

THE EMPLOYMENT RIGHTS (AMENDMENT) BILL
(No. XXXII of 2012)

Explanatory Memorandum

The object of this Bill is to amend the Employment Rights Act with a view to, *inter alia* –

- (a) creating a legal framework for the operation of –
 - (i) shift work by limiting the maximum number of working hours per day and the maximum number of working days per week and offering some protection to female workers before and after childbirth; and
 - (ii) the regime of fixed term contracts of employment to prevent employers from having recourse to such contracts abusively;
- (b) extending the grant of paid annual and sick leave to workers reckoning between more than 6 months' and less than 12 months' continuous employment;
- (c) reviewing the process of disciplinary hearing to ensure that such hearing is held in a fair and independent manner;
- (d) introducing the concept of reinstatement in cases of unfair termination of employment on grounds of redundancy, discrimination and victimisation for participation in trade union activities;
- (e) providing for the setting up of an independent Employment Promotion and Protection Division within the Employment Relations Tribunal to determine, within a specific time frame, whether cases of redundancy or closing down of enterprises are justified or not;
- (f) providing for the payment of a death gratuity in case of death of workers reckoning more than 12 months' continuous employment;
- (g) increasing the quantum of meal allowance from 50 rupees to 70 rupees per day where a worker is required to perform more than 2 hours overtime after having completed a normal day's work; and
- (h) increasing the quantum of recycling fee from 3 days' to 6 days' basic wages per year of service for employees reckoning between 12 months' and 36 months' continuous employment.

2. Opportunity has been taken to address the shortcomings in the Act to render its application more user-friendly.

S. A. Y. A. R. MOHAMED
*Minister of Labour, Industrial
Relations and Employment*

07 December 2012

THE EMPLOYMENT RIGHTS (AMENDMENT) BILL
(No. XXXII of 2012)

ARRANGEMENT OF CLAUSES

Clause

- | | |
|---|--|
| 1. Short title | 22. Section 43 of principal Act amended |
| 2. Interpretation | 23. Section 44 of principal Act amended |
| 3. Section 2 of principal Act amended | 24. Section 45 of principal Act amended |
| 4. Section 5 of principal Act amended | 25. Section 46 of principal Act amended |
| 5. Section 8 of principal Act repealed and replaced | 26. Section 47 of principal Act amended |
| 6. Section 9 of principal Act amended | 27. Section 49 of principal Act amended |
| 7. Section 14 of principal Act amended | 28. New section 49A inserted in principal Act |
| 8. New section 14A inserted in principal Act | 29. Section 51 of principal Act amended |
| 9. Section 20 of principal Act amended | 30. Section 53 of principal Act amended |
| 10. Section 25 of principal Act amended | 31. Section 54 of principal Act amended |
| 11. Section 27 of principal Act amended | 32. Section 62 of principal Act amended |
| 12. Section 28 of principal Act amended | 33. New section 66A inserted in principal Act |
| 13. Section 30 of principal Act amended | 34. Section 67 of principal Act amended |
| 14. Section 31 of principal Act amended | 35. Third Schedule to principal Act amended |
| 15. Part VII of principal Act amended | 36. Eighth Schedule to principal Act repealed and replaced |
| 16. Section 36 of principal Act amended | 37. Fourteenth Schedule added to principal Act |
| 17. Section 37 of principal Act amended | 38. Consequential amendments |
| 18. Section 38 of principal Act amended | 39. Savings and transitional provisions |
| 19. New Part VIIIA inserted in principal Act | 40. Commencement |
| 20. Section 40 of principal Act amended | FIRST SCHEDULE |
| 21. Section 42 of principal Act amended | SECOND SCHEDULE |
-

A BILL

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Employment Rights (Amendment) Act 2012.

2. Interpretation

In this Act –

“principal Act” means the Employment Rights Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

(a) in the definition of “employer”, by repealing paragraph (a) and replacing it by the following paragraph –

(a) means a person who employs a worker and is responsible for the payment of remuneration to the worker;

(b) in the definition of “good and sufficient cause”, by adding the following new paragraph –

(c) absence due to participation in a lawful strike;

(c) in the definition of “harassment”, by inserting, after the words “domestic circumstances,”, the word “sex,”;

(d) by deleting the definition of “shift work” and replacing it by the following definition –

“shift work” means work organised in 2 or more shifts in a period of 24 consecutive hours;

