

Provisions of the Employment Act, 2001

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The Employment Act, 2001 was passed by Parliament on the 20th of December 2001 and enacted on the 1st of January 2002. Here are some of the basic provisions of the Employment Act, 2001. Please note that this is not an exhaustive list and the explained provisions are not fully described as there are some exceptions based on type of enterprise. This information is provided for information purposes only and should not be construed as representing legal advice.

Saving of More Favourable Terms of Employment - Where any provision of this Act provides greater rights or better benefits than those currently given to employees, those rights or benefits are to be brought up to the level provided for in this Act, and where greater rights or better benefits are currently provided, they shall not be reduced.

Conditions of Employment - Employees shall be informed of the name of the employer, the place of employment, the nature of employment, the number of hours of daily work, the time work is to commence and the time work is to terminate, the rate of wages and other benefits, and the manner and period of payment of wages and other benefits among other things. The employee shall provide his name and where practicable his place of origin and any other particulars necessary for his identification.

Non-discrimination and Equal Pay for Equal Work - Employers shall not discriminate against employees, or applicants for employment, on the basis of race, creed, sex, marital status, political opinion, age or HIV/Aids.

Standard Hours - The standard hours of work shall be 8 hours a day, 40 hours per week, once the Act is fully implemented. However, there is a proviso that the standard hours of work will be 44 hours per week for the period February 1st, 2002 to February 1st, 2003. Any time worked over the standard hours is in most cases subject to overtime pay. When the nature of the employment is such that hours are required to be irregular, the standard hours may be calculated as an average over a period not exceeding four weeks. Certain sectors may exceed the standard hours in a day up to a maximum of 12 hours at a regular rate of pay, however the standard hours for the week shall still apply.

Day Off - Each employee shall be allowed 48 hours off each week with at least 24 of those hours being consecutive. The consecutive 24 hours is referred to as the day off. (For convenience, the other 24 hours will be referred to as "hours of rest".)

Overtime Pay - Whenever an employee works on a Public Holiday or his day off, he shall be paid at twice his regular rate of pay, (double time). Whenever an employee works beyond the standard hours in a day, or works any portion of his hours of rest, he shall be paid at one and one-half times his regular rate of pay (time and one-half), except in the case of an employee in a tipped category in the tourism and hospitality industry who is paid at a regular rate of pay for time worked during his hours of rest.

Sick Leave - Employees employed for at least six months are entitled to one week sick leave with pay per year. Employees are required to produce a medical certificate whenever they are absent due to sickness except for the first day or a single day of sickness. Sick leave is only paid upon the production of a medical certificate. If a medical certificate is produced for a single day of absence, that day shall be paid.

Vacation Leave and Pay - Employees who have been employed for six months but less than one year are entitled to one week's vacation pay, but not necessarily vacation leave. If one week's vacation pay and/or leave is given to an employee after six months but less than one year of employment this pay and/or leave can be deducted from the employee's entitlement after the first year of employment. Employees who have been employed for one year or more but less than seven years are entitled to two weeks vacation leave with pay per year. Employees who are employed for seven years or more are entitled to a 3 weeks vacation leave with pay per year. Vacation pay is based on basic pay.

Termination of Employment During Year - When an employee is terminated prior to the completion of a full year, he shall be paid on a pro rata basis the amount of vacation pay earned for the uncompleted year. No employee is entitled to vacation pay unless he has been continuously employed for a period of ninety days or more.

Maternity Leave - The duration of maternity leave shall be for a period not less than 12 weeks, with at least 1 week of leave being before the birth and at least 8 weeks of leave being after the birth. Additional leave of up to 6 weeks shall be granted due to illness, subject to a medical certificate.

Maternity Pay - The minimum amount of maternity pay shall be one-third of the employee's wage up to the level of the National Insurance ceiling on insurable wages for the 12 week leave period (a total of four weeks pay from the employer with the remainder being paid by the National Insurance Board). In order to be entitled to maternity pay, the employee must have been employed for a period of twelve months or more, and the pay entitlement is only once in every three years.

Family Leave - Any employee who has been employed for six months or more is entitled to one week unpaid leave per year in the event of the birth of a child, or the death or illness of a child, spouse or parent. Employees are required to furnish evidence of the birth, death or illness.

Redundancy Payments - When an employee who has been continuously employed for one year or more is terminated due to redundancy, the amount of redundancy pay shall be 2 weeks' notice (or 2 weeks' basic pay in lieu of notice) plus 2 weeks' basic pay for each year of employment up to 24 weeks. Where the employee holds a supervisory or managerial position, the amount of redundancy pay shall be 1 month's notice (or 1 month's basic pay in lieu of notice) plus one month's basic pay for each year of employment up to 48 weeks. In the case of a construction employee who worked on a specific construction project redundancy pay is not applicable until after two years of continuous employment.

