

# AN OVERVIEW OF SIXTH AMENDMENT TO THE EMPLOYMENT ACT

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Significant changes have been brought to Law no. 2/2008 (Employment Act) (“EA”) by the recent sixth amendment to the EA (“**Sixth Amendment**”), which came into force on 22 September 2020. Regulations to be made under the Sixth Amendment are to be published in the Gazette before 22 March 2021, 6 months from the date on which it came into force.

This overview provides a brief summary of the Sixth Amendment.

## EMPLOYMENT AGREEMENT

- The new provision, s.13(j) obligates an employer to hand over a copy of the executed employment agreement to the employee.
- Furthermore, within 3 (three) months from the date on which the Sixth Amendment came into force (i.e. before 22 December 2020), employers need to hand over the executed employment agreements to employees where they have not done so.
- Failure to do so may result in a fine between MVR 2,000/- (Maldivian Rufiyaa two thousand) and MVR 20,000/- (Maldivian Rufiyaa twenty thousand) being imposed.

## PROBATIONARY PERIOD

- An amendment has been brought to s.14 of the EA, whereby employees who are under probation are now entitled to all the rights guaranteed to permanent employees.
- Furthermore, the amendment obligates employers to pay their employees in probation, the minimum wage set pursuant to s.59 of the EA.

## JOB DESCRIPTION

- The following information that was mandated to be provided in the job description pursuant to s.15(c) of the EA is no longer obligated to be provided:
  - date of commencement of the employment agreement;
  - methods and guidelines for calculations of wages;
  - period for which wages will be paid;
  - leave provisions; and
  - policy on disciplinary measures that may be taken against an employee.
- However, s.15(c)(6) has now been amended to obligate the employer to explicitly state in the job description the particulars of the tasks or work which the employee will be undertaking pursuant to the capacity and job title in which they are being employed.

## REDUNDANCY

For the first time the principles of redundancy have been recognised and incorporated into the EA. Prior to the Sixth Amendment, redundancy was only recognised by case law.

- s. 21(c) now provides that the following reasons are reasonable causes for dismissal under redundancy:-
  - closure of the business and services of the employer;
  - restructure of the business of the employer; and
  - the employer being forced to reduce staff due to financial distress.
- The onus is on the employer to prove that the decision to dismiss the employee was taken in good faith and was not targeted towards a specific employee.
- The regulation made under the EA will specify the circumstances in which an employee may be dismissed on the grounds of redundancy, and the procedures to be followed by the employer in those circumstances.
- Notice period for dismissal under redundancy:

<b>Duration of Employment</b>	<b>Notice period / payment in lieu of notice equivalent to notice period</b>
Less than 1 (one) year	1 (one) month
Between 1 (one) year and 4 (four) years	Minimum 2 (two) months
More than 4 (four) years	Minimum 3 (three) months

## RESIGNATION & DISMISSAL

- Prior to the Sixth Amendment, s.26(a) required an employer to provide an opportunity for the employee to submit a complaint to the employer, where the employer has breached the employment agreement.
- However, s.26(a) has now been amended to ensure that every employee has the right to submit any objections or grievance where the employer has breached the employment agreement. If the employer does not rectify the breach(es) during the specified period, the employee has the right to resign after giving the required notice under the employment agreement.

## WORKING HOURS

- The employer is now obligated to keep the following records relating to employees as prescribed in the regulation issued under the EA (s. 32 (e)): -
  - working hours;
  - the duration for which the employee works;
  - the duration of overtime work; and
  - remuneration provided for overtime work.
- All the information records kept pursuant to s.32(e) must be provided to the Labour Relations Authority if they request or order for such information (s.32(f)).
- S.32 (g) provides that a fine of no more than MVR 5,000/- (Maldivian Rufiyaa five thousand) can be imposed for failure to comply with s. 32(f) of the EA.

## Exempted Employees

Where previously persons working in emergency situations, crew of sea going vessels or aircraft, imams and other employees at mosques, persons on on-call duty during the hours of duty and persons in senior management posts were exempt from all the provisions of Chapter 4 of the EA, the new amendment now only grants such employees exemptions from s.32 (maximum number of working hours per week), s.37 (over-time) and s.38 (working on a public holiday).

## Interpretation

The definition of the term “persons in senior management posts” has been amended, and is now defined as a person appointed or declared by the employer as a person holding a senior management post from among the persons engaged in the senior management, subject to the person meeting the criteria to be set by the regulation to be issued under the EA.

## Employee’s right to leave the work site or premises

- S.34-1(a) now provides the employees the right to leave their place of work, after the designated working hours. The employer/owner of the property shall not obstruct in any manner or form, the employees from leaving the workplace after their working hours or return to the workplace to start their work for the day.
- Furthermore, s.34-1(b), obligates the employer to allow any vessel or vehicle into the work site, which the employee would require to leave the worksite or premises.

## LEAVE

### Annual leave pay

- Whereas, the employer was previously required to pay the employee wages for the annual leave period prior to the commencement of their annual leave, the new amendment only requires the employer to pay to the employee wages for the period on which the employee would be on annual leave, prior to the commencement of their annual leave, if the employee requests to do so as prescribed under the employment agreement.
- However, where the wages of the employee are being paid by the Government, such wages can be paid pursuant to the general policy which the Government follows.