(e) in the definition of “worker” –

(i) in paragraph (a), by deleting the words “Industrial and Vocational Training Act” and replacing them by the words “Mauritius Institute of Training and Development Act”;

- (ii) in paragraph (c)(ii), by inserting, after the word “VIII,”, the words “VIII A,”;
- (f) by inserting, in the appropriate alphabetical order, the following new definitions –

“night work” means work which is performed, whether in shifts or otherwise, during a period of not less than 7 consecutive hours between 6 p.m and 6 a.m;

“Remuneration Regulations” means any regulations made by the Minister under section 93 of the Employment Relations Act and includes any Remuneration Order, made under the repealed Industrial Relations Act, which is still in operation;

4. Section 5 of principal Act amended

Section 5 of the principal Act is amended –

- (a) by repealing subsection (3) and replacing it by the following subsection –

(3) Subject to subsections (3A) and (3B), where a worker, other than a migrant worker, has been in the continuous employment of an employer under one or more determinate agreements for more than 24 months, in a position which is of a permanent nature, the agreement shall, with effect from the date of the first agreement, be deemed to be of indeterminate duration.

- (b) by inserting, after subsection (3), the following new subsections –

(3A) An employer may enter into an agreement with a worker for a specified period of time –

- (a) in respect of a specified piece of work;
- (b) in replacement of another worker who is on approved leave or suspended from work;
- (c) in respect of work and activity which are of a temporary, seasonal or short-term nature;
- (d) for the purposes of providing training to the workforce;
- (e) for a specific training contract; or

- (f) in accordance with a specific scheme set up by the Government or a statutory corporation.

(3B) An agreement under subsections (3) and (3A) shall be made in writing.

5. Section 8 of principal Act repealed and replaced

Section 8 of the principal Act is repealed and replaced by the following section –

8. Written particulars of work agreement

Every employer who employs 10 or more workers, shall provide to every worker engaged for more than 30 consecutive working days a written statement of particulars of employment in the form specified in the Second Schedule, within 14 days of the completion of 30 consecutive working days' service.

6. Section 9 of principal Act amended

Section 9 of the principal Act is amended by repealing subsection (2).

7. Section 14 of principal Act amended

Section 14 of the principal Act is amended –

- (a) by repealing subsection (5) and replacing it by the following subsection –

(5) (a) A worker shall be entitled to a rest day of at least 24 consecutive hours in every period of 7 consecutive days.

(b) Subject to paragraph (c), the rest day specified in paragraph (a) shall be a Sunday.

(c) Where, by nature of its operational requirements, an employer operates on a 7-day week, the rest day shall, at least twice a month, be a Sunday unless the worker and the employer agree otherwise.

- (b) by repealing subsection (8).

8. New section 14A inserted in principal Act

The principal Act is amended by inserting, after section 14, the following new section –

14A. Shift work

(1) An employer shall not, without a worker's consent, require the worker –

(a) to work more than 12 hours in a day;

(b) to perform night work on more than 4 consecutive nights,

on shift work.

(2) Shift work shall be scheduled on a monthly basis.

(3) The monthly schedule of duty worked out on a roster basis indicating the date and time at which a worker shall attend duty shall be handed over to the worker and posted up in a conspicuous place at the place of work at least one week before the schedule is due to take effect.

(4) Notwithstanding subsection (1), a worker on shift work may work in excess of the stipulated hours, without added remuneration, where –

(a) the worker and the employer agree on the number of hours of work to be performed in the shift; and

(b) the average number of hours of shift work in a fortnight does not exceed 90 hours or such fewer number of hours as may be specified in an agreement.

(5) Notwithstanding subsection (1), where a female worker who may be required to perform night work produces a medical certificate certifying that she is or was pregnant, her employer shall not require her to perform night work during a period of at least 8 weeks before, and after, confinement.

9. Section 20 of principal Act amended

Section 20 of the principal Act is amended, in subsections (1) and (2), by deleting the words “the same type of work” and replacing them by the words “work of equal value”.

10. Section 25 of principal Act amended

Section 25 of the principal Act is amended, in subsection (5) –

(a) by deleting the words “any of the leave” and replacing them by the words “any of the annual leave”;

- (b) by inserting, after the words “section 27”, the words “or any other enactment”.

11. Section 27 of principal Act amended

Section 27 of the principal Act is amended –

- (a) by inserting, after subsection (2), the following new subsection –

(2A) Every worker, other than a part-time worker, who remains in continuous employment with the same employer for a period of 6 consecutive months and who has been present on all the working days during that period, shall be entitled during each subsequent month up to the twelfth month, while he remains in continuous employment with the same employer, to one day’s annual leave up to a maximum of 6 days’ annual leave.

