

LAWS OF DOMINICA

PROTECTION OF EMPLOYMENT ACT

CHAPTER 89:02

Act

1 of 1977

Amended by

30 of 1978

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23 of 1984

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CHAPTER 89:02

PROTECTION OF EMPLOYMENT ACT

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CHAPTER 89:02**PROTECTION OF EMPLOYMENT ACT**

AN ACT to make provisions for protecting the employment of workers in the State and for purposes connected therewith. ^{1 of 1977.}

[31st March 1977]

Commencement.

1. This Act may be cited as the –

Short title.

PROTECTION OF EMPLOYMENT ACT.

2. (1) In this Act –

Interpretation.
[4 of 1983].

“business” includes trade, undertaking, operation and establishment;

“Committee” means the Redundancy Benefits Committee to be established pursuant to section 28(1);

“employee” includes a person who was formerly an employee but whose employment has been terminated;

“employer” means a person who employs one or more employees and, in relation to an employee whose employment has been terminated, means the employer who so terminated the employment of that employee;

“employer’s federation” means the organisation of employers that, in the opinion of the Minister, is the most representative of employers and, where the Minister considers that there are more than one organisation of employers that are representative of employers, means those organisations;

“Fund” means the Redundancy Benefit Fund established by section 27;

“Labour Commissioner” means the public officer appointed to the position of Labour Commissioner by the Public Service Commission;

“Minister” means the Minister responsible for Industrial Relations;

“probation period” means the period of six months following the date on which the employment of an employee by an employer commences, or such shorter period of time following that date as may be agreed upon by an employer and an employee or a trade union entitled to represent the employee;

“redundancy benefit” means the amount of money that an employee whose employment has been terminated on account of redundancy is entitled to receive from his employer pursuant to this Act;

Ch. 89:03. “registered trade union” means all of the trade unions that are registered pursuant to the Trade Unions and Trade Disputes Act, but does not include an employer’s federation or any organisation of employers registered pursuant to that Act;

“terminated on account of redundancy” means, in relation to an employee, that the employment of the employee has been terminated pursuant to section 11;

Ch. 89:01. “Tribunal” has the same meaning as that given in section 2(1) of the Industrial Relations Act;

“week’s pay” means an employee’s regular weekly salary for his regular hours of work at the date of the termination of his employment.

(2) This Act does not apply to or in respect of –

(a) any person employed by an employer who –

(i) has and actually exercises authority to hire employees, to terminate the employment of employees, or to order that employees be suspended without pay;

(ii) makes effective recommendations that will, except in unusual circumstances, be acted upon by the employer respecting any matter mentioned in subparagraph (i);

(iii) is employed in a capacity that requires that he has full knowledge of the financial position of the business of the employer; or

(iv) is responsible for or has an effective voice in the formulation of policy in the business of the employer;

(b) an employee who is the father, mother, husband, wife, brother, sister, son or daughter of his employer;

(c) any employee employed as a stevedore, longshoreman or lighterman; and

(d) the State and any employee of the State.

(3) Part I does not apply to or in respect of an employee who reaches the normal retirement age in the business in which he is employed.

(4) Parts II and III do not apply to or in respect of the employment of a person as a domestic servant or worker where –

(a) the duties of that person are performed solely in or in connection with a private dwelling occupied by his employer; and

(b) not more than two of such persons are so employed by the employer.

(5) This Act shall apply notwithstanding any other law or any custom, contract or arrangement whether made before or after the coming into force of this Act, but nothing in this Act shall be construed as affecting any rights or benefits of an employee under any law, custom, contract or arrangement that are more favourable to him than his rights or benefits under this Act.

This Act applies except where benefits more favourable.

PART I

TERMINATION OF EMPLOYMENT

3. A right to work is hereby established and an employer may terminate the employment of any employee employed by him only in accordance with sections 4, 5, 6, 11 or 15.

Right to work and termination of employment.

4. An 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 duty in a satisfactory manner.

Termination during probation period. ✓

5. An employer may terminate the employment of an employee without notice or payment of any sum in lieu of notice where the employee has been guilty of serious misconduct in or in relation to his employment such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the employee.

Termination where serious misconduct.

6. Where an employee –

(a) is guilty of misconduct in or in relation to his employment which, while not sufficiently serious to permit his employer to terminate his employment pursuant to section 5, is of such a nature that the employer cannot reasonably be expected to continue to employ the employee if such misconduct is repeated; or

Written warning in case of misconduct or failure to perform duties.

(b) is no longer performing his duties in a satisfactory manner, the employer shall give the employee a written warning.

Contents of
written warning.

