



LEGAL UPDATES

The New Workers' Rights Act 2019 Brings Key Employment Law Changes

The Workers' Rights Act 2019 (the "Act") came into force by proclamation in the Government Gazette on 24 October 2019. The provisions of the Act relating to "Portable Retirement Gratuity Fund", however, will only come into effect on 1 January 2020. The Act repeals the Employment Rights Act 2008 ("ERA"). Some of the major changes brought by the Act are highlighted below.

Definition of a "worker"

Crucial to the application of the Act is the definition of "worker". The Act raises the salary threshold from MUR 360 000 to MUR 600 000 per annum. Hence, a worker means an employee whose basic wage is MUR 50 000 or less in a month. The provisions of the Act do not apply to an employee earning above that threshold except as otherwise provided in the Act. Provisions that are applicable to all employees irrespective of basic salary include but are not limited to discrimination, end of year bonus, maternity and paternity leave, juror's leave, termination of agreement and reduction of workforce, workfare programme fund and portable gratuity retirement fund.

For the purposes of this note, we shall refer generally to "Employee" (or "Employees") as all employees where the Act applies irrespective of the amount of the Employee's basic salary and "Worker" (or "Workers") as any person whose basic salary is MUR 50 000 or less in a particular month.

Contract of Determinate Duration

The general rule under the Act is that an employer is now prohibited from employing a Worker under a contract of determinate duration if the Worker, other than a migrant worker, is employed in a position which is of permanent nature, unless it falls within the exceptions stated in the Act. The exceptions to the general rule include when an employer requires a Worker for a specified period in relation to the temporary needs of the employer for the performance of a specific piece of work, in respect of any work or activity which is temporary, seasonal or short term nature, in replacement of another Worker on approved leave or suspended from work or for a specific training contract.

A contract of determinate duration entered before the commencement of the Act relating to a Worker will be deemed to become a contract of indeterminate duration if the Worker and the employer have entered into one or more agreements for total period of more than 12 months.

End of year Bonus

Previously, workers meeting the threshold stated in the ERA were entitled to the statutory “end of year gratuity” based on *earnings* while employees (as understood under the ERA) were entitled to that gratuity based on *basic wage*. Under the Act, all Employees are now entitled to the statutory “end of year bonus” based on 1/12 of the Employee’s earnings. “Earnings” includes basic wage, overtime and any sum money by whatever name called, including commission and which is related to productivity. Employees are also entitled to the end of year bonus if their employment is terminated in the course of the year for any reason; or if an Employee resigns in the course of the year on or after having been in continuous employment for at least 8 months.

Settlement Agreement

The Act makes it mandatory for a Worker to consult an independent advisor before signing a settlement agreement in respect of a dispute relating to the termination of a Worker’s employment agreement. If the Worker is not afforded an opportunity to consult an independent advisor, a settlement agreement shall not be valid.

Wage Guarantee Fund

The Act introduces the concept of a “Wage Guarantee Fund” which will be used to pay a Worker who is not paid remuneration in the case of his employer being insolvent. Under this fund, a Worker will be entitled up to a maximum of MUR 50 000.

Leaves

There have been no major changes in respect of the entitlements to leave for Workers. However, the Act introduces the concepts of “Vacation Leave,” “Special Leave”, “Juror’s Leave”, and leave to participate in international sports events.

A Worker, other than a migrant Worker, who remains in continuous employment with the same employer for a period of at least 5 consecutive years shall be entitled to a vacation leave of not more than 30 days with pay, for every period of 5 years, to be spent in a manner as the Worker deems fit, either locally or abroad. The computation of the period of 5 consecutive years shall start as from 24 October 2019.

A Worker is further entitled if he has been in continuous employment for a period of 12 consecutive months, to 6 working days of *special leave* to celebrate his first civil or religious marriage, 3 working days on the occasion of the first civil or religious marriage of his son or daughter and 3 working days of *special leave* on full pay on the death of his spouse, child, father, mother, brother or sister.