- (b) in subsection (3), by deleting the following words –

$N/W \times 20$ normal working days, where “N” means the number of days of work he is required to perform in a week and “W” means the number of working days in a week of a comparable full-time worker.

and replacing them by the following words –

$N/W \times Y$, where “N” means the number of days of work he is required to perform in a week, “W” means the number of working days in a week of a comparable full-time worker and “Y” means the number of days of annual leave to which a worker is entitled under subsection (1) or under any Remuneration Regulations, as the case may be.

- (c) in subsection (5), by deleting the word “annual”;
- (d) by repealing subsection (7) and replacing it by the following subsection –

(7) This section shall be subject to any collective agreement or award, or any other enactment.

12. Section 28 of principal Act amended

Section 28 of the principal Act is amended –

- (a) by inserting, after subsection (2), the following new subsection –

(2A) Every worker, other than a part-time worker, who remains in continuous employment with the same employer for a period of 6 consecutive months and who has been present on all the working days during that period shall be entitled, during each subsequent month up to the twelfth month, while he remains in continuous employment with that employer, to one day's sick leave for each month of service up to a maximum of 6 days' sick leave.

(b) in subsection (2)(a), by deleting the following words –

$N/W \times 15$ normal working days, where “N” means the number of days of work he is required to perform in a week and “W” means the number of working days in a week of a comparable full-time worker.

and replacing them by the following words –

$N/W \times Y$, where “N” means the number of days of work he is required to perform in a week, “W” means the number of working days in a week of a comparable full-time worker and “Y” means the number of days of sick leave to which a worker is entitled under subsection (1) or under any Remuneration Regulations, as the case may be.

(c) in subsection (5), by deleting the words “4 days” and replacing them by the words “3 days”.

13. Section 30 of principal Act amended

Section 30 of the principal Act is amended, in subsection (7), by deleting the words “or work during night shift”.

14. Section 31 of principal Act amended

Section 31 of the principal Act is amended, in subsection (1), by deleting the words “remuneration regulations” and replacing them by the words “Remuneration Regulations”.

15. Part VII of principal Act amended

Part VII of the principal Act is amended by deleting the words “Remuneration Regulations” wherever they appear and replacing them by the words “Sugar Industry Remuneration Regulations”.

16. Section 36 of principal Act amended

Section 36 of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) Subject to subsections (3), (4) and (5) –

- (a) every determinate agreement of which the duration does not exceed 24 months; or

- (b) every agreement entered into under section 5(3A),

shall terminate on the last day of the period agreed upon by the employer and the worker.

- (b) by repealing subsection (2);

- (c) by repealing subsection (5) and replacing it by the following subsection –

(5) An agreement shall not be broken by a worker where he absents himself from work for more than 2 consecutive working days without good and sufficient cause for a first time unless the employer proves that the worker has, after having been given written notice –

- (a) by post with advice of delivery; or

- (b) by delivery at the residence of the worker,

requiring him to resume his employment, failed to do so within a time specified in the notice which shall not be less than 24 hours from receipt of the notice.

17. Section 37 of principal Act amended

Section 37 of the principal Act is amended –

- (a) in subsection (1) –
 - (i) by deleting the words “A party” and replacing them by the words “Subject to section 36(1), a party”;
 - (ii) by deleting the words “, other than an agreement for a specified piece of work or for a period of time,”;
- (b) by repealing subsection (6) and replacing it by the following subsection –
 - (6) Subject to section 39B(2), where an employer terminates the employment of a worker, he shall, on the date of the termination of the employment, give written notice of that fact to the Permanent Secretary.

18. Section 38 of principal Act amended

Section 38 of the principal Act is amended –

- (a) in subsection (1)(a), by inserting, after the word “colour,”, the word “caste,”;
- (b) in subsection (2) –
 - (i) in paragraph (a), by repealing subparagraph (iii) and replacing it by the following subparagraph –
 - (iii) he has notified the worker of the charge made against the worker within 14 days of –
 - (A) the day on which he becomes aware of the misconduct; or
 - (B) the completion of an investigation, if any, carried out to establish the misconduct;

- (ii) in paragraph (a)(iv), by deleting the words “5 working days” and replacing them by the words “7 days”;
- (iii) in paragraph (b)(ii), by deleting the figure “10” and replacing it by the figure “14”;
- (iv) in paragraph (b)(iii), by deleting the words “5 working days” and replacing them by the words “7 days”;
- (c) in subsection (3)(c), by deleting the words “5 working days” and replacing them by the words “7 days”;
- (d) by inserting, after subsection (4), the following new subsections –

(4A) The oral hearing referred to in subsection (4) shall be presided by a person who has not been involved in the investigation and who is able to make an independent decision.

