

RETRENCHMENT AND SEVERANCE BENEFITS ACT

CHAPTER 88:13

Act
32 of 1985

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UNOFFICIAL VERSION

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on section 24 of the Act

The Companies Ordinance, Ch. 31 No. 1 (1950 Revised Edition) was repealed and replaced by the Companies Act, (Ch. 81:01) and the corresponding provisions to sections 78 and 250 of the said Companies Ordinance in the said Companies Act shall apply.

CHAPTER 88:13

RETRENCHMENT AND SEVERANCE BENEFITS ACT

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CHAPTER 88:13

RETRENCHMENT AND SEVERANCE BENEFITS ACT

32 of 1985. **An Act to prescribe the procedure to be followed in the event of redundancy and to provide for severance payments to retrenched workers.**

Commencement.
[1/1986].

[2ND JANUARY 1986]

WHEREAS it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Short title. **1.** This Act may be cited as the Retrenchment and Severance Benefits Act.

Interpretation. **2.** In this Act—
“casual worker” means a person who is employed on a temporary or on an irregular or intermittent basis;
“Collective Agreement” has the meaning assigned to that expression by section 2 of the Industrial Relations Act;

Ch. 88:01.

“completed year of service” means continuous service over a period of twelve successive months;

“employer” means an employer within the meaning of the Industrial Relations Act;

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“independent contractor” means a person who is engaged on the basis of a contractual arrangement to do work over an estimated period of time and whose hours of work are not regulated by contract;

“involved worker” means a worker earmarked for retrenchment and named by the employer in the formal notice required by section 4;

“Minister” means the Minister to whom responsibility for the administration of labour matters has been assigned;

“recognised majority union” has the meaning assigned to that expression by section 2 of the Industrial Relations Act;

“redundancy” means the existence of surplus labour in an undertaking for whatever cause;

“retrenchment” means the termination of employment of a worker at the initiative of an employer for the reason of redundancy;

“seasonal worker” means a person who is regularly employed each year, but not throughout the year, to perform work which is limited to a certain time or certain times of the year because of the seasonal nature of the work involved;

“service” means the period of continuous employment of an involved worker with his employer immediately prior to his retrenchment;

“worker” means a worker within the meaning of the Industrial Relations Act.

3. (1) This Act applies to persons falling within the definition of “workers” under the Industrial Relations Act with the exception of—

Application of the Act.

- (a) subject to paragraph (d), workers who have not had more than one completed year of service;
- (b) workers serving a known pre-determined probationary or qualifying period of employment;

- (c) casual workers;
- (d) seasonal workers, unless such workers are employed as part of the regular work force for at least three consecutive seasons with the same employer and for at least one hundred days each season;
- (e) workers employed on a specified fixed term basis or workers engaged to perform a specific task over an estimated period of time where these conditions are made known to the worker at the time of engagement,

and does not apply to independent contractors.

(2) For the purposes of subsection (1), the “estimated period of time” shall be taken to mean a period not exceeding the contract period of a project, including any extensions granted for completion of the project, except that where such workers are transferred from project to project, notwithstanding any short breaks between projects, they shall not be regarded as being excluded from subsection (1).

Procedure for
retrenchment.

4. (1) Where an employer proposes to terminate the services of five or more workers for the reason of redundancy he shall give formal notice of termination in writing to each involved worker, to the recognised majority union and to the Minister.

- (2) The notice shall state—
- (a) the names and classifications of the involved workers;
 - (b) the length of service and current wage rates of the involved workers;
 - (c) the reasons for the redundancy;
 - (d) the proposed date of the termination of employment;
 - (e) the criteria used in the selection of the workers to be retrenched;
 - (f) any other relevant information.

(3) Where notice of retrenchment given by an employer to fewer than five involved workers is followed by notice of retrenchment to any other worker within the time period of the previous notice to the other workers, all workers receiving such notice shall be counted together in determining the number of workers to whom notice has been given for the purposes of this section.

5. Notwithstanding section 4, an employer may, prior to the giving of formal notice in writing of retrenchment, enter into consultation with the recognised majority union with a view to exploring the possibility of averting, reducing or mitigating the effects of the proposed retrenchment.

Consultation prior to formal notice.