7. A written warning given pursuant to section 6 shall –
- (a) describe the misconduct or unsatisfactory performance in respect of which the written warning is given; and
 - (b) state the action that the employer intends to take if the employee is subsequently guilty of misconduct or fails to perform his duties in a satisfactory manner, as the case may be.

Misconduct after
written warning.

8. Where an employee –
- (a) has received a written warning from an employer pursuant to section 6 in respect of his misconduct; and
 - (b) is, within a period of six months following the day on which he received the written warning, guilty of misconduct in or in relation to his employment that is the same or substantially the same as the misconduct in respect of which the written warning was given,

the employer may terminate the employment of the employee.

Failure to
perform duties in
a satisfactory
manner after
written warning.

9. Where an employee –
- (a) has received a written warning from an employer pursuant to section 6 in respect of the performance of his duties; and
 - (b) does not, during the period of three months following the day on which he received the written warning, demonstrate that he is able to perform and has performed his duties in a satisfactory manner,

the employer may terminate the employment of the employee.

What is not
misconduct or
failure to
perform duties.

10. An employee shall be deemed not to be guilty of serious misconduct pursuant to section 5 or misconduct or failure to perform his duties in a satisfactory manner pursuant to section 9, by reason of –
- (a) his membership in a trade union;
 - (b) his participation in union activities outside working hours or, with the consent of the employer, during working hours;
 - (c) the fact that he has, in good faith, filed a complaint or participated in a proceeding against his employer involving an alleged violation of any law;

- (d) his race, colour, sex, marital status, religion, political opinion, national extraction or social origin; or
- (e) his being absent on Saturdays or Sundays to take part in religious worship.

11. An employer may terminate the employment of an employee where that termination is or is part of a reduction in the workforce employed by him that is a direct result of the fact that –

Termination where part of a reduction in workforce.

- (a) the employer has modernised, automated or mechanised all or part of his business;
- (b) the employer has discontinued or ceased to carry on all or part of his business;
- (c) the employer has sold or otherwise disposed of all or part of his business;
- (d) the employer has reorganised his business to improve efficiency;
- (e) the employer's need for employees in a particular category has diminished or ceased;
- (f) it has become impossible or impracticable for the employer to carry on his business at its usual rate or level or at all due to –
 - (i) a shortage of materials;
 - (ii) a mechanical breakdown;
 - (iii) a *force majeure*; or
 - (iv) an act of God; or
- (g) a reduced operation in the employer's business has been made necessary by economic conditions, including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

12. Where one of the purposes of a sale or other disposition of a business is to enable an employer to avoid any of his obligations under this Part or to deprive any employee of any right he has or may have under this Part –

Effect of sale that is not *bona fide*.

- (a) the employment of an employee of the business shall not be terminated pursuant to section 11;

- (b) the sale or other disposition shall not affect any right or benefit under this Part that accrues or would have accrued to an employee of the business but for such sale or other disposition;
- (c) all of the obligations under this Part of the person selling or otherwise disposing of the business are binding on the person acquiring the business; and
- (d) the period of employment of an employee of the business prior to the time of the sale or other disposition shall count as a period of employment with the person acquiring the business; and
- (e) the transfer or other disposition shall not interrupt an employee's period of continuous employment.

Lay offs,
suspension and
reduction of
hours of work.

13. (1) No employer shall lay off an employee except where he is entitled pursuant to this Act to terminate the employment of the employee.

(2) No employer shall suspend an employee from work without pay except where he is entitled pursuant to section 5, 8 or 9 to terminate the employment of the employee.

(3) No employer shall reduce the hours of work of an employee without the consent of the employee.

Employer to give
preference and
notice to former
employees.

14. (1) Where an employer who has terminated the employment of an employee pursuant to section 11, or who has laid off an employee, subsequently intends, within a period of six months following the date of the termination, to hire a person to perform duties that are the same or substantially the same as those that were formerly performed by the employee, the employer shall give preference in hiring to the employee.

(2) Where an employer to whom subsection (1) applies intends to hire a person, he may notify an employee who is entitled to the benefit of subsection (1) –

- (a) by personally notifying the employee, either verbally or in writing of his intention; or
- (b) by publishing in one issue of two newspapers having general circulation in Dominica a notice of his intention.

15. (1) An employer who is entitled pursuant to section 5, 6 or 11 to terminate the employment of an employee may do so by serving on the employee a notice in writing specifying the date on which the termination is to have effect and the reason for the termination. Reason for termination to be given employee.

(2) An employer who serves a notice pursuant to subsection (1) shall not subsequently add any additional reason to or substitute a different reason for the reason for the termination specified in the notice.

