

THE END OF THE YEAR GRATUITY ACT 2001

Act No. 21 of 2001

I assent

2nd August 2001

CASSAM UTEEM
President of the Republic

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Payment of gratuity
4. Powers of authorised officers
5. Jurisdiction
6. Offences
7. Regulations

An Act

To provide for a yearly payment of an end of the year gratuity to employees of the private sector

ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the End of the Year Gratuity Act 2001.

2. Interpretation

In this Act -

"authorised officer" means the Permanent Secretary or any public officer authorised by him;

"basic wage or salary"

(a) means -

(i) the basic wage or salary prescribed or agreed upon; or

(ii) in any other case, the wages or salary actually earned by an employee on a piece rate basis or otherwise; and

(b) includes any previous additional remuneration granted under any enactment; but

(c) does not include any allowance, commission, or other benefit given to an employee in lieu of, or in addition to, his basic wage or salary,

"continuous employment" means employment on an average of at least two-thirds of the total number of working days during which, an employee has been in the employment of an employer;

"employee" -

- (a) means a person who works or has worked under a full-time or part-time contract of service or apprenticeship, whether the contract is express or implied, oral or in writing and whether the person is paid daily, weekly, monthly or otherwise; and
- (b) includes-
 - (i) a person whose employment has been terminated in the course of the year by reason of redundancy,
 - (ii) a person who retired in the course of the year in compliance with the provisions of any agreement or enactment other than the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983, the Sugar Industry (Non-Agricultural Workers) (Remuneration Order) Regulations 1985, the Salt Manufacturing Industry (Remuneration Order) Regulations 1983, and the Tea Industry Workers (Remuneration Order) Regulations 1984;
- (c) does not include a public officer;

"gratuity" means the gratuity payable under section 3;

"Minister" means the Minister to whom responsibility for the subject of labour is assigned;

"Permanent Secretary" means the Permanent Secretary of the Ministry responsible for the subject of labour;

"working day" - .

- (a) means a day on which work is normally performed; and
- (b) includes a day on which an employee -
 - (i) has been absent from work for good and sufficient cause;
 - (ii) is not provided with work by his employer;
 - (iii) has earned his basic wage or salary.

3. Payment of gratuity

- (1) Subject to the other provisions of this section, every employer shall, on or before 21 December of every year, pay a gratuity to every employee who is or has been in his continuous employment during the year.
- (2) Subject to subsection (4), the gratuity payable to an employee who reckons continuous employment with his employer -

- (a) for the whole or part of the year and who is in his employment on 31 December, shall be equivalent to not less than one-twelfth of the monthly basic wage or salary of the employee payable in respect of the month of December, multiplied by the number of months during which he has worked in that year;
- (b) for only part of the year and -
 - (i) whose employment has been terminated by reason of redundancy; or
 - (ii) who retired in the course of the year in compliance with the provisions of any agreement or enactment, shall be equivalent to not less than one-twelfth of the monthly basic wage or salary of the employee payable in the last month of his employment multiplied by the number of months during which he has worked.
- (3) (a) Where an employee is eligible but does not qualify for an end of the year bonus, by whatever name called, under any other enactment or agreement, he shall not be paid any gratuity.
- (b) Where an employee reckons service for only part of the year, he shall be paid the gratuity or an end of the year bonus, by whatever name called, under any other enactment or an agreement whichever is the higher.
- (c) Where an employee is eligible and quality for an end of the year bonus, by whatever name called, under any other enactment or agreement, he shall be paid either the bonus or the gratuity, whichever is the higher.
- (4) For the purpose of subsection (1), where an employee is paid otherwise than on a monthly rate, his monthly basic wage or salary for the month of December or the last month of his employment shall be deemed to be -
 - (a) where he is paid at a daily rate, 26 times his daily basic wage or salary in that month;
 - (b) where he is paid at a weekly rate, 4 and one-third times his weekly basic wage or salary in that month.
- (5) Where the basic wage or salary of an employee is paid partly by one employer and partly by another, each employer shall pay that part of the gratuity which bears the same proportion as the part of the basic wage or salary paid by him bears to the total basic wage or salary.

4. Powers of authorised officers

Notwithstanding any other enactment, an authorised officer may, for the purpose of ensuring compliance with this Act-

- (a) enter any work premises or office of an employer;

- (b) inspect any book or record kept by an employer in relation to his employees;
- (c) request an employer to furnish him with any information or document which he may require,
- (d) prosecute a person who commits an offence under this Act; and
- (e) enter any action on behalf of an employee.

5. Jurisdiction

Notwithstanding any other enactment-

- (a) in the Island of Mauritius, the Industrial Court;
- (b) in Rodrigues, the Magistrate for Rodrigues;
- (c) in the other islands under the jurisdiction of the State of Mauritius, the Magistrate visiting those islands,

shall have exclusive jurisdiction to hear and determine any civil or criminal proceedings under this Act.

6. Offences

Any person who-

- (a) contravenes section 3 or any regulations made under this Act,
- (b) obstructs an authorised, officer in the exercise of his powers under section 4;
- (c) fails to comply with a request under section 4(c), or in complying with the request, furnishes any information or document which he knows or should have known to be false or misleading in a material particular,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

7. Regulations

The Minister may make such regulations as he thinks fit for the purposes of this Act.

Passed by the National Assembly on the twenty-ninth day of June two thousand and one.

ANDRE POMPON
Clerk of the National Assembly