

DOMINICA

LABOUR CONTRACTS ACT

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An Act to make provisions whereby every employer is required to provide each employee within the application of this Act with a written contract specifying certain particulars of his employment; to provide the contents of a basic labour contract, and for the purposes connected therewith.

Commencement 16th June 1983

Short title.

1. This Act may be cited as the Labour Contracts Act.

Interpretation.

2. (1) In this Act-

"holiday" means a public holiday or a day which by agreement is a holiday with pay;

"labour contract" means an employment contract prepared pursuant to section 3;

"Labour Commissioner" means the public officer appointed to the office of Labour Commissioner in accordance with the Constitution.

2. (2) This Act does not apply to the State.

2. (3) This Act does not apply to an employer in respect of the employment of an employee –

- (a) who is included in a category of employees for which a trade union is recognised as the bargaining agent by the employer;
- (b) who normally works or is expected to work less than twenty-one hours in each week;
- (c) who is hired for a fixed term of two weeks or less;
- (d) who is employed by the employer on the date on which this Act comes into force;
- (e) who, having been a party to a labour contract with the employer pursuant to this Act, is re-engaged in the same or similar employment by the employer after an absence from that employment of less than six months; who shall be presumed unless the contrary appears, to be employed on the same terms as his former contract;
- (f) who is the father, mother, husband, wife, brother, sister, son or daughter of the employer;
- (g) who is employed as a home assistant;
- (h) who is employed as an agricultural worker.

Employer to prepare labour contract.

3. Any person who employs another shall, not later than fourteen days from the date on which the employment commences, prepare a contract labour contract in writing correctly describing the terms and conditions of employment that have been agreed upon by the employer and the employee.

Signing of labour contract.

4. Where, pursuant to section 3, a labour contract has been prepared by an employer respecting the employment of an employee –

- (a) a copy of the labour contract shall be delivered forthwith by the employer to the employee for his inspection;
- (b) the employer and employee shall sign the labour contract including any amendments agreed upon within three days of the date on which it was delivered to the employee; and
- (c) the employer shall give the employee a signed copy of the labour contract.

Contents of labour contract.

5. (1) A labour contract between an employer and an employee shall set out _

- (a) the names of the employee and the employer;
- (b) the date on which the employment of the employee began or will begin;
- (c) a description of the duties of the employee;
- (d) the rate of pay that the employee is entitled to receive in respect of his employment, or the method to be used for calculating the pay of the employee;
- (e) the intervals at which the employee will receive his pay, being intervals not exceeding one months in duration;
- (f) the period of time during which the employee will be on probation;
- (g) the normal hours of work of the employee;
- (h) the rate of pay that the employee is entitled to receive for hours worked by him in excess of or outside his normal working hours;
- (i) the annual leave to which the employee is entitled and the pay that he is entitled to receive during the period of his annual leave;
- (j) the sick leave to which the employee is entitled and the pay that he is entitled to receive during any period of sickness;
- (k) the length of notice that the employer and employee must give in order to terminate the labour contract; and
- (l) any other term or condition of employment that has been agreed upon.

Maternity leave

5. (2) A labour contract between an employer and a female employee shall set out, in addition to the matters mentioned in subsection (1), the maternity leave to which the employee is entitled and the pay that she is entitled to receive during the period of her maternity leave.

5. (3) If an employee is not entitled to anyone or more of the benefits or terms mentioned in subsections (1) or (2), the labour contract respecting his employment shall specify each benefit or term to which he is not entitled.

5. (4) Without prejudice to, and notwithstanding the provisions of section 9, where an employer or an employee has failed to comply with the provisions of sections 3 and 4 and subject to any other terms which might have otherwise been agreed to, the employment of the employee shall be deemed to be in terms no less favourable than those set out in the Schedule.

Effect of industrial agreement on labour contract.

