

The Finance Act 2021 Series

Part 2 – Employment

Key legislative amendments

axis
TRUSTED FIRST

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01 | Introduction



The Finance (Miscellaneous Provisions) Act 2021 was gazetted on 05 August 2021 and it brings into force a number of amendments to the legislations in Mauritius. The second segment of the joint Axis and BLC Robert Finance Act series sets out the key amendments made to the Workers’ Rights Act 2019, Non-Citizens (Employment Restriction) Act, and Private Pension Schemes Act.

02 | Workers’ Rights Act 2019

For the avoidance of doubt, an “employee” refers to any person to whom the Workers’ Rights Act 2019 (“WRA”) applies to irrespective of basic salary, and a “worker” refers to any person whose basic salary is MUR 50,000 or less in a particular month.



(a) Compromise agreement

The Act provides that, irrespective of any provision to the contrary in the Code Civil Mauricien and any other enactment, a worker and an employer shall enter into a compromise agreement if they both agree to resolve a dispute concerning the termination of employment or non-payment or short payment of remuneration. The conditions pertaining to the validity of the compromise agreement are set out in the WRA.



(b) Atypical work agreement

The Act now clarifies the definition of an atypical worker as a person of at least 16 years old who :

- (a) is not employed under a standard agreement;
- (b) who works for one or more employers concurrently and is remunerated on a time-rate or piece-rate basis or otherwise by the employer(s) as the case may be, for the work performed; or
- (c) undertakes to perform personally any work for, or who offers his services to, another party to the contract.

The Act goes even further to set out which type of workers are included or excluded from the definition of an atypical worker.

02 | **Workers' Rights Act 2019** - *Continued*



(c) Application for protective order

The scope for the application of a protective order has been extended to non-compliance with notice period, severance allowance and any gratuity due to a worker or group of workers. The conditions for which the supervising officer of the Ministry responsible for the subject of labour and employment relations (the “Supervising Officer”) can make an application for a protective order has been extended and fully set out in the Act.



(d) Wage Guarantee Fund Account

There is no more the requirement for an enterprise to be declared insolvent by the Supreme Court of Mauritius for its workers to benefit from the Wage Guarantee Fund Account. Workers will now be able to benefit from the payment out of the Wage Guarantee Fund Account if an enterprise is considered insolvent without the need to get a Supreme Court order.



(e) End of year bonus

The Act now provides that the statutory end of year bonus equivalent to one twelfth of the earnings of employees for that year is also payable to employees earning a monthly basic wage of MUR 100,000 or less who have been in employment with the same employer for only part of the year and their employment agreements come to an end.



(f) Transport of workers

The WRA sets out the instances where the employer should refund the equivalent of the return bus fare to the worker, pay the worker a transport allowance and provide the worker with free transport. The Act now provides that, subject to the conditions set out in the WRA, a worker who uses light rail to attend his/her workplace should benefit from the same amenities as a worker who make use of the bus to attend his/her workplace, calculated in respect of the relevant light rail fares incurred by the worker.



(g) Protection against termination of agreement

Prior to the Act, a disciplinary hearing initiated against an employee should be completed within 30 days of the date of the first oral hearing. Extension by mutual consent in specific circumstances was allowed. The Act now provides that the extension by mutual consent can only be done provided that the disciplinary hearing is completed not later than 60 days of the date of the first hearing.



(h) Suspension

Prior to the Act, if an employer suspends an employee pending the outcome of a disciplinary hearing on account of the employee’s alleged misconduct or poor performance, the suspension period should be on full pay.

The Act now provides that the if the employer suspends the employee pending the outcome of an investigation carried out before a charge of alleged misconduct is levelled against an employee, or pending the outcome of a disciplinary hearing on account of the employee’s alleged misconduct or poor performance, the employer shall pay the employee his/her basic salary during the suspension period.



(i) Payment of severance allowance

The Act provides that no severance shall be paid to a migrant employee or a non-citizen under one or more fixed term contracts at the expiry of their contracts. In addition, the Act further provides that where an employee whose basic wage exceeds MUR 600, 000 per annum, the employee shall not be entitled to severance allowance in respect of contracts of determinate duration when the contracts come to an end if the employee was paid a gratuity or compensation at the end of each contract. The intent of this clause is not clear as under the existing law, employees earning more than MUR 600, 000 per annum are not entitled to severance allowance at the end of the contract.