Employees are further entitled to leave with pay to attend court pursuant to a summons issued to such Employees to attend service as juror under the Courts Act 1945. In addition, Employees are also entitled to paid leave if they are selected or nominated to participate in an international sport event to represent Mauritius.

Promotion

The Act imposes a mandatory obligation upon the Employer, where a vacancy arises in a higher grade, give consideration, as far practicable, to qualifications, merit and seniority. In addition, notice of any vacancy shall be posted in a conspicuous place which may be seen by every Worker at least five days before the promotion or selection exercise.

Disciplinary Hearings

The Act now makes it mandatory for an employer to provide an Employee, at his request, with all information or documents as may be relevant to a charge prior to the holding of a disciplinary hearing. In addition, it is also now mandatory to provide an Employee who has attended a disciplinary hearing or the person assisting the Employee at a disciplinary hearing, upon request, a copy of the minutes of proceedings of the disciplinary hearing.

The Act further introduces a timeframe within which a disciplinary hearing must be completed. It must be completed within 30 days from the date of the first oral hearing except where there is mutual agreement between the parties to extend the delay or owing to the illness or death of any of the parties or witnesses, or the reconstitution of the disciplinary panel or change in the legal or other representatives, such hearing cannot be completed during that delay.

The Act abolishes the need to have an independent chairperson to chair a disciplinary hearing as previously provided under the ERA. In spite of the abolition of the requirement to have an independent chairperson, the Employee is still entitled to a fair hearing which implies an independent fair-minded chairperson.

Reduction of Workforce

There has been a major reform in respect of the procedures to follow prior to reducing the number of Employees in the workforce. The procedures as laid out in the Act apply to an employer who employs not less than 15 Employees or having a turnover of at least MUR 25 million. The Act imposes not only a duty of notification but a duty of negotiation with trade union representatives prior to a redundancy situation in a view to finding a solution or an agreement. If an agreement has not been reached, then the matter must be referred to the "Redundancy Board" which has been set up to deal with redundancy situations together with a statement showing cause for the reduction of workforce at least 30 days before the reduction. It is not possible to terminate the employment prior to the 30 days from the date of the notification by the employer to the Redundancy Board.

The Redundancy Board shall complete its proceedings within 30 days from the date of notification by the employer. Any extension must be agreed by the parties. If the Redundancy Board is of the view that the termination is unjustified, it may order severance allowance at the rate of 3 months remuneration per year of service or order re-instatement of the Employee with remuneration to be paid as from date of termination to the date of reinstatement.

Portable Gratuity Retirement Fund

The Act introduces the concept of a “Portable Retirement Gratuity Fund” whose object is to recognise the terms of service of an employee irrespective of the number of employers for whom an employee has worked for. The employer will be required to make a contribution to the portable retirement gratuity fund in accordance with a prescribed formula. It will not be applicable to an employer who has a private pension scheme in respect of which a pension is paid, to an employee earning a basic salary exceeding MUR 200 000 per month, and to an employee who is more than 50 years of age. The contributions in respect of an employer’s share to the portable retirement gratuity fund are not yet known and it is expected that the regulations will be published soon.

Immediate Steps

Employers must ensure that workers earning in excess of MUR 30 000 per month and up to MUR 50 000 per month are now given the protections afforded by the Act. For instance, notwithstanding any provision of any employment agreement, Workers must now be refunded their annual leaves not taken. Furthermore, the statutory end of bonus for all Employees must be paid on earnings in December.

We remain at your disposal for any queries that you may have.

****Please note that the above should in no way be construed as legal advice and is merely an analysis of the Act****



Should you require any additional information in respect of the above or any queries pertaining to any employment related matters please contact:

Fayaz Hajee Abdoula

Partner

Fayaz.Abdoula@blc.mu

Ebene Office

2nd Floor, The AXIS, 26 Bank Street
Cybercity Ebene 72201, Mauritius.

Phone: +230 403 2400

Fax: +230 403 2401

Email: chambers@blc.mu

Port Louis Office

8, George Guibert Street
Port Louis, Mauritius

Phone: +230 212 2154

Fax: +230 211 8595

Email: chambers@blc.mu