6. (1) Where-

(a) a trade union is recognised by an employer as the bargaining agent for a category of employees; and

(b) an industrial agreement has been concluded and is in force between the trade union and the employer respecting that category of employees, a labour contract in respect of the employment of an employee included in that category of employees is void except in so far as it confers any benefit on the employee that is more favourable to him than that contained in the industrial agreement.

6. (2) Where-

(a) an industrial agreement between an employer and a trade union representing employees of the employer expires; and

(b) no trade union is or has applied to be recognised by the employer as the bargaining agent for those employees,

the provisions of this Act shall apply in respect of those employees as though the employment of each of them had commenced on the day following the date on which the industrial agreement expired.

6. (3) Where the recognition of a trade union as the bargaining agent for a bargaining unit is terminated pursuant to the Industrial Relations Act while an industrial agreement respecting the bargaining unit is in force, the terms and conditions of employment of the employees in the bargaining unit shall, for the purposes of this Act and section 41 (2) of the Industrial Relations Act, be those set out in the industrial agreement until the industrial agreement expires.

Capacity.

7. (1) Every person of the full age of eighteen years or more shall have the capacity to enter into a labour contract pursuant to this Act.

7. (2) Subject to the Employment of Children Prohibition Act and the Employment of Women, Young Persons and Children Act, a person under the age of eighteen years may enter into a labour contract only with the written

consent of a parent or guardian of the person or, where that person has no parent or guardian, the written consent of the Labour Commissioner or the police officer in charge of the district in which the labour contract is to be made or performed.

7. (3) A person who is a party to a labour contract pursuant to this Act is entitled to receive directly the wages and benefits payable pursuant to the labour contract and may sue or be sued in respect of the labour contract notwithstanding his infancy.

Amendment of contract.

8. A labour contract between an employer and an employee may be amended from time to time as the employer and employee may agree.

Offences.

9. Any person who violates or fails to comply with any provision of this Act is liable on summary conviction to a fine of five hundred dollars.

Schedule.

10. The **Schedule** is the basic labour contract which will be applicable to all persons undergoing industrial training in new enterprises and to all workers whose terms and conditions of employment are not the subject of a collective or industrial agreement or an agreement entered into in accordance with the provisions of sections 3 and 4.

SCHEDULE

BASIC LABOUR CONTRACT

1. **DUTIES:**

Duties shall be such as have been assigned to the employee from time to time by the employer. The employee will be required to obey all lawful orders and instructions given by Management. The job description is annexed hereto.

2. **EMPLOYEE'S RESPONSIBILITY:**

(a) The employee is required to perform to the best of his ability, the duties to which he is assigned. Each assignment shall be normally on jobs within the job categories in which he is employed but the employee may be required to perform duties of a lower category provided there is no reduction of his regular rate of pay as a result.

(b) The employee is required to attend work on his normal working days at the time stipulated and shall not report for work after starting time

without a reasonable excuse or absent himself without previous permission from an authorised officer of the business.

(c) If the employee absents himself from duty without permission except in the case of sickness or other unavoidable circumstances, he may be liable to disciplinary action.

(d) The employee shall be required to make good any loss or damage to equipment or materials where the loss or damage is due to the proven negligence of the employee.

(e) The employee shall not remove from the premises or take away from a site or job any materials of the business without permission.

(f) The employer or his representative shall have the right to order private checks and searches at anytime so as to prevent goods, materials or equipment from being illegally taken out from the premises, site or jobs.

(g) The employee will adhere strictly to safety and maintenance regulations in force and carry out such work as is incidental to good safety practices. In this connection if the employee is found under the influence of alcohol or other dangerous non-prescribed drugs while on duty he will be subject to disciplinary measures.

(h) The employee shall not divulge any confidential and secret information obtained at work or by virtue of his employment.

(i) Where the employee is required to wear protective clothing or equipment, the clothing or equipment shall be worn by the employee when carrying out his duties. The protective clothing shall be issued by the employer.

3. RESPONSIBILITIES OF EMPLOYER:

(a) The employer shall pay the employee the wages agreed upon and shall pay not less than the minimum wages provided by legislation for the employment.

