

*Supplement to Official Gazette*

SI. 34 OF 1991

EMPLOYMENT ACT, 1990  
(Act 9 of 1990)

**Conditions of Employment Regulations, 1991**

In exercise of the powers conferred by sections 40(1) (b) and (3) and 73 of the Employment Act 1990, the Minister of Employment and Social Affairs hereby makes the following Regulations -

1. These Regulations may be cited as the Conditions of Employment Regulations, 1991 and shall come into operation on the 1st May, 1991. Citation and Commencement

2. (1) In these Regulations – Interpretation

"alternative holiday" means a day off work granted in lieu of a holiday;

"days" when used in relation to leave includes holidays;

**"essential service" means –**

- (a) **a service relating to the generation, supply or distribution of electricity;**
- (b) **any hospital or medical services;**
- (c) **a service relating to the supply or distribution of water;**
- (d) **a service relating to the sewerage service;**
- (e) **port and marine services;**
- (f) **a service relating to civil aviation;**
- (g) **the fire brigade;**
- (h) **a service relating to telecommunication;**
- (i) **a service deemed by a notice under the Industrial Relations Act to be an essential service."**

"holiday" means Sunday or a public holiday;

"medical certificate" means a certificate by a medical practitioner, or other person authorised by the Minister responsible for Health to issue certificates for the purposes of these Regulations;

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\*Amended/Introduced by SI 3 of 2000

\*\*Amended/Introduced by SI 9 of 2006

“part-time worker” means a worker other than a casual worker who works for the same employer for a period less than 25 hours a week or irrespective of the period of work for a period less than 3 days a week;

“public holiday” does not include Sunday;

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- (2) Subject to this regulation, the annual leave entitlement is taken each year by mutual arrangement between employer and worker but the employer shall ensure that a worker engaged by him under a contract of continuous employment or under a contract for a fixed term which lasts for a year or more, takes a minimum period of 14 consecutive days' leave in a year, unless the worker has, under the mutual arrangement, agreed to accumulate his leave entitlement.
- (3) Leave not taken in a year may be accumulated.
- \*\* (4) **Where it is mutually agreed between an employer and a worker, the leave entitlement of the worker in any year may be converted into cash payable in that year.**
- (5) Under a contract for a fixed term or under a contract for employment on an outer island, the whole of the leave earned and not taken may be converted into cash upon termination of the contract.
- (6) A part-time worker is entitled to leave under sub-regulation (1) in the proportion which the number of hours worked by him bears to the number of hours which a full time worker in the same occupation would have worked.
- (7) A casual worker who has worked for the same employer for 5 consecutive days is entitled in respect of every such 5 days to half of his day's pay in lieu of leave.
- \* (8) (a) **Subject to paragraph (b), the following formula shall apply for the purpose of converting accumulated leave into cash:**
- $$\frac{\text{Salary per year} \times \text{Number of days entitled}}{\text{Number of days per year}}$$

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\*Amended/Introduced by SI 3 of 2000

\*\*Amended/Introduced by SI 9 of 2006

(b) Where an employer allows a worker to accumulate the worker's leave and the number of days' leave so accumulated exceeds 42, the worker shall be entitled to one and a half times the normal pay for each day in excess;

\*\* (9) With effect from 1<sup>st</sup> January 2006, Saturdays, Sundays and Public Holidays shall be excluded in calculating a period of annual leave earned after that date under this regulation.

10. (1) Wherever a worker loses a very close relative or there are other compassionate reasons which require the presence or attendance of the worker, he shall be entitled to compassionate leave.

Compassionate  
Leave

(2) Where leave taken under sub-regulation (1) is in excess of 4 days in a period of 12 months, the excess may either be unpaid or, at the discretion of the employer, may be deducted from the worker's entitlement to annual leave.