16. (1) Subject to subsection (5) an employer who serves a notice on an employee pursuant to section 15(1) shall serve the notice a sufficient period of time in advance of the intended date of termination to ensure that the employee will receive not less than the notice to which he is entitled pursuant to this section. When notice to be served.

(2) The notice required to be given by an employer to terminate the employment of an employee who is paid on a monthly basis or a basis of more than a month shall not be less than –

(a) one month, where the employee's period of continuous employment with the employer is less than ten years; and

(b) two months, where the employee's period of continuous employment with the employer is more than ten years.

(3) The notice required to be given by an employer to terminate the employment of an employee who is paid on a basis less than a month shall not be less than –

(a) one week, where the employee's period of continuous employment with the employer is less than two years;

(b) two weeks, where the employee's period of continuous employment with the employer is more than two years but not more than five years; and

(c) four weeks, where the employee's period of continuous employment with the employer is more than five years.

(4) For the purpose of determining an employee's period of continuous employment with an employer for purposes of this Part, an absence from employment that is –

(a) as a result of a trade dispute;

- (b) due to sickness, accident or injury;
- (c) due to a temporary cessation of work;
- (d) pursuant to any law;
- (e) pursuant to an agreement with the employer;
- (f) permitted or condoned by the employer;
- (g) due to an act of God or *force majeure*; or
- (h) as a result of a lay off or the suspension of the employee from work without pay,

shall be deemed not to have interrupted continuity of employment.

(5) Where an employer serves a notice on an employee pursuant to section 15(1) terminating the employment of the employee, the employer is not required to comply with subsection (1) if he pays to the employee at the time he serves the notice a sum that is not less than the wages that the employee would have been entitled to receive during the period of notice to which he is entitled pursuant to this section.

Tribunal may grant leave to terminate employment.

17. (1) Where, pursuant to this Part, an employer is not entitled to terminate the employment of an employee, the employer may apply to the Tribunal for leave to terminate the employment of the employee.

(2) Where, on an application by an employer pursuant to subsection (1) for leave to terminate the employment of an employee, the Tribunal is satisfied that, having regard to all of the circumstances, it is not reasonable to require the employer to continue to employ the employee, the Tribunal may grant leave to the employer to terminate the employment of the employee on such terms and conditions and on payment of such amount of compensation as the Tribunal may determine.

Time off from work to seek new employment.

18. Where an employer terminates the employment of an employee pursuant to this Part, the employer shall give the employee a reasonable amount of time off from work when required by the employee in order to seek other employment.

Employee to give notice in writing. [4 of 1983].

19. Subject to section 20, where an employee intends to terminate his employment with an employer he may do so by giving the employer notice of the intended termination not later than –

- (a) 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

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

20. An employee may terminate his employment with an employer without complying with section 19 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.

Termination in case of serious misconduct by employer. [4 of 1983].

PART II

REDUNDANCY BENEFITS PLAN

21. Where an employee has been continuously employed by an employer for a period of not less than three years and the employment of that employee by the employer is terminated on account of redundancy the employer shall pay to the employee a redundancy benefit calculated pursuant to section 22.

Obligation to pay redundancy benefit.

22. (1) Subject to subsection (3), the redundancy benefit payable to an employee by an employer pursuant to section 21 shall, where the employee has been continuously employed by the employer for a period –

Determination of redundancy benefit. [30 of 1978].

- (a) not exceeding five years, be equal to one week's pay for each year that the employee was so employed, plus two weeks pay for each year in excess of three years;
- (b) exceeding five years but not exceeding ten years, be equal to nine weeks pay plus two weeks pay for each year in excess of five years that the employee was so employed; and
- (c) exceeding ten years, be equal to nineteen weeks pay plus three weeks pay for each year in excess of ten years that the employee was so employed.

(2) Where, in determining the amount of the redundancy benefit payable to an employee, a period of continuous employment occurs that is less than a full year, that period shall –

- (a) if it is not more than three months, count as one-quarter of a year;
- (b) if it is more than three months but not more than six months, count as one half of a year;

(c) if it is more than six months but not more than nine months, count as three quarters of a year; and

(d) if it is more than nine months, count as one year,

of continuous employment, and the employee shall receive a redundancy benefit in respect of that period equal to the product of the applicable fraction of a year and the amount of redundancy benefit that the employee would have been entitled to receive in respect of the year in which that period occurred if he had been employed for that full year.

(3) A redundancy benefit payable to an employee by an employer pursuant to this Act shall not exceed an amount that is equal to fifty-two weeks pay for that employee.

