

M O N T S E R R A T

LABOUR CODE (AMENDMENT) ACT 2021

No. 11 of 2021

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I ASSENT

(Sgd.) Andrew Pearce

Governor

DATE: 30.06.2021

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AN ACT TO AMEND THE LABOUR CODE (CAP. 15.03).

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the Authority of the same as follows:—

1. Short title

This Act may be cited as the Labour Code (Amendment) Act, 2021.

2. Interpretation

In this Act, “**principal Act**” means the Labour Code (Cap. 15.03).

3. Section 3 amended

Section 3 of the principal Act is amended by—

- (a) deleting the definitions of “established employee” and “non-established employee”; and
- (b) inserting the following definition in the correct alphabetical sequence:

“**“Social Security Act”** means the Social Security Act (Cap. 18.09);”.

4. Section 8 amended

Section 8 of the principal Act is amended by—

- (a) deleting subsection (1)(g) and substituting the following:

“(g) following the provision of notification to the employer—

- (i) enter at any hour of the day or night any workplace liable to inspection;
- (ii) carry out any examination, test or enquiry which he or she considers necessary in order to ensure observance of this Code;
- (iii) take or remove from any workplace for the purposes of analysis, samples of materials or substances used or handled; or
- (iv) take photographs and video recordings of any workplace.”; and

- (b) deleting subsection (2).

5. Section 22 amended

Section 22 of the principal Act is amended by inserting the following as subsection (1A):

“(1A) A party under subsection (1) shall refer the dispute to the Labour Commissioner no later than three months after the dispute arose.”.

6. Section 23 amended

Section 23 of the principal Act is deleted and the following substituted:

“**23. The Labour Tribunal**

- (1) There is established a Labour Tribunal to settle disputes transmitted to it by the Labour Commissioner.
- (2) The rules of the Tribunal are set out in Schedule 3 and may be amended by Order by the Governor acting on the advice of Cabinet.
- (3) Subject to subsection (2), the Tribunal shall regulate its own proceedings.”.

7. Section 24 amended

Section 24 of the principal Act is amended by inserting the following as subsection (1A):

“(1A) A person who has been convicted of an indictable offence is disqualified from being a member of the Labour Tribunal.”.

8. Section 32 amended

Section 32 of the principal Act is deleted and the following substituted:

“32. Written terms and conditions of employment

- (1) If an employee is engaged by an employer for a term of employment exceeding three months, the employer shall—
- (a) complete on behalf of the employee the form set out as Form A in Schedule 2;
 - (b) sign the completed form in the presence of a witness; and
 - (c) secure the signature of the employee on the completed form, in the presence of a witness.
- (2) The employer shall, within ten working days of engagement, submit a copy of the completed form under subsection (1) to the—
- (a) Labour Commissioner; and
 - (b) employee.
- (3) If a worker is recruited from abroad, the employer shall, prior to the arrival of the worker in Montserrat—
- (a) inform the worker of the terms and conditions of employment in a language that he or she understands; and

(b) inform the worker of or confirm with the worker that arrangements that have been made for his or her accommodation and return to his or her country of citizenship or residence or the country from which he or she was recruited.

(4) If, subsequent to the submission of the completed form under subsection (2), the employer wishes to change the responsibilities and duties of the employee, the employer shall submit a copy of the revised form to the—

(a) Labour Commissioner; and

(b) employee,

at least seven days before the date the proposed change is to take effect.”.

9. Section 51 amended

Section 51(1) of the principal Act is amended by deleting “calendar”.

10. Section 52 amended

Section 52 of the principal Act is amended—

(a) in subsection (1), by deleting “not less” the second time it appears and substituting “not more”; and

(b) by inserting the following as subsections (4), (5) and (6):

“(4) If an employee under subsection (1) is still sick or becomes sick after being granted

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twenty-four days of paid sick leave in a year, the employer shall—

- (a) grant the employee at least two additional months of sick leave without pay; and
- (b) not dismiss the employee during the two months of sick leave granted under paragraph (a).

(5) Despite subsection (4)(a), an employer may pay an employee during the two additional months of sick leave.”.

11. Section 53 amended

Section 53(1) of the principal Act is amended by deleting “presumed”.

12. Section 55 amended

Section 55 of the principal Act is amended—

- (a) in the heading to the section, by deleting “civic purposes” and substituting “civic duties”; and
- (b) in subsection (1), by deleting “civic natures” and substituting “civic duties”.

13. Section 56 amended

Section 56 of the principal Act is amended by inserting “stepparent, grandparent,” after “parent,”.

14. Section 59 amended

Section 59 of the principal Act is amended in the chapeau by deleting “employer” the second time it appears and substituting “employee”.

15. Section 75 amended

Section 75 of the principal Act is amended by—

(a) inserting the following as subsection (1A):

“(1A) An employee under subsection (1) is entitled to severance pay for any period of employment not amounting to a year of completed service and the amount payable shall be a prorated amount of that which is payable for every year of completed service.”; and

(b) deleting subsection (4) and substituting the following:

“(4) An employee to whom retirement benefits have been paid by virtue of him or her having attained the pensionable age set out in the Third Schedule to the Social Security Act and who is subsequently dismissed on the grounds of redundancy shall only be entitled to severance pay for the period he or she was employed after attaining the pensionable age set out in the Third Schedule to the Social Security Act.”.