(3) A worker shall also be allowed reasonable time off work, with or without pay at the discretion of the employer, to attend to matters which cannot normally be attended to except during t0 rg 1.002 0 0 1 160.8 505.44 Tm [(en)34(t)-39(i)24ave.bb(t)-18(o)13( )-3(m)-4(a

- (b) for the duration of the programme, where it is part-time only.
- \* (3) Where the education leave relates to a full-time training programme which lasts for more than 6 months, **the employer** shall pay the worker –
  - (a) during the period of the training programme, an allowance equal to  $\frac{2}{3}$  of the worker's salary; and
  - (b) on successful completion of the training programme, an allowance, in respect of the period of the training programme, equal to  $\frac{1}{3}$  of the worker's salary.
- \* (4) Notwithstanding sub-regulation (3), **the employer** may, in its absolute discretion and for reason which it deems to

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- (i) the worker has not exhausted his 30 days' paid sick leave referred to in paragraph (a), and
- (ii) the worker is confined at the hospital or similar institution **or at home** for a continuous period which extends beyond the unexhausted part the 30 days' paid sick leave

the worker shall be entitled to a further maximum 30 days' paid sick leave during that continuous period;

- (c) an aggregate maximum of 60 days' unpaid sick leave after the exhaustion of paid sick leave under this regulation.

(2) Entitlement to sick leave under sub-regulation (1) arises where –

- (a) a medical certificate of unfitness for work or confinement, as the case may be, is produced;
- (b) in the case of sub-regulation 1 (a) or (c), a worker's child under 12 years of age is medically certified sick and a medical practitioner or official authorised by the Minister of Health recommends that the worker attends the child;
- (c) in the case of sub-regulation 1 (a) or (c), a worker's dependent other than a child under 12 years of age is medically certified sick and a social worker certifies that the sick person requires the attendance of the worker.

(3) Where a worker is under a contract for fixed term and the duration of the contract is of less than 12 months, the eligibility to sick leave under sub-regulation (1) is of a number of days bearing the same proportion to the term of the contract as the periods of sick leave referred to in sub regulation (1) bear to 12 months, but in any case ends upon the date of expiry of the contract.

(4) Where following the full period of paid sick leave, a medical practitioner certifies that the worker will not recover and be fit for work, the contract is deemed to be frustrated.

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\*Amended/Introduced by SI 3 of 2000

\*\*Amended/Introduced by SI 9 of 2006



(5) Where a worker for reasons attributable to sickness fails to

15. An employer who pays sick leave under regulation 13 or maternity leave under regulation 16 to a worker is sub-rogated in the rights of the worker to any sickness or maternity benefit to which the worker is entitled under the Social

Employee  
Entitled  
to  
Sickness

- \*21. (1) A person shall not have in that person's employ another of less than 15 years of age.**
- (2) Notwithstanding sub regulation (1), work schemes

**Minimum  
Employ-  
ment Age**

- (2) Where at any time during pregnancy and up to 3 months after confinement, a female worker produces a medical certificate that a change in the nature of her work or duties is necessary in the interest of her health or that of her child, she has the right to be transferred to other work or duties appropriate to her condition without loss of wages.
  - (3) Where a transfer is not possible pursuant to sub regulation (2), the female worker is entitled to sick leave under regulation 12.
24. (1) The following formula shall apply for the purpose of wages and calculating the wages of a worker whose wage is calculated on an hourly basis- Calculation  
of Wages and  
Compensation

$$\frac{\text{Salary per year}}{\text{-----}} \\ 52 \times \text{weekly working hours}$$

- (2) The following formula shall apply for the purpose of calculating compensation payable to a worker under section 47(2) of the Act –

$$\frac{A \times B \times C}{\text{-----}} \\ 52 \times D$$

A stands for salary per year;