(4B) The worker and the employer may, during the oral hearing specified in subsection (4), negotiate for the payment of compensation with a view to promoting a settlement.

(4C) Where a settlement is reached under subsection (4B) —

- (a) the worker shall not be entitled to join the Workfare Programme; and
- (b) the employer shall not be required to pay the recycling fee under section 47(1).

- (e) by repealing subsection (6) and replacing it by the following subsection –

(6) (a) A notification of a charge, a notice to answer the charge and a notification of a termination of agreement, under subsections (2) and (3), to a worker shall be issued by –

- (i) causing the notification or notice to be handed over to the worker in person; or
- (ii) sending the notification or notice by registered post to the usual or last known place of residence of the worker.

(b) Where a worker –

- (i) refuses to accept delivery of the notification or notice; or
- (ii) fails to take delivery of the notification or notice after being notified that it awaits him at a specified post office,

the notification or notice shall be deemed to have been duly served on the worker on the day he refuses to accept delivery thereof or is notified that it awaits him at the specified post office.

(f) by adding the following new subsections –

(7) Where an employer suspends a worker pending the outcome of disciplinary proceedings against the worker on account of the worker's misconduct or poor performance –

- (a) any period of such suspension shall be on full pay;
- (b) any extension to the delay provided for under subsection (2)(a)(iv), (2)(b)(iii) or (3)(c) made by or on behalf of the worker, shall be on full pay for a period not exceeding 7 days, where the worker is found not guilty of the charge made against him.

(8) No employer shall suspend a worker unless he has informed the worker of the reasons for his suspension.

(9) Any suspension without pay as disciplinary action following a hearing shall not exceed 4 working days.

19. New Part VIII A inserted in principal Act

The principal Act is amended by inserting, after Part VIII, the following new Part –

PART VIII A – REDUCTION OF WORKFORCE AND CLOSING DOWN OF ENTERPRISE

39A. Employment Promotion and Protection Division

(1) There shall be for the purposes of this Act a division of the Tribunal which shall be known as the Employment Promotion and Protection Division.

(2) The Employment Promotion and Protection Division shall –

- (a) be presided by the President or Vice-President of the Tribunal; and
- (b) consist of 2 independent members appointed under section 85(2)(c) of the Employment Relations Act with proven experience in the field of employment relations and finance, respectively.

(3) The Employment Promotion and Protection Division shall deal with all cases referred to the Tribunal under this Part, other than section 39B(11).

39B. Reduction of workforce

(1) In this section, "employer" means an employer of not less than 20 workers.

(2) An employer who intends to reduce the number of workers in his employment either temporarily or permanently or close down his enterprise shall give written notice of his intention to the Permanent Secretary, together with a statement of the reasons for the reduction of workforce or closing down, at least 30 days before the reduction or closing down, as the case may be.

(3) Notwithstanding this section, an employer shall not reduce the number of workers in his employment, either temporarily or permanently, or close down his enterprise unless he has, in consultation with the trade union or group of workers, if any, recognised in accordance with sections 38 and 38A of the Employment Relations Act, explored the possibility of avoiding the reduction of workforce or closing down.

(4) Where an employer reduces his workforce or closes down his enterprise, the employer and the worker may agree on the payment of compensation by way of a settlement.

(5) (a) Where there has not been any settlement for payment of compensation, a worker, as defined in section 40, may –

- (i) join the Workfare Programme in accordance with Part IX; or
- (ii) register a complaint with the Permanent Secretary.

(b) (i) A worker shall register his complaint with the Permanent Secretary within 14 days of the termination of his employment.

(ii) The Permanent Secretary may, on reasonable cause shown, extend the time limit specified in subparagraph (i).

(c) The Permanent Secretary shall enquire into the complaint with a view to promoting a settlement between the parties.

