms of employment or labour of any persons, whether employees or not in the employment of the employer with whom the dispute or difference arises.

PART 2

Computation of Period of Employment and continuity of employment

Period of employment to be calculated in weeks

3. (1) The employee’s period of employment under the Act shall be calculated in weeks in accordance with these Regulations.

3. (2) The following weeks shall count in computing a period of employment—

- (a) a week in which the employee worked 28 hours or more;
- (b) a week in which the employee was—
 - (i) unable to work because of sickness, injury, maternity or disease,
 - (ii) absent from work because of a temporary cessation of work,
 - (iii) absent from work in circumstances such that by arrangement or custom or law the employee is regarded as continuing in the employment of his or her employer,
 - (iv) absent from work before the Act comes into force because of a trade dispute.

Absence due to trade dispute not to count

4. Where on or after the appointed day the employee is absent from work in any week because of a trade dispute then that week shall not count in computing the period of employment.

Change of employer

5. The foregoing provisions of these Regulations apply only to employment with the same employer.

However, when the business of an employer, if reorganised or amalgamated with business of another employer, or, the business of an employer is transferred to another employer as a going concern, then weeks employment with the former employer shall be counted in computing the period of employment with the latter employer.

Circumstances not breaking the continuity of employment

6. The continuity of employment shall not be broken for any of the following—

- (a) absence from work due to a trade dispute;
- (b) a change in the employer as set out in the proviso to regulation 5;
- (c) absence from work because of sickness, injury, maternity or disease;
- (d) absence from work because of a temporary cessation of work;
- (e) absence from work in circumstances such that by arrangement or custom or law the employee is regarded as continuing in the employment of his or her employer;
- (f) absence from work on holiday paid or unpaid;
- (g) absence from work due to *force majeure*, Act of God, civil commotions, riot.

Part 3

Entitlements of employee during period of notice

Entitlement of fixed wage

7. Where the employee works for a fixed wage he or she shall be entitled to that fixed wage during the period of notice save as may be otherwise provided under this part.

Entitlement where pay is based on hours worked

8. Where the employee's pay is based on the number of hours worked and does not vary with the amount of work done, then the employee shall be paid for the number of hours worked during the period of notice.

Where entitlement is based on fixed wage or hours worked but no work provided

9. (1) When an employee covered by the provisions of regulation 7 is—

- (a) ready and willing to work but no work is provided for him or her by his or her employer;
- (b) incapable of work because of sickness, injury or maternity, or disease; or

- (c) absent on holiday,

then he or she shall receive the remuneration prescribed by regulation 7.

9. (2) Where an employee covered by the provisions of regulation 8 is—

- (a) ready and willing to work but no work is provided for him or her by his or her employer;
- (b) incapable of work because of sickness, injury, maternity, or disease;
or
- (c) absent on holiday,

then for each week of the period of notice the employer shall pay the employee not less than his or her average weekly wage in the last 12 full weeks before notice was given.

However, a week shall not count as a full week for this purpose unless the employee worked at least 28 hours in that week,

9. (3) Any payments made to the employee by the employer by way of sick pay shall count towards meeting the employer's liability under this regulation.

Employment by hour

10. Where the employee is paid by the hour his or her pay during the period of notice shall not be less than the payment for the number of hours worked during the period of notice at the average rate of pay per hour in the last 6 full weeks prior to notice being given.

However, a week shall not count as a full week for this purpose unless the employee worked at least 28 hours in that week.

Entitlement where no fixed wage

11. (1) Where the employee has no fixed wage or salary, and where he or she is not paid by the hour without relation to the amount of work done, then he or she shall be entitled to payment during the period of notice as follows—

- (a) for each week of the period of notice the employer shall pay the employee not less than his or her average weekly wages in the last 12 full weeks before notice was given;

However, a week shall not count as a full week for this purpose unless the employee worked at least 28 hours in that week.

11. (2) The employer's liability under subregulation (1) is conditional upon the employee being ready and willing to do work of a reasonable nature to earn remuneration at the rate stipulated in subregulation (1)(a) above.

However, the employer is liable to pay the employee as stipulated in this subregulation if the employee is—

(a) absent from work because of sickness, maternity, injury, or disease;
or

(b) absent on holiday.

11. (3) Any sick pay paid by the employer shall count towards his or her liability under subparagraph (a) above.

11. (4) Where the notice was given by the employee, the employer's liability under this paragraph shall not arise unless and until the employee leaves the service of the employer under the notice.

No entitlement due because of trade dispute

12. Payment shall not be due under this part for any period during which the employee is absent from work because of a trade dispute.

Termination of employment during period of notice

13. (1) If, during the period of notice the employer breaks the contract of employment, payments received under these Regulations in respect of the part of the period of notice after the breach shall go towards mitigating the damages recoverable by the employee for loss of earnings in that part of the period of notice.

13. (2) If, during the period of notice, the employee breaks the contract and the employer rightfully treats the breach as terminating the contract, payment shall not be due to the employee under this Schedule in respect of the part of the period of notice falling after the termination of the contract.

Part 4 Severance payments

Calculation of redundancy payments

14. An employee who becomes redundant under the meaning of the Act shall receive a severance payment calculated as follows—

(a) one weeks' wages for each period of 52 weeks of continuous employment covering a period up to 156 weeks;

(b) two weeks' wages for 52 weeks of continuous employment covering a period of employment in excess of 156 weeks but not exceeding 364 weeks;

(c) three weeks' wages for each period of 52 weeks of continuous employment covering a period in excess of 364 weeks.

(Substituted by S.I. 38/1985)

Calculation of length and period of employment

15. The length of the period of employment and whether or not the employment has been continuous shall be decided in accordance with Part 3 of these Regulations.

Reference to one week's wages

16. For the purposes of this Part, the amount of a week's wages shall be the amount the employee would be entitled to in the last week of his or her employment calculated in accordance with Part 3 of these Regulations.

However, any sum in excess of \$250 shall be discounted in computing a weeks' pay.

In addition, the Minister may, by order, provide for a sum larger than \$250 referred to above.

(Amended by the S.I. 21/1995)