Determination of continuous employment. [23 of 1984].

23. (1) Section 16(4) of this Act applies to this Part for the purpose of determining an employee's period of continuous employment with an employer.

(2) Where an employee receives a redundancy benefit, the period of his continuous employment shall be deemed to have been interrupted.

Where employee who has been laid off may claim and be paid redundancy benefit.

24. (1) Where an employee has been laid off by his 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 pursuant to this Act.

(2) Where an employee makes a claim for a redundancy benefit pursuant to subsection (1), the employer shall –

(a) pay to the employee the redundancy benefit to which he is entitled pursuant to section 22; or

(b) 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.

(3) Where an employer serves a counter-notice on an employee pursuant to subsection (2)(b), the employer shall not be liable to pay a redundancy benefit to the employee if he makes full time employment with him available to the employee –

- (a) within four weeks of the date on which the counter-notice was given; and
- (b) for a period of not less than thirteen consecutive weeks during which he does not lay off the employee.

25. An employee shall not be entitled to receive a redundancy benefit from his employer pursuant to this Act where, on or before the date on which the employment of the employee is terminated by the employer –

No redundancy benefit payable where offer of alternative employment refused.

- (a) the employer makes an offer of suitable alternative employment to the employee; and
- (b) the employee unreasonably refuses to accept that offer.

26. The Minister may make Regulations excluding the right to any redundancy benefit or reducing the amount of any redundancy benefit where an employee has, pursuant to any other Act, a right or claim to a periodical payment or lump sum by way of pension, gratuity or superannuation allowance that is to be paid by reference to his employment by a particular employer and that is payable at or after the time when he leaves employment.

Regulations.

PART III

REDUNDANCY BENEFITS FUND

27. (1) There is hereby established a Fund to be called the Redundancy Benefits Fund into which shall be paid all contributions and other moneys required or prescribed by or collected pursuant to this Part, and from which moneys shall be paid pursuant to this Part.

Redundancy Benefits Fund. [23 of 1984].

(2) Every person who, in respect of any contribution week beginning on or after the coming into force of this Act, is liable to pay an employer's contribution under regulation 4(1) of the Social Security (Collection of Contributions) Regulations in respect of any person, being over the age of sixteen years and under the age of sixty years shall, in respect of that week, be liable also to pay in respect of that person a contribution to be called a "redundancy fund contribution".

Sub. Leg. Chap. 31:01.

(3) Subject to the following provisions of this section, the amount of the redundancy fund contribution which, in respect of any person, is payable in respect of any contribution week shall be .25% of that person's wages within the meaning of the term as defined in

Rate of redundancy fund contributions.

Ch. 31:01.

section 2(1) of the Social Security Act and the earnings received in cash by or on behalf of such a person as indicated in regulation 4(2) of the Social Security (Collection of Contributions) Regulations.

(4) The Minister may by Order provide that the rate of the redundancy fund contribution prescribed in subsection (3) shall have effect as if, for the rate specified in that subsection, there were substituted such other rate as may be specified in the Order.

(5) No such Order shall be made unless a draft of the Order has been laid before the House of Assembly and approved by a resolution of the House.

Social Security Board.

(6) Redundancy fund contributions shall be paid to the Social Security Board constituted under section 4 of the Social Security Act, but subject to the following provisions of this Part, shall be taken to be so paid as contributions to the Redundancy Benefits Fund.

Separate accounts to be kept.

(7) The accounts of the Redundancy Benefits Fund shall be kept separate and distinct from the accounts of the Social Security Fund, even if the accounts of both Funds are kept by the same person.

Collection of Redundancy Fund Contributions.
[23 of 1984].
Ch. 31:01.

28. (1) Subject to section 27 and this section, all the provisions of the Social Security Act shall have effect for the purposes of that Act as well as for the purposes of this Act in relation to a person who is liable as an employer to pay a redundancy fund contribution in respect of a person for a contribution week –

- (a) as if that contribution and the contribution payable by him for that week in respect of that person under section 22(1) of the Social Security Act, together constituted one combined contribution payable by him under that Act in respect of that person for that week; and
- (b) as if the whole of the combined contribution in question were payable into the Social Security Fund; and in the Social Security Act “contributions” shall be construed accordingly.

(2) Except in so far as may be otherwise provided by any Regulations made under the Social Security Act after the passing of this Act, subsection (1) of this section shall apply in relation to Regulations made, whether before or after the passing of that Act, under any provisions of that Act to which that subsection applies, as it applies in relation to those provisions.