(6) Where no settlement is reached under subsection (5), the Permanent Secretary –

(a) shall, subject to subsection (7)(a), refer the matter to the Tribunal, if he is of the opinion that the worker has a *bona fide* case and thereupon the worker as defined in section 40 shall be entitled to join the Workfare Programme;

(b) may, subject to subsection (7)(b), not refer the matter to the Tribunal, if he is of the opinion that the worker does not have a *bona fide* case and shall advise the worker as defined in section 40 that he may apply for admission to the Workfare Programme.

(7) (a) Where a worker referred to in subsection (6)(a) institutes proceedings before the Court to claim severance allowance under section 46(5), the Permanent Secretary shall not refer his case to the Tribunal but the worker shall be entitled to be admitted to the Workfare Programme if he is a worker as defined in section 40.

(b) Where a worker referred to in subsection (6)(b) institutes proceedings on his own before the Court and the Court gives judgment in favour of the worker under section 46(5), that worker shall, as from the date of judgment, be eligible to be admitted to the Workfare Programme, if he is a worker as defined in section 40.

(8) (a) Where a matter is referred to the Tribunal by the Permanent Secretary, the Tribunal shall proceed to hear the case and give its award within 30 days of the date of the referral.

(b) The Tribunal may, in exceptional circumstances, extend the delay specified in paragraph (a) for another period of 30 days.

(9) Where the Tribunal finds that the reduction of workforce is unjustified, it may, with the consent of the worker, order that that worker –

(a) be reinstated in his former employment with payment of remuneration from the date of the termination of his employment to the date of his reinstatement; or

(b) be paid severance allowance in accordance with section 46(5).

(10) Where the Tribunal finds that the closing down is unjustified, it may order the employer to pay to the worker severance allowance in accordance with section 46(5).

(11) Where an employer reduces the number of workers in his employment either temporarily or permanently, or closes down his enterprise, in breach of subsections (2) and (3), he shall, unless reasonable cause is shown, pay to the worker whose employment is terminated a sum equal to 30 days' remuneration in lieu of notice together with severance allowance, wherever applicable, as specified in section 46(5).

(12) (a) Where a settlement is reached under subsection (4) or (5)(c)

–

(i) the worker shall not be entitled to join the Workfare Programme under section 41; and

(ii) the employer shall not be required to pay the recycling fee under section 47(1).

(b) Where there has been no settlement under subsections (4) and (5) or reinstatement under subsection (9), the employer shall pay the recycling fee specified in section 47.

20. Section 40 of principal Act amended

Section 40 of the principal Act is amended, in the definition of “worker”, in paragraph (f), by deleting the words “6 months” and replacing them by the words “180 days”.

21. Section 42 of principal Act amended

Section 42 of the principal Act is amended –

(a) by repealing subsection (1) and replacing it by the following subsection –

(1) Subject to section 46 and subsection (3), a worker shall be entitled to join the Workfare Programme where –

(a) his agreement is terminated by an employer –

(i) for the reasons specified in section 36(3) and (4);

(ii) in contravention of section 38(1), (2) and (3);

- (iii) for reason of –
 - (A) economic, technological, structural or similar nature affecting the enterprise;
 - (B) misconduct; or
 - (C) poor performance;
 - (iv) without any justification;
 - (b) he has been in the continuous employment of an employer for a period of not less than 180 days on a determinate agreement and the employer terminates the agreement, or the agreement comes to an end.
- (b) in subsection (2) –
 - (i) in paragraph (a), by deleting the figure “7” and replacing it by the figure “14”;
 - (ii) in paragraph (b), by deleting the word “good” and replacing it by the word “reasonable”.

22. Section 43 of principal Act amended

Section 43 of the principal Act is amended –

- (a) in subsections (2) and (3), by deleting the figure “7” and replacing it by the figure “14”;
- (b) by inserting, after subsection (3), the following new subsections –
 - (3A) Where a worker becomes entitled to the payment of a Transition Unemployment Benefit under section 46(3)(a)(ii), he shall register himself with the Permanent Secretary within 14 days of the date on which he is informed that the Permanent Secretary has entered proceedings on his behalf before the Court.
 - (3B) Within 14 days of a registration under subsection (3A), the Permanent Secretary shall notify the Permanent Secretary of the Ministry responsible for the subject of social security of the registration in the form specified in the Fourteenth Schedule.
- (c) in subsection (4), by deleting the words “subsection (3)” and replacing them by the words “subsections (3) and (3B)”;

- (d) in subsection (5), by deleting the words “good” and “subsection (2)” and replacing them by the words “reasonable” and “subsections (2) and (3A)”, respectively.

