

EMPLOYMENT (TERMINATION AND LAY-OFF BENEFITS) REGULATIONS 1980

1. These Regulations may be cited as the Employment (Termination and Lay-Off Benefits) Regulations 1980.

2. In these Regulations unless the context otherwise requires -

“business” includes a trade, industry, profession, undertaking and any activity carried on by a person or body of persons, whether corporate or unincorporate;

“continuous contract of service” means uninterrupted service with an employer, including service which may be interrupted on account of sickness, authorized leave, an accident, a strike which is not illegal, a lock-out, or a cessation of work which is not due to any fault on the part of the employee;

“dependant” means any member of the family of a deceased employee who wholly or in part depended upon his earnings at the time of his death; “lock-out” shall have the meaning assigned to it under the Industrial Relations Act 1967;

“member of the family” means wife, husband, parent, grandparent, step-father, step-mother, child, grandchild, step-child, brother, sister, half-brother, half-sister, step-brother and step-sister;

Provided that -

(a) the child of a deceased employee shall be deemed to include the illegitimate child of such employee and his adopted child and any child whose adoption by him has been registered under the provisions of the Registration of Adoption Act 1952, and any child under the care, custody or control of such employee pursuant to the provisions of Part III of the Children and Young Persons Act 1947; and

(b) the parent of a deceased employee shall be deemed to include the father and the mother of an illegitimate child and the person who has adopted any child or has registered the adoption of any child under the provisions of the Registration of Adoptions Act 1952, and the person who has the care, custody or control of a child pursuant to Part III of the Children and Young Persons Act 1947;

“out-worker” means a person to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in his own house or on other premises not under the control or management of the person who gave out the materials or articles;

“relevant date” mean-

(a) in relation to termination, the date with effect from which the contract of service of an employee is terminated; or

(b) in relation to a lay-off, the date on which the period of four consecutive weeks referred to in regulation 5 (1) has expired;

“renewal” includes extension and any reference to renewing a contract of service shall be construed accordingly;

“termination or lay-off benefits payment” means the amount payable by an employer to an employee under regulation 3;

“the Act” means the Employment Act 1955;

“strike” shall have the meaning assigned to it under the Industrial Relation Act 1967.

3. (1) Subject to these Regulations, an employer shall be liable to pay termination or lay-off benefits payment calculated in accordance with regulations 6 to an employee who has been employed under a continuous contract of service for a period of not less than twelve months ending with the relevant date if -

(a) the contract of service of the employee is terminated; or

(b) the employee is laid-off within the meaning of regulation 5.

(2) For the purpose of this regulation a continuous contract of service for a period of not less than twelve months shall include two or more periods of employment which are not less than twelve months in the aggregate if the intervening period or periods between one period of employment and another does not in the aggregate exceed thirty days.

4. (1) Subject to paragraphs (2), (3) and (4), an employee shall be entitled to termination benefits payment where his contract of service is terminated for any reason whatsoever otherwise than -

(a) by the employer, upon the employee attaining the age of retirement if the contract of service contains a stipulation in that behalf; or

(b) by the employer, on the grounds of misconduct inconsistent with the fulfilment of the express or implied condition of his service, after due inquiry, or

(c) voluntarily by the employee, other than under section 13 (2) or the reasons specified in section 14 (3) of the Act.

(2) An employee shall not be entitled to any termination benefits payment if -

(a) his contract of service is renewed, or he is re-engaged by the same employer under a new contract of service on terms and conditions which are not less favourable; and

(b) the renewal or re-engagement takes effect immediately on the ending of his employment under the previous contract;

Provided that the period of employment immediately prior to such renewal or re-engagement shall be taken into account for the purpose of determining the amount of termination or lay-off benefits payment payable to an employee.

(3) An employee shall not be entitled to any termination benefits payment if, not less than seven days before the date with effect from which his services are to be terminated,

the employer has offered to renew his contract of service or to re-engage him under a new contract, so that -

(a) the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not be less favourable than the corresponding provisions of the contract as in force immediately before the termination of his services; and

(b) the renewal or re-engagement would take effect on or before the date with effect from which his services are to be terminated, and the employee has unreasonably refused that offer.

(4) An employee shall not be entitled to any termination benefits payment where he leaves the service of his employer before the expiration of any notice given to him by his employer in accordance with section 12 of the Act -

(a) without the prior consent of the employer, which consent shall not be unreasonably withheld; or

(b) without having made payment to the employer in accordance with section 13.

5. (1) Where an employee is employed under a contract on such terms and conditions that his remuneration thereunder depends on his being provided by the employer with work of the kind he is employed to do, he shall, for the purposes of regulation 3 (b), be deemed to be laid-off if -

(a) the employer does not provide such work for him on at least a total of twelve normal working days within any period of four consecutive weeks; and

(b) the employee is not entitled to any remuneration under the contract for the period or periods (within such period of four consecutive weeks) in which he is not provided with work;

Provided that any period during which an employee is not provided with work as a result of a rest day, a public holiday, sick leave, maternity leave, annual leave, any other leave authorized under any written law, or any leave applied for by the employee and granted by the employer shall not be taken into account in determining whether an employee has been laid-off.

(2) The continuity of a contract of service of an employee shall not be treated as broken by any lay-off as a result of which no lay-off benefits payment has been made.

6. (1) Subject to the provisions of these Regulations, the amount of termination or lay-off benefits payment to which an employee is entitled in any case shall not be less than -

(a) ten days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for a period of less than two years; or

(b) fifteen days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for two years or more but less than five years; or

(c) twenty days' wages for every year of employment under a continuous contract of service with the employer if he has been employed by that employer for five year or more,

and pro-rata as respect an incomplete year, calculated to the nearest month.