02 | **Workers' Rights Act 2019** - *Continued*



(j) Reduction of workforce

The Act now provides for reduction of workforce on the ground of restructuring for financial reasons. The employer must thus give a written notice to the Redundancy Board, together with a statement containing the relevant information. The Redundancy Board shall only entertain such notification from an employer in that case if it is satisfied that :

- (a) the enterprise is over-indebted and not economically viable and any further debt would increase the risk of the enterprise being insolvent; and
- (b) the restructuring may enable the enterprise to manage the repayment of its debts without being insolvent and to dispose of adequate cash flow to continue its operations.

The statement to be provided shall contain all the information set out under the Act, failing which the reduction of workforce shall be deemed to be unjustified.



(k) Provision for a conciliation and mediation service

The Redundancy Board may, upon receipt of a notice in accordance with the relevant provisions of the WRA and the prior consent of the parties, provide a conciliation or mediation service to the parties with a view of promoting a settlement. During the course of conciliation, the Redundancy Board may explore the possibility of the employees being reinstated by the employer or re-engaged in another enterprise, providing training at the cost of the employer to develop their employability or the employer paying to the employees a compensation of not less than 15 days' remuneration for every period of 12 months of continuous employment, where the reduction is deemed to be justified.

If the parties reach a settlement, an agreement, which shall have the same effect as an order of the Redundancy Board, shall be drawn up in writing and signed or marked by the parties.



(l) Transition unemployment benefit

The Act provides that an employee shall also be entitled to a transition unemployment benefit if he/she has registered with the Supervising Officer after 60 days following the termination of his/her employment, provided that the employee falls within the conditions set out under the Act. The transition unemployment benefit shall cease as from the end of the month in which the employee declines, for the third consecutive time, an offer for a job or training, which is in accordance with his/her profile and qualifications.

In addition, an employee shall, after becoming employed, notify the Supervising Officer specifying whether he is employed on a full-time basis or otherwise and if the employee fails to do so after becoming employed on a full-time basis for a period of at least 30 consecutive days, the employee shall commit an offence. If such employee continues to benefit from the transition unemployment benefit, the employee shall refund the payment received to the Workfare Programme Fund within one month of the date of payment failing which the employee shall commit an offence.

02 | **Workers' Rights Act 2019** - *Continued*



(m) **Gratuity on retirement**

An employer shall not, irrespective of any agreement or any provision to the contrary in any other enactment, require an employee, notwithstanding his/her basic wage, to retire before the retirement age, i.e. 65 years of age.



(n) **Offences**

The Act provides that if, an employer fails to provide a copy of the minutes of proceedings of a disciplinary hearing to the employee who has appeared before and to the person assisting the employee in a disciplinary hearing within 7 days of the receipt of a written request from or on behalf of the employee, the employer shall commit an offence.



(o) **Savings and transitional provisions**

The WRA provides that the fixed term contract(s) entered into between a worker and an employer before the commencement of the WRA for a total period of more than 12 months pertaining to a work of permanent nature shall, on the commencement of the WRA, be deemed to be an indeterminate contract with effect from the month immediately following the twelfth month of employment under the contract. The Act provides that the above transitional provision is only applicable to workers whose monthly basic salaries were MUR 30,000 or less (i.e. MUR 360,000 or less per annum).

03 | **Non-Citizens (Employment Restriction) Act**

The Non-Citizens (Employment Restriction) Act has been amended to increase the fine as well as term of imprisonment where a non-citizen engages in an occupation in Mauritius for reward or profit without a valid permit or where a person employs such a non-citizen. New sanctions have also been introduced.

Regarding renewal of work permits, where the authorities are unable to renew the permit within 15 working days of the effective date of the application, they may, until the permit is renewed, issue a provisional permit, subject to such conditions they may impose.

A holder of a Family Occupation Permit, his/her spouse and any person working exclusively for the family unit are exempted from the requirement to apply for a work permit to work in Mauritius, under the Act.

04 | **Private Pension Schemes Act**

The definition of “defined contribution scheme” has been amended whereby the reserves of the scheme could now potentially be used to smooth out investment returns, whereas before, the reserves could not be used as guarantee in respect of any capital or investment income which would affect the amount or duration of pension benefits.