23. Section 44 of principal Act amended

Section 44 of the principal Act is amended, in subsection (3), by inserting, after the words “Transition Unemployment Benefit”, the words “or the training or re-skilling stipend paid under subsection (1A)(b)”.

24. Section 45 of principal Act amended

Section 45 of the principal Act is amended, in subsection (3), by inserting, after paragraph (a), the following new paragraph –

- (aa) all expenses incurred for any training, re-skilling or multi-skilling of laid-off workers which is organised by the Permanent Secretary;

25. Section 46 of principal Act amended

Section 46 of the principal Act is amended –

- (a) by repealing subsection (1) and replacing it by the following subsection –

(1) Subject to subsection (1A), an employer shall pay severance allowance to a worker as specified in subsection (5) where the worker has been in continuous employment with the employer –

- (a) for a period of not less than 12 months on a contract of indeterminate duration and that employer terminates his agreement; or
- (b) for a period of more than 24 months under one or more determinate agreements in respect of a position of a permanent nature and that employer terminates the agreement of the worker other than a migrant worker.

- (b) by inserting, after subsection (1), the following new subsection –

(1A) Unless otherwise agreed by the parties, no severance allowance shall be payable where –

- (a) a worker and an employer enter into an agreement under section 5(3A) and the agreement comes to an end;
- (b) a worker and an employer enter into one or more determinate agreements for a total period of less than 24 continuous months in respect of a position of a permanent nature and the agreement comes to an end; or
- (c) a worker, whose basic wage or salary is at a rate in excess of 360,000 rupees per annum, and an

employer enter into a determinate agreement and that agreement comes to an end.

(c) by repealing subsection (2) and replacing it by the following subsection –

(2) (a) Subject to section 42(3) or 43(1), where a worker claims severance allowance under subsection (1), he shall register himself with the Permanent Secretary within 14 days of the termination of his employment or the expiry of his contract, as the case may be, and the Permanent Secretary shall enquire into the matter with a view to promoting a settlement.

(b) The Permanent Secretary may, on reasonable cause shown, extend the time limit referred to in paragraph (a).

(d) in subsection (3), by repealing paragraph (a) and replacing it by the following paragraph –

(a) may enter proceedings before the Court if he is of the opinion that the worker as defined in section 40 has a *bona fide* case and thereupon –

(i) if that worker is still unemployed, he shall be entitled to be admitted to the Workfare Programme; or

(ii) if that worker becomes gainfully employed, he shall be entitled to be paid an allowance equivalent to the Transition Unemployment Benefit, as specified in section 44, from the date of the termination of his employment up to the date he has taken up employment.

(e) by inserting, after subsection (3), the following new subsections –

(3A) Where a worker is entitled to be admitted to the Workfare Programme under subsection (3)(a)(i) or to be paid an allowance under subsection (3)(a)(ii), he shall register himself with the Permanent Secretary within 14 days of the date on which he is notified by the Permanent Secretary that Court proceedings have been entered on his behalf.

(3B) Where a worker, who claims severance allowance under subsection (1), registers himself with the Permanent Secretary after 14 days of the termination of his employment, the Permanent Secretary may enter proceedings before the Court if he is of the opinion that the worker

has a *bona fide* case, but the worker shall not be entitled to be admitted to the Workfare Programme.

(f) in subsection (5)(b), by deleting the words “section 38(1), (2), (3) and (4)” and replacing them by the words “section 38(2), (3) and (4)”;

(g) by inserting, after subsection (5), the following new subsections –

(5A) Where a matter has been referred to the Tribunal under section 39B, the Court shall have no jurisdiction to hear the matter.

(5B) Notwithstanding subsection (5), where the Court finds that the termination of employment of a worker, who has been in continuous employment for a period of not less than 12 months with an employer, is effected on grounds specified in sections 38(1)(a) and (d), the Court may, with the consent of the worker, order that that worker –

(a) be reinstated in his former employment with payment of remuneration from the date of the termination of his employment to the date of his reinstatement; or

(b) be paid severance allowance in accordance with subsection (5).

(h) in subsection (6), by deleting the words “as from the date of judgment” and replacing them by the words “ within 14 days as from the date of judgment”;

(i) by repealing subsections (7), (8) and (10);

(j) by repealing subsection (12) and replacing it by the following subsection –

(12) For the purposes of this section, a month’s remuneration shall be –

(a) the remuneration drawn by the worker for the last complete month of his employment; or

(b) an amount computed in the manner as is best calculated to give the rate per month at which the worker was remunerated over a period of 12 months before the termination of his agreement inclusive of payment for extra work, productivity bonus, attendance bonus, commission in return for services and any other regular payment,

whichever is the higher.

