

August 9, 2021

Provisions applicable irrespective of the worker's basic salary

Atypical worker

Unlike the provision as styled before, a person other than a worker employed on a standard agreement and who is paid remuneration is **not** automatically classified as an atypical worker, but can be "**deemed**" to be an atypical worker.

The definition of an "atypical worker" has been amended to now include a person aged 16 years or more who:

- is **not** employed under a standard agreement;
- works for **one or more** employers concurrently and is remunerated, on a time-rate or piece-rate basis or otherwise, by the employer or employers, as the case may be, for the work performed;
- undertakes to perform personally any work for, or who offers his services to, another party to the contract;
- performs work through an online platform or such other similar services;
- performs teleworking;
- performs work through an IT system; or
- uses his personal equipment and tools to perform work.

A person who does **not** classify as an "atypical worker" is as follows:

- a job contractor;
- a self-employed person who has a business registration number or who personally operates a business or trade on his own account or who employs another person to execute his work agreement; or
- a person whose business is his sole or main source of income.

Irrespective of the basic salary, the provisions relating to the following apply to an atypical worker and a worker who works from home:

- Discrimination in employment and occupation

- Equal remuneration for work of equal value
- Payment of remuneration due on termination of agreement
- General conditions of employment Remuneration and leave in relation to a COVID-19 vaccination or RT-PCR test where the worker is employed in specified institutions
- Termination of agreement
- Workfare programme fund
- Portable Retirement Gratuity Fund
- Violence at work
- Administration

Remuneration and leave related to COVID-19 vaccination or RT-PCR test

Any conditions relating to the payment of remuneration or grant of leave for a worker employed in the following institutions, in cases where the worker cannot have access to his place of work pursuant to the Quarantine Act 2020 or any regulations made thereunder, shall be such conditions as may be prescribed:

- Crèche, day-care centre, kindergarten;
- Pre-primary school, primary school, special needs institution, private secondary school, tertiary institution;
- Vocational training centre and any other training institution; and
- Such institutions as may be prescribed.

This provision shall be deemed to have come into operation on 20 June 2021.

Procedural amendments concerning termination of employment and disciplinary hearings

Delay to terminate employment following a disciplinary hearing

In cases of termination for reasons of alleged misconduct which is the subject of criminal proceedings, or for reasons of poor performance, the procedural requirement has been changed from "**within 7 days of**" the completion of the disciplinary hearing to "**not later than 7 days after**" the completion of the disciplinary hearing. So, if a disciplinary hearing ended on Monday:

- In a case before the amendment: Monday would be day 1
- In a case after the amendment: Tuesday is day 1

Request for a copy of the minutes of proceedings

It has been clarified that that a written request for a copy of the minutes of a disciplinary hearing can be either from the worker himself or **on behalf of** the worker.

Failure to provide a copy of the minutes of proceedings is now an offence with a liability not exceeding MUR 25,000 and imprisonment for a term not exceeding two years.

Delay to complete disciplinary hearing

Whilst the delay provided for the completion of a disciplinary hearing is within 30 days of the first oral hearing, the WRA 2019 provided that the delay could be extended by the agreement of both parties. However, any extension has now been capped to not later than 60 days after the date of the first oral hearing.

Suspension

Whilst it was already the practice, the provision relating to suspension has been clarified to include the possibility of the employer suspending a worker pending the outcome of an investigation into circumstances of alleged misconduct, and not only pending the outcome of disciplinary proceedings.

The basic salary of the worker is payable during such suspension, and it is no more on "**full pay**".

Severance allowance

Non-citizen or migrant worker

Whilst initially the position was that no severance allowance is payable to a migrant worker or non-citizen where he has worked under a determinate agreement(s), and his employment is **terminated**, it has now been amended to state that no severance allowance is payable where the determinate agreement terminates on the last day of the period as agreed. This is also the case for citizen workers.

Reduction of workforce or closing down of an enterprise

Ban on reduction of workforce

Employers are not only banned from making workers redundant (temporarily or permanently) until 31 December 2021 (or as further prescribed), but they are also banned from **closing down** their enterprises.

Please note that there are certain exceptions to the ban.

Reduction on the grounds of restructuring for financial reasons

A new type of redundancy has been added. An employer who intends to make a number of workers redundant on the grounds of restructuring for financial reasons may, instead of applying for financial assistance, give written notice to the Redundancy Board (**Board**) at least 30 days before the intended reduction.

The Board will only consider such a notification where the enterprise is over-indebted and not economically viable, and where the restructuring will prevent the enterprise from becoming insolvent.

There are strict specifications which have to be provided to the Board to qualify under this redundancy scheme:

- A restructuring plan as approved by the board of directors;
- Statement on why the restructuring plan has reasonable prospects for preventing insolvency and saving jobs; and
- Actual number of jobs to be saved, amongst others.

Failure to provide the above-mentioned documents may lead to unjustified reduction.

Reduction for exempted employers

Where the Board is satisfied that the procedure adopted for the reduction of the exempted employer company is in the best interest of the business, the Board shall **not** order the payment of severance allowance.

The 15-day delay to complete proceedings before the Redundancy Board can now be extended for a longer period subject to the agreement of the parties.

Redundancy Board

The Board has the legal discretion to provide for a conciliation or mediation service to the parties to explore the possibility of a compensation payment of not less than 15 days per year of service where the reduction is justified, amongst other possibilities.

Provisions applicable only to workers whose basic salary is not more than MUR 50,000/month

Atypical workers and workers working from home

Previously, the WRA 2019 did not apply to atypical workers and workers who worked from home, except for certain provisions. Now, those workers have been categorized by virtue of their basic salaries, and the provisions which apply to normal workers earning less than MUR 50,000/month are now applicable to atypical workers and workers who work from home who earn less than MUR 50,000/month.

Compromise agreement

Amendments have been introduced specifically stating that a compromise agreement reached between a worker and an employer in resolution of a dispute concerning termination of employment or underpayment or non-payment of wages will be valid "**notwithstanding any provision to the contrary in the Mauritian Code Civil and any other enactment**".

Protective order

The supervising officer's jurisdiction to apply to the Judge in Chambers for a protective order has been extended to not only the employer's failure to pay any remuneration, but also the employer's failure to pay in lieu of notice, severance allowance or gratuity.

Transport allowance

A new provision states that the equivalent to the light rail fare (if this is the case) is payable to a worker whose residence is more than three kilometres from his place of work.

Retirement

A new subsection has been added under the provision providing for "Gratuity on retirement" stating that an employer **cannot** require a worker to retire before the retirement age (65 years) and this is **notwithstanding** any agreement, or any provision to the contrary in any other enactment. This is irrespective of the worker's basic salary.

Provisions applicable only to workers whose basic

salary exceeds MUR 50,000/month

Additional remuneration

Workers including atypical workers whose basic salary exceeds MUR 50,000/month are no longer eligible for the payment of additional remuneration to compensate for the increase in the cost of living as provided by the WRA 2019.

Severance allowance

No severance allowance is payable at the expiry of a determinate contract where a compensation payment, gratuity or such other payment, however referred to, is paid to the employee in lieu of pension or in respect of his length of service at the end of every period of 12 months or at the end of each determinate contract.

Where an employee's basic salary exceeds MUR 50,000/month, the employee will not be considered to be in continuous employment even if he is employed successively under one or more determinate contracts.

Provision applicable only to workers whose basic salary is not more than MUR 100,000/month

End of year bonus

A prorated end of year bonus is now also payable to a worker employed on a **determinate contract** where the contract of employment comes to an end during the year.

Your Key Contacts



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