

THE EMPLOYMENT (TERMINATION AND REDUNDANCY
PAYMENTS) ACT

REGULATIONS
(*under section 18*)

The Employment (Termination and Redundancy Payments) Regula-
tions, 1974

L.N. 500/74
352B/75
90D/86
110A/88
Act 7/2008

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REGULATIONS, 1974

(Made by the Minister on the 9th day of December, 1974)

L.N. 500/74
Amd:
L.N. 352B/75
*Vide
L.N. 100/76
Amd:
L.N. 90D/86
110A/88
Act 7/2008

1. These Regulations may be cited as the Employment (Termination and Redundancy Payments) Regulations, 1974.

Citation.

2.—(1) In these Regulations, unless the context otherwise requires—

Interpretation
and application.

“normal wages” means, in relation to any employee, the remuneration regularly paid to him by his employer as wages or commission, and includes any amounts regularly so paid by way of bonus as part of such remuneration but does not include—

(a) any overtime wages; or

(b) any premium or special allowance paid—

(i) in consideration of the times at which, or the conditions subject to which, or the circumstances in which, he works in the course of the performance of his duties; or

(ii) in consideration of any inconvenience suffered or likely to be suffered by him in the course of the performance of his duties;

“normal working week” means the number of days in a week on which the employee in relation to whom that expression is used is normally required to work for his employer;

“week” means the period commencing immediately after twelve o'clock midnight on each Saturday and ending at twelve o'clock midnight on the Saturday next following;

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“year of employment” means fifty-two weeks (whether continuous or discontinuous) which, in accordance with these Regulations, count in computing a period of employment.

(2) Where the relevant date does not fall at the end of a week, any reference in these Regulations to the relevant date shall be construed as a reference to the end of the week in which that date falls.

(3) These Regulations apply—

- (a) in relation to contracts of employment made before the coming into force of these Regulations and subsisting at the coming into force of these Regulations; and
- (b) in relation to periods of employment commencing before the coming into force of these Regulations and subsisting at the coming into force of these Regulations,

as they apply in relation to contracts of employment made, or periods of employment commencing, after the coming into force of these Regulations.

Manner of
computing
period of
employment.

3. An employee’s period of employment shall be computed in weeks and accordingly the periods of five, ten and fifteen years mentioned in section 3 of the Act shall be taken as 260, 520 and 780 weeks respectively.

Periods
which count.

4.—(1) Subject to paragraph (8), any week in which an employee is employed for eighteen hours or more shall count as one week in computing that employee’s period of employment.

(2) Subject to paragraph (8), if in any week an employee is, for the whole or part of the week—

- (a) incapable of working in consequence of sickness or injury; or
- (b) absent from work on account of a temporary cessation of work; or
- (c) absent from work in circumstances such that, by arrangement or custom, he is regarded as continuing in the employment of his employer for all or any purposes,

that week shall, withstanding that it does not fall under paragraph (1), count as one week in computing that employee’s period of employment.

(3) If a business is transferred from one person to another, the period of employment of an employee in the business at the time of the transfer shall count as a period of employment with the transferee.

(4) If an employee is, on the death of his employer, taken into the employment of a personal representative or trustee of the deceased employer, the employee's period of employment with the deceased employer shall count as a period of employment with that personal representative or trustee.

(5) If, after an interval of not more than two weeks after the ending of an employee's contract of employment, his employer renews his contract or re-engages him in accordance with paragraph (b) of subsection (6) of section 5 of the Act, the period of that interval shall count as a period of employment.

(6) If there is a change in the partners, personal representatives or trustees who employ any person, that employee's period of employment at the time of the change shall count as a period of employment with the partners, personal representatives or trustees (as the case may be) after the change.

(7) Where an employee of a company is taken into the employment of another company which, at the time when he is taken into its employment, is an associated company of the first-mentioned company, his period of employment with the first-mentioned company shall count as a period of employment with the associated company.

(8) Any week beginning after the coming into force of these Regulations shall not count under paragraph (1) or (2) if during that week, or any part of that week, the employee takes part in a strike which prevents him from working for more than eighteen hours in that week.

(9) In this regulation "strike" means a concerted stoppage of work by a group of employees in contemplation or furtherance of an industrial dispute, whether those employees are parties to the dispute or not.

(10) Where an employee is dismissed by his employer, and—

- (a) the dismissal is attributable wholly or partly to illness of the employee; and
- (b) a redundancy payment is not paid to him; and
- (c) the contract of employment under which he was employed (hereafter referred to as "the previous contract") is renewed, whether by the same or by another employer, or he is re-engaged under a new contract of employment, whether by the same or by another employer; and

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- (d) the renewal or re-engagement takes effect after an interval of not more than twenty-six weeks after the ending of the previous contract,

the continuity of the employee's period of employment shall be treated as not having been broken by the interval referred to in sub-paragraph (d).

Continuity
not broken.