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| 26. | *   | An employer, or manager or representative of an employer, on an outer island who employs a worker on an outer island without there being a contract of employment with that worker in accordance with <b>section 22</b> of the Act is guilty of an offence and liable to a fine of R20,000.   | Employment<br>without<br>Contract<br>Prohibited    |
| 27. | (1) | An employer on entering into a contract of employment with a worker under section 19 of the Act may give to the worker an advance of wages not exceeding the equivalent of 2 months' wages.   | Advances<br>to Worker<br>Entering<br>into Contract |
|     | (2) | Where an advance is given under sub regulation (1), the manner of its repayment shall, without prejudice to section 33 (1) (e) of the Act, be stipulated in the contract.   |  |
|     | (3) | Where a worker takes an advance of wages under sub regulation (1) and subsequently fails to embark on the vessel or board the aircraft provided to take him to the place of employment, his failure so to embark or board shall, if he is charged with an offence under section 297 of the Penal Code, be prima facie evidence that he entered into the contract without intending to perform his obligations thereunder. | Cap 73   |
| 28. | (1) | Subject to regulation 30, a worker under a contract of employment for work on an outer island, proceeding to or returning from work on an the outer island, is entitled to free passage and food during the passage for himself and members of his family accompanying him.   | Free<br>Transport<br>and Food                      |
|     | (2) | The entitlement to free return passage and free food during passage for members of a worker's family is available to them or any of them whether or not they accompany the worker but so long as they avail themselves of the   |  |

- (2) A medical examination under sub regulation (1) shall be held within 7 days prior to the departure of the worker or of the member of his family.
30. (1) Where a worker returns to his home island in breach of his contract of employment on an outer island, unless he had at the time of his departure completed  $\frac{3}{4}$  of his period of service, he shall bear the cost of his repatriation and of that of the members of his family in an amount not exceeding 25% of his monthly wages. Breach of Contract by Worker
- (2) Notwithstanding sub regulation (1), where consequent upon the grievance procedure, if any, instituted under the section 61 of the Act the Competent Officer determines that the worker was justified in terminating his contract, the repatriation expenses are fully borne by the employer.
31. (1) Section 34 (2) of the Act does not apply in relation to employment on an outer island. Shop on Outer Island
- (2) An employer who employs workers on an outer island shall keep on that island a shop for the sale to his workers and their families of foodstuffs and basic necessities of life and shall retain in stock there at any time at least a month's supply of such foodstuffs and necessities.
- (3) A shop referred to in sub regulation (1) shall be open at such times as to be readily accessible to workers and their families and its opening hours shall be posted on a notice board on the outside of the shop.

and shall be posted up on a board which shall be displayed in a conspicuous place in the shop.

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| (5) | A shop kept under this regulation is subject to the Licences Act 1986.   | Act 3 of 1986                   |
| (6) | In any dispute as to what constitutes a basic necessity of life the determination of the competent officer to that effect prevails.  |                                 |
| 32. | The Competent Officer may give to an employer keeping a shop under regulation 31 (2) directions -  | Directions by Competent Officer |
| (a) | specifying the foodstuffs and basic necessities to be made available in the shop;  |                                 |
| (b) | prohibiting the storage or sale of certain goods;  |                                 |
| (c) | as to the manner in which sales are to be effected in order to ensure as equitable a distribution of supply as possible to workers taking into account the number of persons in their households.  |                                 |
| 33. | (1) Whenever a worker or member of his family makes a credit purchase in a shop on an outer island where the worker is employed, the person in charge of the shop –  | Invoices Upon Purchase          |
| (a) | shall make out an invoice, showing the date of the purchase, in duplicate in relation to the purchase, and   |                                 |
| (b) | shall deliver a copy of the invoice to the purchaser   |                                 |
| (2) | Subject to sub regulation (3), an employer of a work on an outer island may deduct from the worker's wages the amount of credit purchases made by the worker or member of his family from the outer island shop.                         |                                 |
| (3) | A credit purchase which is not supported by an invoice made at the time and on the date of the purchase is deemed not to have been made and no deduction by the employer from the worker's wages is allowed in respect of that purchase. |                                 |