26. Section 47 of principal Act amended

Section 47 of the principal Act is amended –

(a) by repealing subsection (1)(a) and replacing it by the following subsection –

(1) (a) Subject to subsections (2) and (2A), where –

- (i) an employer terminates the agreement of a worker as defined in in section 40; or
- (ii) the determinate agreement of a worker as defined in section 40 comes to an end,

the employer shall, not later than 30 days from the date of termination of employment or expiry of the determinate agreement, pay to the National Pensions Fund for credit to the National Savings Fund a recycling fee according to the rates specified in the Eighth Schedule in respect of that worker.

(b) by inserting, after subsection (2), the following new subsection –

(2A) No recycling fee shall be payable where the employment of a worker is terminated in accordance with section 38(2) except where the Court finds that the dismissal is unjustified.

27. Section 49 of principal Act amended

Section 49 of the principal Act is amended –

(a) by inserting, after subsection (1), the following new subsection –

(1A) Notwithstanding any agreement or any provision to the contrary in any other enactment, an employer shall not require a worker to retire before the retirement age.

(b) in subsection (3), by inserting, after the words “subsection (2)”, the words “and section 49A”;

(c) in subsection (3)(a), (b), (c) and (d), by inserting, after the words “or the age of 60”, the words “or at death”;

(d) by repealing subsection (5) and replacing it by the following subsection –

(5) For the purposes of this section –

(a) a day’s remuneration shall be –

(i) the remuneration drawn by the worker in respect of his last normal working day other than a public holiday; or

(ii) an amount computed in the manner as is best calculated to give the daily rate at which the worker was remunerated over a period of 12 months prior to the termination of his agreement, inclusive of payment for extra work, productivity bonus, attendance bonus, commission in return for services and any other regular payment,

whichever is the higher; and

(b) in order to determine a day’s remuneration –

(i) a month shall be deemed to consist of 26 days;

(ii) a fortnight shall be deemed to consist of 12 days; and

(iii) a week shall be deemed to consist of 6 days.

(e) by adding the following subsection –

(6) Where a claim for gratuity on retirement has been made, the Court may, where it thinks fit and whether or not a claim to that effect has been made, order an employer to pay interest at a rate not exceeding 12 per cent per annum on the amount of gratuity payable from the date of retirement to the date of payment.

28. New section 49A inserted in principal Act

The principal Act is amended by inserting, after section 49, the following new section –

49A. Gratuity at death

(1) Where a worker who has been in continuous employment with the same employer for a period of not less than 12 months dies, that employer shall pay a gratuity –

- (a) to the spouse of the deceased worker; or
- (b) where there is no surviving spouse, to the dependants of the deceased worker in equal proportion,

irrespective of any benefits the spouse or dependants may be entitled to under the National Pension Act or any other enactment.

(2) Subject to section 49(3), (4) and (5), the gratuity referred in subsection (1) shall be calculated in accordance with section 49(2).

(3) In this section –

“dependant”, in relation to a deceased worker, means any person who was living in the worker’s household and was wholly or partly dependent on the earnings of the worker at the time of that worker’s death;

“spouse”, in relation to a worker, means the person with whom the worker has contracted a civil or religious marriage and with whom the worker was living under a common roof at the time of that worker’s death.

29. Section 51 of principal Act amended

Section 51 of the principal Act is amended, in subsection (1), by inserting, after the word “terminated”, the words “or who has resigned from his employment”.

30. Section 53 of principal Act amended

Section 53 of the principal Act is amended –

- (a) in subsection (1), by inserting, after the word “Notwithstanding”, the words “any provision to the contrary in”;
- (b) by repealing subsection (2) and replacing it by the following subsection –

(2) The gratuity under subsection (1) shall not be payable where a worker qualifies for a gratuity under the End of the Year Gratuity Act.

31. Section 54 of principal Act amended

Section 54 of the principal Act is amended, in subsection (1)(d), by adding, the word “to”.

32. Section 62 of principal Act amended

Section 62 of the principal Act is amended, in subsection (3)(a)(ii), by deleting the words “registered post to,” and replacing them by the words “by registered post to his registered office or”.

33. New section 66A inserted in principal Act

The principal Act is amended by inserting, in Part XV, the following new section –

66A. Protection from liability

No liability, civil or criminal, shall lie against an officer in respect of any act done or omitted to be done in good faith in the execution of his functions under this Act.