(b) The employer shall observe and follow statutory restrictions on the method of payment of wages to the employee and shall pay the employee at the intervals agreed upon being intervals not exceeding one month in duration.

(c) The employer shall pay all social security contributions required by legislation.

(d) The employer shall contribute to the redundancy fund (if any), in respect of the employee and shall make redundancy payments to the employee if entitled on dismissal on redundancy grounds.

(e) The employer shall discharge the duty of care owed at common law or by statute to the employee by ensuring that he provides competent fellow employees, safe plant, appliances and place of work, and a safe system of work.

(f) The employer shall make such rules and regulations as is considered necessary or advisable for the orderly efficient and safe conduct of his business and he shall ensure that employees observe such rules and regulations.

4. HOURS OF WORK:

(a) The employee will not be required to work more than forty normal hours per week.

(b) The employee shall not be required to work more than eight normal hours per day and shall be entitled to not less than half an hour off for lunch.

(c) The employee shall be entitled to at least one full day off per week.

(d) The number of hours in the regular working week is stated for the purpose of defining the normal week and calculating overtime and shall not be construed as a guarantee of any minimum nor as a restriction of any maximum number of hours to be worked.

5. PAY FOR OVERTIME AND PUBLIC HOLIDAYS:

(a) It is recognised that wherever the employer considers operational conditions to require it, the employee may be called upon and he may consent to work reasonable overtime in excess of his normal working hours. As far as is possible at least four hours notice of the requirement for overtime will be given.

(b) Overtime at the rate of time and one half will be paid for work done in excess of the normal hours on a normal working day, and double time for work performed on public holidays.

6. HOLIDAY WITH PAY:

The employee who is not required by the employer to work on a statutory or proclaimed holiday shall receive pay for the hours he would normally have worked had not the day been a public holiday, provided always - that the employee attends work on his normal working days preceding and succeeding

the holiday unless his absence from work on these days has been notified and was an approved absence.

7. ANNUAL VACATION LEAVE:

(a) The employee shall be eligible to qualify for annual vacation leave with pay after each complete calendar year of service. Minimum leave entitlement in accordance with the Labour Standards Act shall be as follows:

- (i) under five years service - two (2) weeks;
- (ii) five years and over - three (3) weeks.

(b) If a holiday occurs during the employee's vacation leave on a day normally a working day, the employee shall be granted an extra day vacation leave.

8. TERMINATION OF EMPLOYMENT

The employment of the employee who has passed his probationary period may be terminated in the following circumstances:

8. (1) *Termination for serious misconduct:*

(a) the employer may terminate the employment of the employee without notice or payment of any severance payment or other terminal benefits where the employee has been guilty of serious misconduct affecting his employment.

(b) "serious misconduct" means misconduct that is such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the employee.

8. (2) Termination for misconduct that is not serious misconduct for unsatisfactory performance, or Breach of Conditions of Employment:

(a) Where the employee is guilty of an offence in breach of his condition of employment or any misconduct that is not serious or a breach of any work rule governing his behaviour or any misconduct such that the employer cannot reasonably be expected to continue to employ him if it is repeated, the employer may give the employee a written warning. If the employee after being warned is guilty of the same or similar offence or misconduct in the following six months, the employer may terminate his employment.

(b) Where the employee is not performing his duties in a satisfactory manner, the employer may give him a written warning. If the employee after being warned, does not during the following three months period demonstrate that he is able to perform and has performed his duties in a satisfactory manner, the employer may terminate his employment.

8. (3) *Termination by reason of redundancy:*

The employer may terminate the employment of the employee because the employee was redundant in accordance with the provisions of the Protection of Employment Act

"redundancy" means the loss of permanent employment arising out of the introduction of new methods of work, whether by automation, mechanisation, rationalisation or re-organisation due to shortage of work, or in accordance with section 11 of the Protection of Employment Act.