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| 34. | (1) | During the period of a worker's contract of employment on an outer island the employer shall provide the worker and his family with housing of a good standard.  | Housing and Water Supply                |
|     | (2) | Every employer of a worker on an outer island shall arrange for a sufficient supply of wholesome water for the worker and his family and shall observe any reasonable directions which may be given to him by the Competent Officer in respect of such water supply.   |   |
| 35. | (1) | Every employer of a worker on an outer island shall keep and provide for the use of the worker and his families such first-aid equipment and medicines and such general health facilities as <b>may satisfy the requirements of</b> the Ministry of Health.  | Medical Facilities and Care             |
|     | (2) | Where a worker on an outer island is ill and facilities for his treatment are not available on the island or where a female worker or wife or concubine of a worker is pregnant, the employer shall, at his expense, arrange for the repatriation of the sick worker or of the pregnant woman to Mahe or to a hospital or health centre where adequate care and treatment are available.               |   |
| 36. |     | Where a worker dies during his period of employment, on an outer island ,the employer shall as soon as possible give notice thereof to the Competent Officer together with a written report of the circumstances in which the worker died, and shall pay all wages due and deliver all property belonging to the deceased worker to the Competent Officer for distribution in accordance with the law. |   |
| 37. | (1) | Section 32 (2) of the Act does not apply in relation to employers of workers on an outer island and the payment of wages of a worker there employed may be made -  | Manner of payment of wages and payslips |
|     | (a) | by remittances to persons in Mahe nominated by the worker to receive the same;   |   |
|     | (b) | by settlement of accounts at the end of the contract and payment to the worker in Mahe.  |   |

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\*Amended/Introduced by SI 3 of 2000  
 \*\*Amended/Introduced by SI 9 of 2006



- (2) without prejudice to section 35 and 36 of the Act, every employer of a worker employed on an outer island shall produce to the worker at end of each month a pay-slip specifying –
- (a) the worker's normal wages plus earning arising from overtime work, work on holidays, payment in lieu of holidays or otherwise;
  - (b) the deductions made for social security, shop account, remittances pursuant to sub-regulation (1) (a) and otherwise; and
  - (c)

40. Where a worker on an outer island is empowered by the Act to initiate the grievance procedure and it is impracticable for him to register the grievance within the time limit set out in paragraph 2 (1) of Part II of Schedule 1 to the Act, he may  
\* register the grievance within **14 days** after his return from the outer island.
41. In regulations 28, 29, 31 and 33 to 35 references to “member
- Registration  
of Grievances

46. \* (1) The period of training on an employer's training scheme for persons employed as trainees shall not exceed **2 years or such longer period as may be authorised by the Competent Officer** Period of training
- \* (2) A training course for untrained workers in occupations shall not exceed **2 years or such longer period as may be authorized by the competent officer.**
47. (1) Subject to sub regulations (2) and (3), a trainee shall be paid an allowance equivalent - Trainee's Allowance
- (a) in the 1<sup>st</sup> year of training, to 70% of the salary payable to a worker engaged in the work for which the training is being undertaken;
- (b) in the 2<sup>nd</sup> year of training, to 80% of the salary payable to a worker referred to in paragraph (a).
- (2) Where a training scheme or a training course is for a period not exceeding one year, a trainee shall be paid an allowance equivalent to 80% of the salary payable to a worker engaged in the work for which the training is being undertaken.
- (3) Where the allowance payable under sub regulation (1) or sub regulation (2) to a trainee falling within section 24 (b) of the Act is less than the national minimum wage, the allowance payable to that trainee shall be equivalent, in the 1<sup>st</sup> year of training, to the national minimum wage and in the 2<sup>nd</sup> year of training, if the training is for a period in excess of one year, to that wage increase to the increment payable a worker engaged in the work for which the training is being undertaken.
- \*48. (1) **A trainee referred to in section 27 shall be paid an allowance of-** Trainee's Allowance
- (a) **R1100 per month in respect of the first year of training**
- (b) **R1300 per month in respect of any subsequent year of training**

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