

ANTIGUA AND BARBUDA



THE ESSENTIAL SERVICES ACT, 2008

No. 9 of 2008

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The Essential Services Act, 2008.

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The Essential Services Act, 2008.

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I Assent,

[L.S.]

Louise Lake-Tack,
Governor-General.

11th November, 2008

ANTIGUA AND BARBUDA
THE ESSENTIAL SERVICES ACT, 2008

No. 9 of 2008

AN ACT to minimise interruptions of work likely to jeopardise the health or safety of persons in Antigua and Barbuda or the economy of Antigua and Barbuda and for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows:

1. Short title

This Act may be cited as the Essential Services Act, 2008.

2. Interpretation

(1) In this Act—

“Court” means the Industrial Court established under section 4 of the Industrial Court Act, Cap. 214;

“essential services” means a service listed in the Schedule;

“major dispute” means a trade dispute that has seriously jeopardised or is likely to seriously

jeopardise the health or safety of persons in Antigua and Barbuda or the economy of Antigua and Barbuda because of an interruption of work or a threatened interruption of work;

“Minister” means the Minister with responsibility for labour.

(2) The following definitions from section A5 of the Antigua and Barbuda Labour Code, Cap. 27 apply to this Act, except that a reference to an employee includes an established or non-established employee of the Government of Antigua and Barbuda—

- (a) employee;
- (b) employer;
- (c) employment contract;
- (d) established employee;
- (e) industrial action;
- (f) non-established employee;
- (g) organisation;
- (h) trade dispute; and
- (i) trade union.

(3) A trade dispute is presumed to be a major dispute if it is one that is seriously jeopardising or is likely to seriously jeopardise the health or safety of persons in Antigua and Barbuda or the economy of Antigua and Barbuda in an essential service.

3. Application

For greater certainty, this Act applies to major disputes—

- (a) whether the employer parties to the dispute are in the private or public sector; and
- (b) whether the employee parties to the dispute are persons working under employment contracts with employers in the private or public sector, and as established or non-established employees.

4. No industrial action where major dispute in an essential service

(1) Notwithstanding the provisions of section K19 of the Antigua and Barbuda Labour Code, or of

any other law, no industrial action shall be commenced, or, if commenced, shall be continued, in a trade dispute in an essential service, unless it is the subject of an order issued under subsection (2).

(2) The Minister may, in the exercise of his discretion or after consultation with or after hearing submissions from the affected trade union or employment organisation, issue an order determining that a particular trade dispute in an essential service is not a major dispute.

(3) An order issued under subsection (2) has effect immediately after—

- (a) publication of the Order in the *Gazette*; or
- (b) service of the Order on both the trade union or employee organisation and the employer;

whichever is earlier.

(4) For the purposes of subsection (3)—

- (a) service on a trade union or employee organisation shall be made by leaving a copy of the order at its registered office or by giving a copy of the order to an official of the trade union or employee organisation; and
- (b) service on an employer shall be made—
 - (i) in the case of a private sector employer, by leaving a copy of the order at a place of business of the employer or by giving a copy of the order to a member of management of the employer; and
 - (ii) in the case of a public sector employer, by leaving a copy at the offices of the Establishment Department and at the concerned Ministry, or by giving a copy of the order to a senior member of management at that Department and that Ministry.

(5) An order issued under subsection (2) continues to be in effect until the date on which—

- (a) a new order reversing the previous order is issued, and is published or served in accordance with subsections (3) and (4); or
- (b) a final decision of the Court is made under section 5 resolving the trade dispute and any appeal is exhausted;

whichever is earlier.

5. Referral to the Court

(1) Notwithstanding the provisions of the Antigua and Barbuda Labour Code and the Civil Service

Act, Cap. 87, if a trade dispute is a major dispute in an essential service, the Minister shall refer it in writing to the Court.

(2) If the Minister refers a major dispute to the Court—

- (a) the Court has sole jurisdiction to hear and adjudicate on the issues in the major dispute as though the referral were a referral under section 19 of the Industrial Court Act; and
- (b) the Court shall hear the matter expeditiously and in any event within 21 days.

6. Special provisions re notice of termination of employment

(1) Whether or not a strike is unlawful, an employee in an essential service shall not wilfully break or terminate his contract of service without fourteen days' written notice, if the employee knows or has reasonable cause to believe that the probable consequence of doing so, either alone or in combination with others, will be to—

- (a) deprive the public or a section of the public of the enjoyment of the essential service;
- (b) endanger human life or public health;
- (c) cause serious bodily injury to any person; or
- (d) expose valuable property to the risk of destruction, loss or serious injury.

(2) A person shall not cause, procure or counsel an employee referred to in subsection (1) to break or terminate his contract of service without fourteen days' written notice, if the person knows or has reasonable cause to believe that the probable consequence of the employee's doing so, either alone or in combination with others, will be to—

- (a) deprive the public or a section of the public of the enjoyment of the essential service;
- (b) endanger human life or public health;
- (c) cause serious bodily injury to any person; or
- (d) expose valuable property to the risk of destruction, loss or serious injury.

(3) A person who contravenes a provision of this section commits an offence and—

- (a) in the case of subsection (1), is liable on summary conviction to a fine of five thousand dollars or to imprisonment for three months or to both; and

- (b) in the case of subsection (2), is liable on summary conviction to a fine of eight thousand dollars or to imprisonment for three months or to both.

(4) In proceedings in respect of an offence under this section, the court shall presume the existence of the contract, and in the particular service alleged in the charge unless the contrary is proved.

7. Amendment of the Schedule

The Minister may by order amend the Schedule to add to or delete from the list of essential services.

8. Amendments to the Antigua and Barbuda Labour Code, Cap. 27

The Antigua and Barbuda Labour Code is amended—

- (a) in section A5, by repealing, at the end of the definition “essential service” the words “Division K” and substituting the words “the Essential Services Act, 2008;”
- (b) in section K2, by adding, at the end of the definition “essential services” the words “to the Essential Services Act, 2008;”
- (c) in subsection K13(2), by repealing the words in that subsection after “Schedule” including the proviso and substituting the following “to the Essential Services Act, 2008;”
- (d) by repealing section K23; and
- (e) by repealing the Schedule to Division K.

9. Amendments to the Industrial Court Act, Cap. 214

The Industrial Court Act is amended

- (a) by adding, at the beginning of subsection 3(2), the words “Subject to subsection (3),”;
- (b) by adding at the end of section 3, the following subsection:

“(3) This Act applies to the Government and to all employees of the Government, whether established or non-established employees, to the extent necessary to establish the jurisdiction of the Court in respect of major disputes in an essential service under the Essential Services Act, 2008.”; and

- (c) by adding at the end of subsection 4(1), the words “or any other Act.”

SCHEDULE

(Section 2)

Essential Services

1. Water services
2. Electricity services
3. Hospital services
4. Fire services
5. Prison services
6. Air traffic control services
7. Meteorological services
8. Services rendered by persons employed in the Government Printing Office
9. Services rendered by the Port Authority
10. Services rendered by an entity providing telecommunications services

Passed by the House of Representatives on
this 21st day of July, 2008.

Passed by the Senate on this 21st day of
August, 2008.

D. Gisele Isaac-Arrindell,
Speaker.

Hazlyn M. Francis,
President.

L. Thomas,
Acting Clerk to the House of Representatives.

L. Thomas,
Acting Clerk to the Senate.