(3) There shall be excluded from the provisions of the Social Security Act which are to have effect as mentioned in subsection (1) the following provisions:

- (a) section 3(1) of that Act which relates to the components of the Social Security Fund including all contributions;
- (b) section 16(1) of that Act which provides for advances to be made out of the Consolidated Fund;
- (c) section 17(1) of that Act which relates to the extent of the liability for keeping books and records;
- (d) section 19(1) of, and the Second Schedule to, that Act which have the effect of bringing within the scope of that Act as provided also by section 49 thereof, State employment and State employees to which or to whom this Act does not apply;
- (e) section 21(1) of that Act which provides that contributions shall be payable by both insured persons and by employers;
- (f) sections 41, 42 and 43 of that Act which relate to proceedings before a Tribunal other than the Tribunal constituted under section 5 of the Industrial Relations Act; Ch. 89:01.
- (g) any section of that Act where the context does not apply in any way to the Redundancy Benefits Fund.

(4) Nothing in subsection (1) or subsection (2) of this section shall be construed –

- (a) as affecting the rate of any contributions under regulation 4(1) of the Social Security (Collection of Contributions) Regulations;
- (b) as excepting any person who pays, or is liable to pay, employer's contribution under the Social Security Act, or as conferring any power to except any such person from liability to pay redundancy fund contribution other than –
 - (i) the State in relation to its employees as mentioned in subsection 3(d) of this section; and
 - (ii) the categories of persons already excepted under subsections (2) and (4) of section 2 of this Act;

- (c) as conferring any power to modify the rate of redundancy fund contributions in relation to any class of persons;
- (d) as effecting any immediate changes in the existing arrangements for paying redundancy benefits, this redundancy benefits plan being one of those in the comprehensive system of national employee benefits which depends on prior payments to the redundancy benefits fund by employers in order that the plan may be funded according to regulated standards.

Application of
Redundancy
Fund Contribu-
tions.
[23 of 1984].

29. The Minister responsible for Social Security shall, out of the moneys received by the Social Security Board on account of redundancy fund contributions, cause to be retained by the Director such sums in respect of expenses incurred by the Board which are attributable to the application and collection of those contributions including the costs of the annual audit of the accounts referred to in section 36(1) of this Act.

Accounting
procedure.
[23 of 1984].

30. (1) The Social Security Board shall account to the Minister responsible for Industrial Relations for such sums as the said Board may from time to time estimate to represent the redundancy fund contributions received by the Board under section 27(2) of this Act, subject to the deduction of the sums retained by the Board under section 29 of this Act, and the Minister responsible for Industrial Relations shall give general or specific directions from time to time to the Investment Committee, in accordance with section 13(6) of the Social Security Act, on the investment of the sums for which the Board is required to account to the Minister responsible for Industrial Relations in accordance with this section.

Ch. 31:01.

(2) In this section references to the application of redundancy fund contributions do not include the payment of any sums out of the Fund.

Miscellaneous
and Supplemen-
tary Provisions.
[23 of 1984].

Ch. 31:01.

31. (1) In this Part, “contribution week” and “employer’s contribution” have the same meanings as in the Social Security Act.

(2) In this Part, “employee” has the same meaning as in the Social Security Act.

(3) For the purposes of this Act and section 27(2) in particular –

- (a) a person shall be deemed to be over or under any age therein mentioned if he has or, as the case may be, has not attained that age;

- (b) a person shall be deemed to be between two ages therein mentioned if he has attained the first mentioned age but has not attained the second mentioned age;
- (c) a person shall be deemed not to have attained a given age until the commencement of the relevant anniversary of the day of his birth.

32. (1) Where the Redundancy Benefits Fund as invested by the Social Security Board referred to in section 30(1) of this Act has reached a level to be determined by the Minister responsible for Industrial Relations, and it appears to the Minister that it is expedient to do so, he may make provision by Regulations to enable the Director to make payment (in this Part to be referred to as "a rebate") –

Payments from Fund.
[23 of 1984].

- (a) to an employer who is liable to pay, and has paid, a redundancy benefit to an employee; or
- (b) to an employee who claims that his employer is liable to pay to him a redundancy benefit and either –
 - (i) that the employer has refused or failed to pay it;
 - (ii) that the employer is insolvent; or
 - (iii) that the whole or part of the benefit remains unpaid.

(2) Where a payment is made from the Fund to an employee pursuant to subsection (1)(b), the Fund shall be entitled to recover the amount of that payment from the employer concerned.

33. Any question arising under this Part as to the right of an employee to a redundancy fund contribution being paid on his behalf by his employer and matters relevant or incidental thereto may be referred to the Minister in accordance with the procedure laid down by section 36 of this Act; the question may subsequently be referred to the Tribunal if the problem is not solved by the process of conciliation.