34. Section 67 of principal Act amended

Section 67 of the principal Act is amended –

- (a) by repealing subsection (1)(e) and replacing it by the following subsection –
 - (e) contravenes any provision of this Act or any subsidiary enactment made under this Act;

- (b) in subsection (2), by deleting the words “10,000 rupees and to imprisonment for a term not exceeding one year” and replacing them by the words “25,000 rupees and to imprisonment for a term not exceeding 2 years”;
- (b) in subsection (3), by inserting, after the words “directing that person to comply with this Act”, the words “or any order made by that Court”;
- (c) by adding the following new subsection –
 - (4) A person who fails to comply with an order made under subsection (3) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

35. Third Schedule to principal Act amended

The Third Schedule to the principal Act is amended in paragraph (a), by deleting the words “Rs 50.00” and replacing them by the words “Rs 70.00”.

36. Eighth Schedule to principal Act repealed and replaced

The Eighth Schedule to the principal Act is repealed and replaced by the Eighth Schedule set out in the First Schedule to this Act.

37. Fourteenth Schedule added to principal Act

The principal Act is amended by adding the Fourteenth Schedule set out in the Second Schedule to this Act.

38. Consequential amendments

(1) A reference in any enactment to the repealed Labour Act or a section thereof shall be construed as a reference to the Employment Rights Act or the corresponding section thereof.

(2) The Industrial Court Act is amended, in the First Schedule, by inserting, after the words "Workmen's Compensation Act", the words "Employment Rights Act".

(3) The National Savings Fund Act is amended –

(a) in section 5C, in subsection (2), by deleting the words "section 43(3)" and replacing them by the words "section 43(3) and (3B)";

(b) in section 8 –

(i) in paragraph (a), by deleting the word "and";

(ii) by inserting, after paragraph (a), the following new paragraph

–

(aa) the Minister in the administration of the Workfare Programme Fund; and

(c) by repealing section 17 and replacing it by the following section –

17. Recovery of contribution or surcharge or recycling fee

The Permanent Secretary may, without prejudice to any other remedy which the Minister may have, recover any unpaid contributions or surcharge or recycling fee in the same manner as income tax is recoverable under Part XI of the Income Tax Act.

39. Savings and transitional provisions

(1) Subject to subsection (2), where, before the commencement of this Act, a worker and an employer have entered into one or more determinate agreements for a total period of more than 24 months as specified in section 5(3), the agreement shall continue to be treated as a contract of determinate duration until its expiry unless the worker and the employer agree otherwise.

(2) Where an agreement referred to in subsection (1), is renewed after the commencement of this Act, the agreement shall be deemed to be an indeterminate agreement with effect from the date the first agreement was entered into.

(3) Where this Act does not make provision for any saving or transition, the Minister may make such regulations as may be necessary for such saving or transition.

40. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Section 27(d) shall be deemed to have come into operation on 2 February 2009.

FIRST SCHEDULE

[Section 36]

EIGHTH SCHEDULE

[Section 47(1)(a)]

PAYMENT OF RECYCLING FEE

Between 12 months and up to 120 months of continuous employment	6 days' basic wage or salary for every 12 months of continuous employment
Above 120 months up to 240 months of continuous employment	10 days' basic wage or salary for every 12 months of continuous employment
More than 240 months of continuous employment	15 days' basic wage or salary for every 12 months of continuous employment

SECOND SCHEDULE

[Section 37]

FOURTEENTH SCHEDULE

[Section 43(3B)]

NOTIFICATION OF REGISTRATION UNDER SECTION 43(3B) OF THE EMPLOYMENT RIGHTS ACT

1. Particulars of employer

- (a) Name
- (b) Phone number
- (c) National Pensions registration number
- (d) Address

2. Particulars of worker

- (a) Name
- (b) National Identity Card Number

- (c) Phone number
- (d) Address
- (e) Occupation
- (f) Basic wage...../month/fortnight/week
(delete whichever not applicable)
- (g) Date worker became gainfully employed.....

3. Details of employment

- (a) Date joined service
- (b) Date of termination of employment
- (c) Reason for termination of employment
- (d) Amount payable as recycling fee

I certify that the abovenamed worker is registered in the Workfare Programme and is entitled to the Transition Unemployment Benefit for period to

.....
Date

.....
Permanent Secretary
Ministry of Labour, Industrial Relations
and Employment