Meaning of Redundancy - An employee shall be deemed to be redundant if his termination is mainly attributed to the fact that his particular job has diminished or ceased to exist, or the employer has ceased or intends to cease to carry on the business for which the employee was hired.

Termination of Employment With Notice - In order to terminate a contract of employment with an employee, the minimum amount of notice required is as follows: where the employee has been employed for six months or more but less than one year the amount of notice required is 1 week's notice (or 1 week's basic pay in lieu of notice) plus 1 week's basic pay on a pro rata basis for the period between six months and twelve months; and where the employee has been employed for one year or more the amount of notice required is two weeks' notice (or two weeks' basic pay in lieu of notice) plus two weeks basic pay for each year up to 24 weeks. Where the employee holds a supervisory or managerial position, the amount of notice required is one month's notice (or one month's basic pay in lieu of notice) plus one month's basic pay for each year up to 48 weeks.

Note: Employees are required to give two weeks notice to their employer if they have been employed for one year but less than two years, and if employed for more than two years, the amount of notice shall be 4 weeks.

Summary Dismissal - An employer may summarily dismiss an employee without notice or payment in lieu of notice when the employee has committed a fundamental breach of his contract of employment or has acted in a manner repugnant to the fundamental interests of the employer. Misconduct which may constitute a fundamental breach shall include, but not be limited to, the following: theft; fraudulent offences; dishonesty; gross insubordination or insolence; gross indecency; breach of confidentiality (except when made to a law enforcement agency or government department); gross negligence; incompetence; and gross misconduct.

Grounds for Unfair Dismissal - Dismissal for the following reasons are grounds of unfair dismissal: dismissal relating to trade union membership; redundancy that is not applied equally; dismissal on ground of pregnancy; and, dismissal in connection with a lockout, strike, or other industrial action.

Order for Reinstatement or Re-engagement - In a case of unfair dismissal the Tribunal may make an order for reinstatement or re-engagement, and if the employee is not reinstated or re-engaged the employer shall be liable to pay the employee an amount of up to 26 weeks' pay in addition to any other compensation awarded.

Compensation for Unfair Dismissal - Where the Tribunal finds that a case of unfair dismissal has been committed, the amount of compensation shall consist of a basic award and a compensatory award. The total amount of compensation shall not exceed 18 months pay except for those who held a supervisory or managerial position where the total compensation shall not exceed 24 months pay.

Employment of a Child - A child means any person under the age of 14 years. A child shall not be employed in any undertaking except grocery packers, gift wrappers, peanut vendors, and newspaper vendors. It is not lawful to employ a child in night work.

Employment of a Young Person - A young person means any person who is 14 years of age and upwards, and under the age of 18 years. Young persons can be employed in night work provided the employment is in hotels, restaurants, food stores, general merchandise stores, and gas stations.

Prohibition of Employment During School Hours - A child or young person shall not be employed during the hours when the school that he or she attends is ordinarily in session. A young person may work outside of school hours as follows:- on a school day for not more than 3 hours; in a school week for not more than 24 hours; on a non-school day for not more than 8 hours; and, in a non-school week for not more than 40 hours.

Prohibition of Employment on Ships - A young person under the age of 16 shall not work on a ship unless only members of the same family are employed upon the ship or the ship operates only within the waters of The Bahamas.

Wages - Wages are to be paid in the currency of The Bahamas. The payment of wages shall be made on working days only and shall be made by cash, cheque or by deposit in the employee's bank account.

Pay Statements - At the time of making any payment of wages to an employee, the employer shall furnish in writing the period for which the payment of wages is made, the number of hours for which payment is made, the rate of wages, details of any deductions made from the wages and the actual sum being paid to the employee. This does not apply in the case of domestic employees.

Register of Wages - Employers shall keep a register of wage payments and accounts in respect of each employee for a period of three years. This does not apply in the case of domestic employees.

Restriction on Wage Deductions - If agreed by the employer and employee, repayment of loans made to an employee by an employer may be deducted from the employee's wages provided that the amount of deduction does not exceed one-fifth (20%) of the employee's wages.

Fingerprinting and Lie Detector Test - No employer shall require any person to furnish a set of his or her fingerprints or to take a lie detector test.

Change of Ownership of Business - Where a change occurs in the ownership of any business, and after such change of ownership an employee continues to be employed without interruption, the new owner is deemed to be the employer of that employee, and the employment shall be deemed to be continuous regardless of the change in ownership.