5.—(1) The continuity of an employee's period of employment is not broken—

- (a) by the transfer referred to in paragraph (3) of regulation 4; or
- (b) by the death of his employer if he is taken into the employment of a personal representative or trustee of the deceased; or
- (c) by the interval referred to in paragraph (5) of regulation 4; or
- (d) by the change referred to in paragraph (6) of regulation 4; or
- (e) by a change of employment in the circumstances mentioned in paragraph (7) of regulation 4; or
- (f) by any week which does not count by virtue of paragraph (8) of regulation 4; or
- (g) by any period during which the employee is absent from work because of a lock-out by his employer; or
- (h) by any period during which he is absent from work for the purpose of carrying out any duty imposed on him by the Government or any work which he carries out at the request of the Government with the permission of his employer.

(2) In this regulation "lock-out" means action which, in contemplation or furtherance of an industrial dispute, is taken by one or more employers, whether parties to the dispute or not, and which consists of the exclusion of employees from one or more places of employment or of the suspension of work in one or more such places or of the collective, simultaneous or otherwise connected termination or suspension of employment of a group of employees.

Remuneration
in respect of
period of
notice.

6.—(1) The remuneration of an employee in respect of each week of a period of notice shall—

- (a) in the case of an employee who has been employed at time rates, be the normal wages earned by him in respect of the last normal working week preceding the relevant date during which he has worked for his employer; and

(b) in the case of an employee who has been employed at piece or task rates or on a commission basis, be one-quarter of the aggregate normal wages earned by him in respect of the last four working weeks preceding the relevant date during which he has worked for his employer.

(2) Any payment made to an employee by his employer as holiday remuneration, on the termination of that employee's employment shall not be taken into account as part of his remuneration in respect of the period of notice.

7.—(1) Each of the diseases set out in the first column of the Schedule is a prescribed disease for the purposes of paragraph (c) of subsection (2) of section 5 of the Act.

Prescribed
diseases.
Schedule.

(2) If any employee who is employed in any occupation set out in the second column of the Schedule develops a disease set out against that occupation in the first column of the Schedule, that disease shall, unless the contrary is proved, be presumed to be due to the nature of his employment.

(3) Where the employer of any employee who is employed in any occupation set out in the second column of the Schedule wishes to ascertain—

(a) whether that employee has developed a prescribed disease; or

(b) whether a prescribed disease which that employee has developed is due to the nature of his employment,

the employer may require him to submit himself to a medical examination by a medical practitioner chosen and paid by the employer.

(4) An employee who is required to submit himself to a medical examination pursuant to paragraph (3) is entitled to require that a medical practitioner chosen and paid by him shall be given an opportunity to be present at the medical examination.

(5) Where, as respects any of the questions mentioned in subparagraphs (a) and (b) of paragraph (3), there is disagreement between a medical practitioner chosen by an employer and one chosen by an employee, the matter shall be referred to the Chief Medical Officer, and any decision made by him in connection therewith shall be final.

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Manner of calculating redundancy payment, except for seasonal employees.

8.—(1) Subject to paragraph (2) the amount of the redundancy payment to which an employee other than an employee engaged in seasonal employment is entitled in respect of any period, ending with the relevant date, during which the employee has been continuously employed, shall be—

- (a) in respect of a period not exceeding ten years of employment, the sum arrived at by multiplying two weeks' pay by the number of years;
- (b) in respect of a period of more than ten years of employment—
 - (i) for the first ten years reckoned, the sum arrived at by multiplying two weeks' pay by that number of years; and
 - (ii) for the years remaining, the sum arrived at by multiplying three weeks' pay by the number of such remaining years.

(2) For the purposes of paragraph (1)—

- (a) the period during which an employee has been continuously employed shall be computed in accordance with regulations 3, 4 and 5;
- (b) the number of years of employment falling within that period shall be reckoned backwards, starting with the relevant date, so, however, that where there is a part of a year of employment remaining over, that part—
 - (i) shall be disregarded if it does not exceed thirteen weeks;
 - (ii) shall be reckoned as one-half of one year of employment if it exceeds thirteen weeks but does not exceed thirty-nine weeks; and
 - (iii) shall be reckoned as one year of employment if it exceeds thirty-nine weeks;
- (c) "three weeks' pay" means—
 - (i) three times the normal wages earned by the employee in respect of the last normal working week preceding the relevant date during which he has worked; or

- (ii) $3/13$ of the aggregate normal wages earned by him in respect of the last thirteen normal working weeks preceding the relevant date during which he has worked,

whichever is the greater;

“two weeks pay” means—

- (i) twice the normal wages earned by the employee in respect of the last normal working week preceding the relevant date during which he has worked; or
- (ii) $2/13$ of the aggregate normal wages earned by him in respect of the last thirteen normal working weeks preceding the relevant date during which he has worked,

whichever is the greater.

9.—(1) Subject to paragraph (2) the amount of the redundancy payment to which an employee engaged in seasonal employment is entitled in respect of consecutive years in which that employee has been engaged in continuous seasonal employment, shall be—

Manner of calculating redundancy payment for seasonal employees.

- (a) where the number of consecutive years does not exceed ten, the sum arrived at by multiplying two weeks' pay by the number of years;
- (b) where there are more than ten consecutive years—
 - (i) for the first ten years reckoned, the sum arrived at by multiplying two weeks' pay by that number of years; and
 - (ii) for the years remaining, the sum arrived at by multiplying three weeks' pay by the number of such remaining years.