(2) For the purposes of this regulation "wages" shall have the meaning assigned thereto under section 2(1) of the Act and "a day's wages" shall be computed in such a manner so as to give the employee his average [true day's wages](#) calculated over the period of twelve completed months' service immediately preceding the relevant date.

(3) For purposes of this regulation, the period of employment under a continuous contract of service shall include any such employment prior to the date on which these Regulations come into force.

(4) The termination or lay-off benefits payment to which an employee is entitled under this regulation shall be in addition to any payment to which he may be entitled under section 13 of the Act.

7. The provisions of these Regulations shall not apply to any out-worker.

8. (1) Where a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the business for the purposes of which an employee is employed or of part of such business, the employee shall not be entitled to any termination benefits payable under these Regulations, if within seven days of the change of ownership, the person by whom the business is to be taken over immediately after the change occurs, offers to continue to employ the employee under terms and conditions of employment not less favourable than those under which the employee was employed before the changed occurs and the employee unreasonably refuses the offer.

(2) If the person by whom the business is to be taken over immediately after the change occurs does not offer to continue to employ the employee in accordance with paragraph (1), the contract of service of the employee shall be deemed to have been terminated, and consequently, the person by whom the employee was employed immediately before the change in ownership occurs and the person by whom the business is taken over immediately after the change occurs shall be jointly and severally liable for the payment of all termination benefits payable under these Regulations.

(3) Where an offer by the person by whom the business is taken over immediately after the change occurs to continue to employ the employee is accepted by such employee the period of employment of the employee under the person by whom the employee was employed immediately before the change occurs, shall, for the purposes of these Regulations, be deemed to be a period of employment under the person by whom the business is takeover, and the change of employer shall not constitute a break in the continuity of the period of his employment.

9. (1) Regulation 8 shall not apply to any change whereby the ownership of the business, for the purposes of which an employee was employed by a deceased employer, passes to a personal representative of the deceased employer.

(2) Where an employer dies, the personal representative of the deceased employer shall, for the purposes of these Regulations, be deemed to continue to be the employer in relation to any employee employed by the deceased employer in the same way as the deceased employer would have continued to be the employer but for his death, notwithstanding any break between the date of the death of the deceased and the date of the appointment of the personal representative of the deceased.

10. (1) Where an employer has given notice to an employee to terminate his contract of service, and before that notice expires the employee dies the provisions of these Regulations shall apply as if the contract of service has been duly terminated by the employer by notice expiring on the date of the employee's death.

(2) Where an employer has made an offer to an employee under regulation 4 (3) and the employee dies without having either accepted or refused the offer, the employee shall, for the purposes of these Regulations, be deemed to have reasonably refused the offer and be accordingly entitled as on the date of his death to termination benefits payment by the employer.

11. (1) Any termination or lay-off benefits payment payable under these Regulations shall be paid by the employer to the employee not later than seven days after the relevant date.

(2) Any employer who fails to comply with paragraph (1) shall be guilty of an offence.

12. (1) On making any termination or lay-off benefits payment, otherwise than in pursuance of a decision of the Director General under section 69 of the Act, the employer shall at the same time give to the employee a written statement stating the amount of such payment and the manner in which the payment has been calculated.

(2) Any employer who -

(a) fails to comply with paragraph (1); or

(b) in a statement under that paragraph includes anything which is to his knowledge is false in any material particular, or recklessly includes anything which is false in any material particular,

shall be guilty of an offence.

(3) Without prejudice to any proceedings for an offence under paragraph (2) (a), if an employer fails to comply with the requirement of paragraph (1), the employee may by notice in writing to the employer require the employer to give to the employee a written statement complying with those requirement within fourteen days beginning with the day on which the notice was given.

(4) If an employer fails to comply with a notice under paragraph (3), he shall be guilty of an offence.

13. Any dispute between an employee and his employer in respect of any payment payable under any provisions of these Regulations may be dealt with under the provisions of Part XV of the Act.

14. For the purpose of any dispute or proceedings in relation to any claim for termination or lay-off benefits payment under these Regulations, the Director General may appoint any suitable person to represent the interests of the employee who has died before the termination or lay-off benefits payment is made, or to represent the estate or the dependants of such deceased employee.

15. (1) Any sum due by way of termination or lay-off benefits payment to a deceased employee shall be treated as if it were workmen's compensation payment under the Workmen's Compensation Act 1952 and shall be deposited by his employer with the Director General in his capacity as the "Commissioner" under the said Act.

(2) The Director General shall, subject to this regulation, exercise the powers vested in him under section 10 of the Workmen's Compensation Act 1952 in receiving the sum deposited under paragraph (1) as termination or lay-off benefits payment and in the distribution of such amount to one or more dependants of the deceased employee, and in the event of there being no such dependant, the Director General shall transfer the whole amount so deposited with him to the Public Trustee for disposal in accordance with the law.

(3) Any party aggrieved by any order or decision of the Director General made in the exercise of the powers under section 10 of the Workmen's Compensation Act 1952 may apply to the Arbitrator in accordance with subsection (11) of the said section 10, and the provisions of section 39 of the said Act shall apply in relation to an order or decision of the Arbitrator.

Commentary: "true day's wages.." should be calculated by dividing the total numbers of days in the month and not by 26 days and for the true day's wages over a period of twelve month immediately preceeding the relevant date should be divided by 365 days. (Commentary is not part of the law.)