16. Section 78 amended

Section 78(2)(b) of the principal Act is amended by deleting “civic obligations” and substituting “civic duties”.

17. Section 143 amended

Section 143 of the principal Act is amended by deleting “the Schedule” and substituting “Schedule 1”.

18. Section 145 amended

Section 145 of the principal Act is amended by inserting the following as subsection (4):

“(4) An appeal under subsection (3) shall operate as a stay of the decision of the Registrar to

suspend or withdraw registration of any trade union or employers' organisation.”.

19. Section 148 amended

Section 148 of the principal Act is amended by inserting the following as subsection (4):

“(4) An appeal under subsection (3) shall operate as a stay of the decision of the Registrar to declare a trade union or an employers' organisation defunct.”.

20. Section 154 amended

Section 154 of the principal Act is amended by inserting the following as subsections (3A) and (3B):

“(3A) A trade union subject to a withdrawal or cancellation of a certificate under this section may appeal to the High Court.

(3B) An appeal under subsection (3A) shall operate as a stay of the decision of the Registrar to withdraw or cancel a certificate.”.

21. Section 160 amended

Section 160 of the principal Act is deleted and the following is substituted:

“(1) Subject to the rules of a trade union and the Code, a person over sixteen years of age may be a member of —

(a) a trade union; or

(b) the committee of management, trustee or treasurer of a trade union.

(2) A person under subsection (1)(a) shall enjoy the rights of a member, execute instruments and give acquittances necessary to be executed or given under the rules of a trade union.”.

22. Section 161 amended

Section 161(2) of the principal Act is deleted and the following is substituted:

- “(2) A member of a trade union or employers’ organisation or the Registrar may apply to the High Court, claiming on reasonable grounds a violation of subsection (1).
- (3) The Court, on an application under subsection (2), may—
- (a) declare the election void;
 - (b) determine a date for the holding of fresh elections; and
 - (c) make provision for the filling of the offices concerned, pending the outcome of the fresh elections; or
 - (d) make any other order relating to the election or fresh elections as it deems fit.”.

23. Schedule amended

The Schedule of the principal Act is amended by deleting “**SCHEDULE**” and substituting “**SCHEDULE 1**”.

24. Schedules 2 and 3 inserted

The principal Act is amended by inserting the following as Schedule 2 and Schedule 3—

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“**SCHEDULE 2**

(Section 32)

Form A

Note: If an item is inapplicable, insert 'NIL' or 'N/A' in the space provided.

1. Name of Employer
2. Address of Employer.....
3. Name of Employee
4. Address of Employee.....
5. Date of Birth of Employee.....
6. Date of commencement of employment.....
7. Employment Period (if not indefinite)
8. Social Security Fund Number.....
9. Full description of responsibilities and duties of the employee.....
10. Hours of Work
11. Rest Period
12. Probationary Period (if any)
13. **Wages**
 - (a) Pay Period
 - (b) Rate of Pay
 - (c) Pay Scale

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- (d) Method of Pay Computation
- 14. Paid Holiday Leave entitlement
- 15. Sick Leave Entitlement
- 16. Pension Scheme or Gratuity (*if any*)
- 17. Additional terms or conditions of employment

Dated this day of, 20.....

Signed by:
(*Name of Employer*)

In the presence of:
(*Name of Witness*)

Signed by:
(*Name of Employee*)

In the presence of:
(*Name of Witness*)

SCHEDULE 3

(*Section 23*)

RULES OF THE LABOUR TRIBUNAL

- (1) The Chairperson shall determine the date, time and place for the hearing of a dispute by the Tribunal.
- (2) The Tribunal shall cause notice of the date, time and place for the hearing of the dispute by the Tribunal to be served on a party to a dispute.

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- (3) Notice under item (1) shall be served on a party to the dispute not less than fourteen days' before the date of the hearing of the dispute.
- (4) Full details of the dispute referred to the Tribunal by the Labour Commissioner under section 22(4) of the Act shall be served with the notice under item (2).
- (5) The Chairperson and—
 - (a) one member representing the interests of the employer; and
 - (b) one member representing the interests of the employeeconstitute a quorum at a hearing before the Tribunal.
- (6) The Chairperson shall preside at all sittings of the Tribunal.
- (7) The Tribunal may, if it deems fit, exclude the public from a hearing.
- (8) A party to a dispute may appear before the Tribunal personally or be represented by an attorney-at-law or another person.
- (9) The Tribunal may permit a party who does not wish to be present or represented to make submissions in writing.
- (10) A decision of the Tribunal shall be by a majority of the members present.
- (11) If the votes of members present at a meeting are equally divided, the Chairperson has a casting vote.
- (12) The Tribunal shall state in writing the reasons for its decision.

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- (13) The Tribunal has the same powers as a Magistrate's Court in respect of the summoning of witnesses and the taking of evidence on oath.

(Sgd.) Charliena White

SPEAKER

Passed by the Legislative Assembly this 23rd day of June, 2021.

(Sgd.) Judith Baker

CLERK OF THE LEGISLATIVE ASSEMBLY