Reference of questions to Tribunal by Minister.
[23 of 1984].

34. The Minister may, from time to time, make Regulations –

Regulations.

- (a) fixing the contributions or the rates of contributions to be paid by employers to the Fund;
- (b) prescribing the mode under which payment of contributions may be made;
- (c) prescribing the mode of collecting contributions and paying claims;

(d) prescribing the percentage of any redundancy benefit paid pursuant to this Act by any employer that shall be refunded to such employer; and

(e) prescribing any forms for the purpose of this Act.

Audit of Fund
and report.

35. (1) The Fund shall be audited annually as of 31st December in each year by auditors appointed by the Committee with the concurrence of the Minister, and the cost of such audits shall be paid by the Fund.

(2) The Minister shall prepare a report of the activities of the Fund for the period ending 31st December in each year and shall lay a copy thereof before the House of Assembly before 31st March in each year.

PART IV

ENFORCEMENT

Complaint to
Minister.
[4 of 1983].

36. (1) Any employee or employer who alleges that his employer or employee has failed to comply with any provision of Parts I and II, or any trade union which on behalf of an employee, alleges that an employer has failed to comply with any provision of those Parts, may make a complaint in writing to the Minister:

(2) A complaint made to the Minister pursuant to subsection (1) shall contain –

(a) the names of the employee and the employer;

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

(c) a statement of the relief claimed.

(3) Upon receipt of a complaint made pursuant to subsection (1), the Minister may send a copy of the complaint to the Labour Commissioner for the purpose of giving an opportunity for the complaint to be settled by way of conciliation.

(4) Where the Labour Commissioner receives a complaint from the Minister pursuant to subsection (3), he shall take such urgent steps as he considers appropriate to assist the parties to the complaint to settle the complaint.

(5) Where at any time –

- (a) after an employer has terminated the employment of an employee in circumstances in which the employee claims that he was unfairly dismissed; but
- (b) before any complaint relating to that claim has been presented by the claimant under subsections (1) and (2), and a request is made direct to the Labour Commissioner by the employer or by the employee or their representatives to make his services available to them, the Labour Commissioner may act in accordance with subsections (3) and (4) as if the complaint had been presented in pursuance of that claim.

(6) Where the parties to a complaint are unable to settle the complaint within twenty-one days or such other period as the Minister may determine or allow from the date on which it was forwarded to the Labour Commissioner pursuant to subsections (4) and (5) either of the parties or the Labour Commissioner may report to the Minister that the parties are unable to settle the complaint.

(7) Where a report has been received by the Minister pursuant to subsection (6) the Minister may refer the complaint to the Tribunal at any time thereafter and the Tribunal shall proceed to hear and determine the complaint. Complaint to the Tribunal.

(8) Any thing communicated to the Labour Commissioner in connection with his functions under this section shall not be admissible in evidence in any proceedings before the Tribunal, except with the consent of the person who communicated it to the Labour Commissioner, provided that this privilege shall not extend to evidence which would otherwise be admissible.

(9) For the purposes of subsections (2) to (4) and (6) to (8), an application under section 17 shall be deemed to be a complaint under subsection (1).

(10) Nothing in this section shall be construed as derogating from any powers or duties of the Minister under any other enactment.

37. The Tribunal has exclusive jurisdiction to determine all questions that arise in relation to any complaint or application made to it pursuant to this Act. Jurisdiction of Tribunal.

Power of
Tribunal to make
orders.
[4 of 1983].

38. (1) The Tribunal has, in relation to any complaint or application made to it pursuant to this Act, power to order –

- (a) any person to comply with any provision of this Act;
- (b) an employer to reinstate any employee to his former employment where the employer has –
 - (i) terminated the employment of that employee contrary to Part I;
 - (ii) laid off, reduced the hours of work of or suspended without pay that employee contrary to Part I;
 - (iii) failed to give preference to that employee in circumstances where the provisions of section 14 apply; and
- (c) an employer to pay to an employee –
 - (i) whose employment has been terminated contrary to Part I;
 - (ii) who has been laid off, put on reduced hours of work or suspended without pay contrary to Part I; or
 - (iii) who has not been given preference in circumstances where the provisions of section 14 apply,

compensation not exceeding such sum as, in the opinion of the Tribunal, is equivalent to the remuneration that would have been paid to the employee but for the action of the employer.