8. (4) *Termination at the employee's initiative:*

(a) Where the employee intends to terminate his employment with the employer he may do so by giving the employer notice of the intended termination not later than –

(i) one month before the date on which the termination is to have effect, where he is paid on a monthly basis or a basis of more than a month; and

(ii) one week before the date on which the termination is to have effect, where he is paid on a basis less than a month.

(b) The employee may terminate his employment in accordance with section 20 of the Protection of Employment Act which states:

"An employee may terminate his employment with an employer without complying with section 19 of the Act where the employer has been guilty of serious misconduct in relation to the employee such that the employee cannot reasonably be expected to take any course other than to terminate his employment with the employer".

8. (5) *Termination due to extended lay-off:*

(a) Where the employee has been laid off by the employer for a period of six or more consecutive weeks the employee may elect to make a claim in writing to the employer for a redundancy benefit

(b) Where the employee makes a claim for a redundancy benefit pursuant to subparagraph (a), the employer shall-

(i) pay to the employee the redundancy benefit to which he is entitled pursuant to section 22 of the Protection of Employment Act; or

(ii) serve on the employee within seven days of the date on which the claim was made a written counter-notice offering to give the employee full time employment to commence within four weeks of the date on which the counter-notice is given and to continue for a period of not less than thirteen weeks.

(c) Where the employer serves a counter-notice on the employee pursuant to subparagraph (5)(b) the employer shall not be liable to pay a redundancy benefit if he makes full time employment with him available to the employee –

(i) within four weeks of the date on which the counter-notice was given; and

(ii) for a period of not less than thirteen consecutive weeks during which the employer does not layoff the employee.

9. RIGHT OF APPEAL:

9. (1) Where in the opinion of the employee, the employer has failed to comply with the Labour Standards Act other than sections 28 and 29, or where the employee is dissatisfied with any disciplinary or other action taken against him, the employee may make a complaint to the Labour Commissioner in writing.

9. (2) A complaint made to the Labour Commissioner pursuant to subclause (1) shall contain-

(a) the names of the employee and employer;

(b) a brief statement of the facts and circumstances relevant to the complaint; and

(c) a statement of the relief claimed.

9. (3) The Labour Commissioner shall take such steps as he considers appropriate to assist the parties to the complaint to settle the complaint.

9. (4) Where the parties to a complaint are unable to settle a complaint within 21 days from the date on which it was forwarded to the Labour Commissioner pursuant to subclause (1) either of the parties or the Labour Commissioner may report to the Minister that the parties are unable to settle the complaint by the process of conciliation.

9. (5) (a) Upon the receipt of such a report the Minister may refer the complaint to a Tribunal appointed in accordance with the provisions of the Industrial Relations Act.

10. EQUAL WAGES:

(a) The employer shall not establish or maintain differences in wages between the employee and any other employee employed in the same business who is performing under the same working conditions, the same or similar work or jobs requiring similar skills, efforts and responsibility, on the basis only of the sex of the employee or the other employee.

(b) Payment to male and female employees of different wages does not constitute a violation of this section if the difference is based on any factor or factors other than sex that justify such a difference.

11. RATES OF PAY:

11. (1) Rates of pay shall apply to the various job classifications and not to the individual performing the work.

11. (2) Where no work in his usual occupation is available the employee shall agree to perform during normal working hours alternative duties outside his occupation at the substantive rate of his classification.

12. TRAINING PERIOD:

The employee may be required to undergo a reasonable period of training of a duration fixed by the employer for employees of that job classification at the commencement of his employment during which period the employee shall be considered a temporary employee.

13. PROBATIONARY PERIOD:

13. (1) The new employee may be required to serve a probationary period of not more than six months following the period of training.

13. (2) The employer may terminate the employment of an employee at any time during the probation period of that employee without notice or payment of any sum in lieu of notice, if the employee does not demonstrate that he is able to perform his duties in a satisfactory manner.

14. PAYMENT DURING CERTIFIED PERIODS OF ILLNESS:

14. (1) If the employee is unable to attend work due to illness he must-

(a) make every reasonable effort to notify the employer on the first day of his absence due to illness;

(b) submit within three days a medical certificate from a qualified medical practitioner stating the illness and the period for which the employee will be absent from work.