(2) For the purposes of paragraph (1)—

- (a) an employee is engaged in continuous seasonal employment during any season in which—
 - (i) he works for not less than ninety days in the seasonal employment provided by his employer; or

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- (ii) where the number of days of work referred to in sub-paragraph (i) cannot be ascertained, he has earned, as normal wages in the seasonal employment provided by his employer, a sum equivalent to or greater than ninety times the established daily rate for the category of work performed by him in an area where there is such established daily rate; or
 - (iii) where the number of days of work referred to in sub-paragraph (i) cannot be ascertained and there is no established daily rate of the kind referred to in sub-paragraph (ii), his name appeared on the pay-bills of his employer in respect of seasonal employment for not less than sixteen weeks;
- (b) the number of consecutive years in which an employee has been engaged in continuous seasonal employment shall be reckoned backwards, starting with the last year preceding the relevant date;
- (c) "three weeks' pay" means $3/104$ of the aggregate normal wages earned by the employee in the seasonal employment in which he has been engaged during the last two consecutive years preceding the relevant date;
- "two weeks' pay" means $2/104$ of the aggregate normal wages earned by the employee in the seasonal employment in which he has been engaged during the last two consecutive years preceding the relevant date.

Record.

10. The record required by section 16 of the Act to be kept by every employer shall contain—

- (a) the name and address of the employer;
- (b) the name and address of the employee;
- (c) the date on which the employment of the employee commenced and, in the case of an employee who has been re-employed after the termination of his contract of employment, the date on which the re-employment commenced;
- (d) an accurate description of the place at which the employee was ordinarily resident when he was engaged under the contract of employment;

- (e) an accurate description of the place at which the employee was present when the offer of employment was made to him by any means other than by advertisement or at which the contract of employment was made;
- (f) information as to the rate of the normal wages of the employee and his normal working week;
- (g) where the contract of employment of the employee has been terminated, particulars as to—
 - (i) the relevant date;
 - (ii) the period, ending with the relevant date, during which he was continuously employed or, if he was engaged in seasonal employment, the number of consecutive years for which he was engaged in continuous seasonal employment;
 - (iii) the amount of redundancy payment, if any, paid to him.

11.—(1) An employer who dismisses or proposes to dismiss his employee by reason of redundancy shall submit to the Minister, in writing—

Information to
Minister re
dismissal on
redundancy

- (a) the effective date of the dismissal;
- (b) the name and address of the employee;
- (c) the amount which is payable to the employee;
- (d) the name, description and type of the employee's post; and
- (e) a statement as to whether the employee is a member of a union and if so, the name of the union with which the employee is affiliated.

(2) The information referred to in paragraph (1) shall be submitted to the Minister within twenty-one days of the date the decision to dismiss was made.

(3) A person who contravenes this regulation commits an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

12.—(1) Nothing in these Regulations shall be construed as preventing any employee from being paid more than the amount which he is entitled to receive under these Regulations as redundancy payment or as remuneration during a period of notice.

Saving

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SCHEDULE

(Regulation 7)

In this Schedule "pneumoconiosis" means fibrosis of the lungs caused by sclerogenetic mineral dust, and includes silico-tuberculosis where silicosis is an essential factor in causing incapacity for work.

<u>Description of Disease</u>	<u>Nature of Occupation</u>
1. Pneumoconiosis.	All occupations involving exposure to the risk concerned.
2. Disease caused by beryllium or its toxic compounds.	All occupations involving exposure to the risk concerned.
3. Disease caused by phosphorous or its toxic compounds.	All occupations involving exposure to the risk concerned.
4. Disease caused by chrome or its toxic compounds.	All occupations involving exposure to the risk concerned.
5. Disease caused by manganese or its toxic compounds.	All occupations involving exposure to the risk concerned.
6. Disease caused by arsenic or its toxic compounds.	All occupations involving exposure to the risk concerned.
7. Disease caused by mercury or its toxic compounds.	All occupations involving exposure to the risk concerned.
8. Disease caused by lead or its toxic compounds.	All occupations involving exposure to the risk concerned.
9. Disease caused by carbon bisulphide.	All occupations involving exposure to the risk concerned.
10. Disease caused by toxic halogen derivatives of hydrocarbons of the aliphatic series.	All occupations involving exposure to the risk concerned.
11. Disease caused by benzene or its toxic homologues.	All occupations involving exposure to the risk concerned.
12. Disease caused by nitro- and amido-toxic derivatives of benzene or its homologues.	All occupations involving exposure to the risk concerned.
13. Disease caused by ionizing radiations.	All occupations involving exposure to the action of ionising radiations.
14. Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, or the compounds, products or residues of those substances.	All occupations involving exposure to the risk concerned.
15. Anthrax infection.	Any occupation involving— (a) work in connection with animals infected with anthrax;

- (b) handling of animals carcasses or parts of such carcasses including hides, hoofs and horns;
- (c) loading or unloading or transport of merchandise which may have been contaminated by animals or animal carcasses infected with anthrax.