(2) Where, after hearing a complaint made to it by an employee pursuant to Part I, the Tribunal concludes that, while the employee is entitled to be reinstated by his employer to his former employment, an order reinstating the employee would not be practicable or desirable for the reason that –

- (a) the return of the employee to his former employment would have a seriously detrimental effect on industrial relations in the business concerned; or
- (b) the employee does not wish to return to his former employment,

the Tribunal may, in lieu of making an order requiring the employer to reinstate the employee to his former employment, order the employer to pay compensation to the employee in such amount as the Tribunal may determine.

39. In determining the amount of compensation to be paid to an employee by an employer pursuant to section 17 or section 39(2), the Tribunal shall, in addition to all of the circumstances of the case, have regard to –

Factors for Tribunal to consider in determining compensation.

- (a) the salary of the employee at the date his employment was terminated;
- (b) the remuneration that would have been paid to the employee from the date of the termination of his employment until the date of the order;
- (c) the number of years during which the employee was employed by the employer;
- (d) the age of the employee;
- (e) the number of persons who are dependents of the employee; and
- (f) the prospects of the employee for other employment.

40. (1) The Tribunal has, in relation to any complaint or application made to it pursuant to this Act, all of the powers with respect to its proceedings as are conferred on it by the Industrial Relations Act.

Power of Tribunal respecting its proceedings. Ch. 89:01.

(2) Any order, determination or decision of the Tribunal made pursuant to this Act –

- (a) is final and binding on the parties to the complaint or application;
- (b) may be enforced in the same manner as a decision of the Tribunal pursuant to the Industrial Relations Act; and
- (c) is subject to review or appeal only to the same extent as a decision of the Tribunal under sections 13 and 14 to the Industrial Relations Act.

41. Where in any proceeding before the tribunal in respect of a complaint or application made pursuant to Part I, a question arises as to whether an employer was entitled to terminate the employment of an employee, the onus of proving that he was so entitled shall be upon the employer.

Onus of proof.

42. (1) Any person who –

Offences.

- (a) for the purpose of evading payment of any contributions to the Fund by him or some other person or for

purposes of obtaining any benefit from the Fund for himself or some other person –

- (i) knowingly makes any false statement or representation; or
 - (ii) produces or furnishes or causes or knowingly allows to be produced or furnished any document or information which he knows to be false in a material particular;
- (b) for the purpose of obtaining payment of a redundancy benefit from his employer –
- (i) knowingly makes any false statement or representation; or
 - (ii) produces or furnishes or causes or knowingly allows to be produced or furnished any document or information which he knows to be false in a material particular;
- (c) misrepresents or fails to disclose any material fact; or
- (d) fails to pay to the Fund within such period as may be prescribed any amount that he is liable to pay pursuant to this Act,

is liable on summary conviction to a fine of one thousand dollars and to imprisonment for six months.

(2) In addition to any other proceeding that may be taken pursuant to this Act, every person who contravenes any provision of this Act is liable on summary conviction to a fine of one thousand dollars.

Delegation by
Minister.

43. The Minister may, in relation to any matter or class of matters, delegate to any public officer any of his powers or functions under this Act, other than his power to delegate under this section.

Delegation by
Labour
Commissioner.

44. The Labour Commissioner may, in relation to any matter or class of matters, delegate to any public officer any of his powers or functions under this Act, other than his power to delegate under this section.

SUBSIDIARY LEGISLATION

**PROTECTION OF EMPLOYMENT
(RATES OF CONTRIBUTION) REGULATIONS**

39/1984.

made under section 34

[1st January 1985]

Commencement.

1. These Regulations may be cited as the –

Short title.

**PROTECTION OF EMPLOYMENT
(RATES OF CONTRIBUTION) REGULATIONS.**

2. For the purpose of these Regulations –

Interpretation.

“Act” means the Protection of Employment Act;

Ch. 89:02.

“insurable earnings” shall be the same as set out in the Schedule attached to the Social Security (Collection of Contributions) Regulations.

Schedule.
Sub. Leg.
Ch. 31:01.

3. The amount of redundancy benefit fund contribution payable by an employer under section 32 of the Act in respect of a person employed by him is one-fourth of one percent of the insurable earnings of that person.

Contribution payable.

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Chap. 89:02

Protection of Employment

[Subsidiary]

*Protection of Employment (Payment and
Collection of Contribution) Regulations*

SUBSIDIARY LEGISLATION

40/1984.

**PROTECTION OF EMPLOYMENT (PAYMENT AND
COLLECTION OF CONTRIBUTION) REGULATIONS**

made under section 34

Commencement.

[1st January 1985]

Short title.