14. (2) Employees will be eligible to receive payment for certified periods of illness subject to the conditions set out below:

(a) the employee shall have worked for the employer for a continuous period of six months at the date of application;

(b) no payment shall be due in respect of the first three days of illness where the illness is for more than three days except where the employee has been hospitalised when payment shall commence from the first day of illness;

(c) such payment shall not be made in respect of any illness during a period of annual vacation leave or other leave of absence; and

(d) pay shall be for a maximum period of six weeks in any one year at the rate of 100% of the hourly, weekly or monthly basic rate of the employee minus the amount the employee has received from the Social Security Scheme.

15. OCCUPATIONAL ILLNESS OR INJURY:

Where the employee has become ill as a result of his occupation or an injury sustained in the course of his employment he shall be entitled to pay for a maximum period of twenty-six weeks at the rate of 100% of his hourly, weekly or monthly basic rate of remuneration minus the amount the employee has received from the Social Security Scheme.

16. MEDICAL EXAMINATION:

The employee may be required by the employer at any time to undergo a medical examination by a qualified practitioner appointed by the employer where in the employer's opinion such an examination is desirable, at the expense of the employer.

17. DRESS:

The employer reserves the right to require the employee to dress in a manner befitting his duties and the policy of the business.

18. NOTICE OF TERMINATION BY REASON OF REDUNDANCY:

Where a permanent reduction of the workforce is contemplated by reason of redundancy, notice or pay in lieu will be given by the employer in accordance with section 16 of the Protection of Employment Act except in cases of natural disaster where no notice may be given.

19. LAYOFF AND RECALL:

Meaning of lay-off:

- (a) A week counts as a week of lay-off if an employee gets no pay of any kind from his employer for that week, because although he is available for work there is no work for him to do.
- (b) If and when a lay-off becomes necessary, seniority of service shall be the determining factor where all other relevant considerations are equal, provided that the principle is applied in a manner which will allow for the most efficient operation.
- (c) The above principle shall also be applied in recall after lay-off.

20. LEAVE OF ABSENCE:

In the case of death in the immediate family, i.e. father, mother, sister, brother, husband, wife, children and relatives in the immediate household, and on application by the employee, leave of absence of two days with pay shall be granted by the employer.

21. PROCEDURE FOR SETTLING INDIVIDUAL GRIEVANCES:

The employee will make every effort to settle promptly, fairly and as near as possible to the point of origin, any personal grievances which may be in relation to his employment.

In order to give effect to this undertaking, the following steps, should they be required, are notified as the procedure for achieving a settlement:

- Step 1: The employee wishing to take up an individual grievance should raise it verbally within two days of its happening with the person who is responsible for the job or his immediate supervisor, who will make every attempt to resolve it fairly and quickly.
- Step 2: If a solution is not reached at Step 1, the grievance should then be reported by the following morning to the employer who will endeavour to find a satisfactory settlement.
- Step 3: If a solution is not reached at Step 2, the grievance will be presented to the Labour Commissioner for conciliation.

22. DISCIPLINE:

Where the employer is entitled to terminate the employment of the employee in accordance with the terms for termination, the employer may, rather than

terminate, suspend that employee without pay for such period as he may consider appropriate.

23. MATERNITY LEAVE:

Female employees who have completed one year continuous service with the employer shall be granted maternity leave subject to the following conditions:

- (a) the employee who is desirous of proceeding on maternity leave must apply at least six weeks before the expected date of commencement of maternity leave;
- (b) applications for maternity leave must be supported by a medical certificate from a qualified medical practitioner stating the anticipated date of confinement;
- (c) maternity leave shall cover a maximum of twelve weeks and

shall be divided in not more than six weeks pre-natal period and not less than six weeks post natal period;

(d) the employee applying for maternity leave must absorb the current year's vacation leave with pay; and

(e) the employee will be granted four weeks at half pay during maternity leave.