6. Subject to section 7, the minimum period of formal notice required by section 4 shall be forty-five days before the proposed date of retrenchment.

Minimum periods of notice.

7. Where, due to unforeseen circumstances it is not practicable for an employer to comply with the requirements of section 6 with respect to formal notice, he shall give the maximum notice that he can reasonably be expected to give in the circumstances and the onus shall be on him to prove that the circumstances which prevented him from complying with section 6 were indeed unforeseen.

Where requirements for notice cannot be complied with.

8. (1) Within seven days of receipt of the notice from the employer, the recognised majority union shall reply in writing copied to the Minister, stating its position regarding the proposed retrenchment and giving reasons for its objections, if any, to the action proposed by the employer.

Recognised majority union to reply stating objections.

(2) Where the recognised majority union fails to reply in accordance with this section, the employer may proceed to effect the retrenchment in accordance with the notice given after notifying the Union and the Minister of his intention so to do.

Request for further information.

9. (1) Where the recognised majority union considers it essential to obtain further specific and relevant information from the employer in order to be able to respond to the notice and requests such information, the employer shall, within three days of receipt of the request, reply to the union either by supplying the information so requested or, where in the employer's opinion disclosure of the information so requested is likely to prejudice his undertaking, by indicating that the information will not be supplied for the reason that his undertaking may be adversely affected thereby.

(2) Within three days of receipt of the information referred to in subsection (1), the union shall submit to the employer the reply referred to in section 8.

Parties to search for a solution.

10. Where the recognised majority union disagrees with any aspect of the employer's proposals for retrenchment or with the withholding of the information requested under section 9, the parties shall enter into discussion with a view to agreeing upon an acceptable solution.

Minister's intervention.

11. (1) Where after the exchange of correspondence or discussion between the recognised majority union and the employer no agreement has been reached, the Minister's assistance may be requested by either party, or he may intervene at his own volition, in an attempt to find a solution.

(2) Upon the Minister's intervention he may request the parties to supply any further relevant information, which request shall be complied with unless the party concerned satisfies the Minister that the information requested is confidential and that its disclosure would be prejudicial to the operation of the undertaking of the employer or to the business of the union.

Workers may request Minister's intervention.

12. Where there is no recognised majority union, a worker to whom formal notice is given under section 4 may request the Minister to intervene on his behalf.

Failure to find solution.

13. Where, having intervened, the Minister is of the view that a solution seems unattainable, he shall so advise the parties before the proposed date of retrenchment stated in the employer's notice or any extended terminal date mutually agreed upon by the parties.

14. (1) During the period of notice of retrenchment stipulated in section 6, or such shorter period as the employer may have given under section 7, it shall be an offence for the employer to put into effect the whole or any part of his retrenchment proposals.

No retrenchment during period of notice.

(2) Notwithstanding subsection (1) the employer is not precluded during the period of notice from terminating the services of a worker for valid cause relating to the worker's conduct or job performance.

15. (1) Where an employer serves a retrenchment notice on a worker, that worker shall continue to report for work unless the employer specifically indicates to him otherwise.

Duty of worker during period of notice.

(2) A worker referred to in subsection (1) is entitled during the period of retrenchment notice, to the full terms and conditions of service as if no retrenchment notice had been served on him.

16. Subject to the operational needs of his business undertaking, an employer shall not refuse the request of an involved worker, made in advance, for reasonable time off from his job in order that he may explore the possibility of his obtaining alternative employment.

Time off to seek alternative employment.

17. By mutual consent, the parties to a Collective Agreement may adopt a procedure other than that prescribed in this Act but such procedure shall be set out in their registered Collective Agreement and shall satisfy the requirements—

Variation by mutual consent.

- (a) that a period of notice to retrench be stipulated; and
- (b) that the Minister be notified in writing in accordance with section 4.

18. (1) Where any part of the employer's retrenchment proposals is eventually put into effect, severance benefits shall be payable by the employer to the retrenched worker in accordance with this section.

Severance benefits.

(2) Where the retrenched worker is covered by a registered Collective Agreement, the terms of which with respect to severance benefits are no less favourable than those set out in this Act with respect to severance benefits, the provisions of the said Collective Agreement shall apply.