1. These Regulations may be cited as the –

**PROTECTION OF EMPLOYMENT (PAYMENT AND
COLLECTION OF CONTRIBUTION) REGULATIONS.**

Collection and
Contribution.
Sub. Leg.
Ch. 31:01.

2. The procedures for the payment and collection of contributions shall be the same as set out in the Social Security (Collection of Contributions) Regulations.

SUBSIDIARY LEGISLATION

**PROTECTION OF EMPLOYMENT (CLAIMS)
REGULATIONS**

ARRANGEMENT OF REGULATIONS

REGULATION

1. Short title.
 2. Claim for rebate.
 3. Particulars of notice.
 4. Claim to be made in writing.
 5. Evidence may be required by the Board.
 6. Claims in amended form.
 7. Rate of rebate.
-

SUBSIDIARY LEGISLATION

41/1984.

**PROTECTION OF EMPLOYMENT (CLAIMS)
REGULATIONS**

made under section 34

Commencement.

[13th December 1984]

Short title.

1. These Regulations may be cited as the –

**PROTECTION OF EMPLOYMENT (CLAIMS)
REGULATIONS.**

Claim for rebate.

2. (1) An employer shall give prior notice that a claim for a rebate may arise in consequence of –

- (a) the termination by him of an employee's contract of employment; or
- (b) the expiration of a contract of employment for a fixed term,

by delivering to the office of the Board a written notice containing the particulars specified in regulation 3.

(2) The notice required by this regulation shall be given –

- (a) in the case of an employee who is one of ten or more employees, being employees of the same employer whose contracts of employment are to terminate or expected to terminate on the same day or within a period of not more than six days, not less than twenty-one days before the date on which the terminations are or, as the case may require, the first of them is to take or expected to take effect;
- (b) in any other case, not less than fourteen days before the date on which the termination of the contract of employment is to take or is expected to take effect.

(3) In calculating whether an employee is one of ten or more employees in whose case subregulation (2)(a) applies no account shall be taken of any employee who is one of ten or more employees as aforesaid as respect whom prior notice as required by this regulation has already been given.

3. (1) The notice required by regulation 2 shall contain the following particulars in so far as they are within the knowledge of the employer:

Particulars of notice.

- (a) the employee's full name;
- (b) the employee's Social Security Number;
- (c) the employee's date of birth;
- (d) the date on which the employee commenced his current period of continuous employment;
- (e) the date on which the employment is expected to terminate;
- (f) the reason for the expected termination of employment; and
- (g) the amount of a week's basic pay.

(2) If, in the case of any of the particulars mentioned in subregulation (1), the required information is not known or not completely known to the employer that fact shall be stated in the notice.

(3) If the information required under subregulation (1)(g) involves a calculation which is not practicable for the employer to make in time for the information to be included in the notice before it is to be given, the notice shall be given without information but with an intimation that it will follow later and the information shall be given as soon as practicable after the delivery of the notice.

(4) For the purpose of this regulation the expression "within the knowledge of the employer" means within the knowledge or means of knowledge of the employer or of his servants or agents and the expression "known or completely known to the employer" shall be construed accordingly.

4. (1) A claim for a rebate shall be made in writing to the Board within six months from the date on which the employee's payment was made or within such further period as the Minister may allow.

Claim to be made in writing.

(2) The claim shall –

- (a) specify the date on which the employment terminated; and
- (b) indicate how the amount of the employee's payment was calculated.

Evidence may be
required by the
Board.

5. (1) A person who gives a notice under regulation 2 or makes a claim under regulation 4 shall –

(a) provide such evidence or other information; and

(b) produce for examination on behalf of the Board such documents in its custody or under its control,

as the Board requires, being evidence, information and documents necessary to determine the right of that person or the amount of the rebate.

(2) Unless in any particular case or class of cases the Board dispenses with the requirement of this regulation, a claim under regulation 4 shall be accompanied by a receipt signed by the employee concerned evidencing the payment by the employer to that employee of the employer's payment to which the claim relates.

Claims in
amended form.

6. (1) This regulation applies to claims under regulation 4 made within the time prescribed by subregulation (1) of that regulation and which specify the employer or employees to which they relate but for want of a signature or any other reason are incomplete or defective.

(2) Where a claim to which this regulation applies is made in an amended form –

(a) within four weeks of being referred back to the employer by the Board; or

(b) before the expiration of four weeks from the time prescribed by regulation 4(1),

the amended claim shall be treated as having been made in the first instance.

Rate of rebate.

7. For the purpose of section 35(d) of the Act, the rate of rebate payable respecting any redundancy benefit payment or agreed payment, as the case may be, shall be ten percent.