(3) Where the retrenched worker is not covered in the manner set out in subsection (2), the minimum severance benefits payable by the employer are as follows:

- (a) where he has served the employer without a break in service for between more than one but less than five years, he is entitled for each such completed year of service to two weeks' pay at his basic rate if he is an hourly, daily or weekly-rated worker, or one half month's pay at his basic rate if he is a monthly-rated worker;
- (b) where he has served the employer without a break in service for five years or more, he is in addition to his entitlement under paragraph (a), entitled for the fifth year and for each succeeding completed year of service to three weeks pay at his basic rate if he is an hourly, daily or weekly rated worker, or three quarters month's pay at his basic rate if he is a monthly-rated worker.

(4) For each period of service amounting to less than a completed year of service and in respect of workers who qualify under section 3(1)(d), payment shall be calculated on a *pro rata* basis.

(5) Every worker to whom this Act applies retrenched on or after 1st January, 1985, is entitled to the severance benefits contemplated by this section regardless of the number of workers in his employer's work force.

(6) This section shall not apply to a retrenched worker who is eligible to receive from his employer terminal benefits that are no less favourable than those set out in this section.

19. (1) Where the proposals for retrenchment contemplate the absorption of retrenched workers into another undertaking of the same employer or an undertaking of the employer's assignee or successor, then that employer may withhold the payment of severance benefits, paying instead to the worker on regular pay days from the date of retrenchment to the date of absorption or other alternative employment, whichever first happens, a relief payment of fifty per cent of his basic salary.

Relief payments.

(2) The period between the retrenchment and the absorption referred to in subsection (1) shall be for a duration of not more than three months or until the worker finds alternative employment elsewhere, whichever is earlier.

(3) Where as events turn out the employer is required by this Act to pay severance benefits to the retrenched worker, the relief payment referred to in subsection (1) is deductible from the retrenched worker's final severance entitlement.

(4) In this section and in section 21 "successor" includes assignee, associate company and subsidiary company.

20. The Minister, after consultation with those organisations he considers most representative of employers and labour may, from time to time by Order, subject to negative resolution of Parliament, vary the quantum of benefits payable under section 18.

Minister may vary the benefits.

21. Where a worker unreasonably refuses an offer by his employer or his employer's successor of comparable and suitable employment without any break in service as an alternative to being retrenched, his severance benefits may be withheld.

Forfeiture of entitlement to severance benefits.

22. (1) Subject to section 19, where after thirty days of the expiration of the notice the employer fails to pay the severance benefits or the remainder thereof, as the case may be, the employee may, through his recognised majority union apply to the Industrial Court for redress.

Right of action of aggrieved worker.

(2) Where there is no recognised majority union the aggrieved worker may, through the Minister or through any union, refer such failure to the Industrial Court for enquiry and settlement.

Trade disputes arising out of retrenchment.

- 23.** (1) A dispute arising out of a retrenchment issue including—
- (a) a dispute which alleges unfair dismissal;
 - (b) a difference of opinion as to the reasonableness or otherwise of any action taken or not taken by an employer or a worker; or
 - (c) a dispute as to what is reasonably comparable in respect of a terminal benefit scheme,

may be reported to the Minister as a trade dispute and shall be dealt with as such under the Industrial Relations Act.

(2) A claim against an employer for unpaid severance benefits under this Act is deemed to be a trade dispute.

Preferential payments.

***24.** In the event of a winding up or the appointment of a receiver all severance benefits, including terminal benefits referred to in section 18(6), due to a retrenched worker shall enjoy the same priority as wages or salary due to any clerk or servant in respect of services rendered to a company under sections 78 and 250 of the Companies Ordinance but without limitation.

Ch. 31. No. 1.

Penalty.

25. (1) A person who contravenes the provisions of this Act is guilty of an industrial relations offence within the meaning of the Industrial Relations Act and liable—

- (a) in the case of an employer, to a fine of ten thousand dollars; and
- (b) in the case of a union, to a fine of five thousand dollars.

(2) Where a contravention referred to in subsection (1) is brought before the Industrial Court it shall be dealt with in accordance with the procedure laid down by the Industrial Relations Act, and the Court may make an award in favour of an aggrieved party.

Act binds the State.

26. This Act binds the State.

*See Note on page 2.