### Sick leave

- Pursuant to the new amendment to s.42 of the EA, it is not mandatory for the employer to grant sick leave to an employee, unless a medical certificate issued by a registered medical practitioner is submitted by the employee on the day the employee returns to work.
- However, the employees have the right to two consecutive days of sick leave without the need to submit medical certificate to the employer for 15 days out of the 30 days of sick leave which every employee is entitled to per year.

## SERVICE CHARGE

- Substantial changes have been brought to s.52, whereby employers from the tourism industry are obligated to impose a minimum service charge of 10% on every service given. Employers in other industries may impose a service charge at their discretion.
- Under s.52(b), the employers are obligated to distribute all monies collected as service charge during each month, among all their employees (employees who are directly and indirectly involved in granting the services of the employer) equally, before the end of the following month.
- Furthermore, employers are obligated to keep detailed records of the following (s.52 (e)): -
  - all income received by the employer as service charge;
  - the number of employees paid from the monies collected as service charges;
  - the amount of service charges each employee is entitled to;
  - details of the amount paid as service charge.
    - The employer is now obligated to submit the details prescribed above to the Maldives Inland Revenue Authority and the Labour Relations Authority twice a year in accordance with the dates specified by the Labour Relations Authority in their regulation.
- However, where the Labour Relations Authority requests that such information be provided, employers are obligated to provide all such information in the manner and form which the Labour Relations Authority requires (s. 52 (f)).
- S.52 (g) provides the fine that would be imposed for failure to comply with the above provisions.
  - Where employers engaged in the tourism industry fail to charge and distribute all income received as service charge as mandated under s.52(a) and (b), the Labour Relations Authority has a discretionary right to penalise the employer with a fine not exceeding MVR 100,000/-.
  - Where an employer fails to keep and file records pursuant to s.52(c) and where an employer fails to provide records upon request, the Labour Relations Authority is granted the right to impose a fine not exceeding MVR 50,000/-.
- Additionally, Maldives Inland Revenue Authority is required to ensure that the information provided by employers to the Labour Relations Authority is accurate in order to determine who has failed to abide by the above obligations. However, such assurances are to be provided by Maldives Inland Revenue Authority in relation to employers who submit tax returns pursuant to Income Tax Act (Law Number 25/2019).

\* *The Sixth Amendment expressly states that the above amendments brought to the provisions related to service charge will come into force on **1 January 2021**.*

## ACCOMMODATION OF EMPLOYEES

### Standard of accommodation of employees

- The Ministry of Economic Development is required to set, by way of a regulation, the minimum standards as well as the basic necessities to be included in employee's accommodation, where employers provide one. It is mandatory for the employers to adhere to these standards.

- The regulation on standards of accommodation are to be published within 30 days from the date on which the Sixth Amendment came into force and employers are granted a period of 6 months to ensure compliance with the standards set by the Ministry.

## PRIORITISING MALDIVIAN EMPLOYEES

### Training and prioritising Maldivians

- The EA now requires the Ministry of Economic Development to conduct training programs for Maldivians to improve the skills of the Maldivian labour force. Furthermore, the Ministry is also tasked with keeping track of industries/sectors in which fewer Maldivians are employed in and analyse and conduct trainings in such industries/sectors.
- In offices where more than 50 people are employed, the law now mandates that: -
  - a Maldivian shall be in charge of all matters relating to employees. (s.74-1 (b)); and
  - that 60% of the senior management positions are filled by Maldivians (s.74-1 (c)).
    - Definition of senior management and positions considered as senior management will be specified in the regulations made by the Ministry of Economic Development.
  - The goals specified above shall come into force latest within 5 years from the date on which the Sixth Amendment came into force.
- Additionally, employers are required to submit annual reports to the Labour Relations Authority on how the goals set in prioritising Maldivians in this section of the law are being achieved. The submission dates and the format of the reports that need to be submitted will be detailed in a regulation published by the Labour Relations Authority.
- Where employers fail to ensure compliance with the provisions of this section, the Labour Relations Authority may penalise the employer with a fine not exceeding MVR 100,000/-, at its discretion.
- Furthermore, to ensure the financial stability of Maldivians aged between 55 – 65, the Ministry is required to ensure that people of that age group who are able, educated and competent, be provided with employment opportunities.

## EXPATRIATES

### Quota and work permit

- The (relevant) Ministry, as specified in the Regulation made under the EA, has the right to issue the following:
  - Quota for expatriate workers;
  - the permit for expatriates to work in Maldives; and
  - work permit for the duration of their employment in Maldives.
- The regulation made under the Sixth Amendment should specify the policy on how quotas and work permits shall be granted as well as the date on which the annual quota fee of MVR 2,000/- (Maldivian Rufiyaa two thousand) will commence.
- Work permit for expatriate workers will be issued for a fee of MVR 350/- (Maldivian Rufiyaa three hundred and fifty) per month.

- The fees will be payable to the relevant authority designated by the (relevant) Minister.
- The new amendment has limited the number of foreign workers, from each nationality, which can be actively engaged or employed in the Maldives at any given time to 100,000 (one hundred thousand).
- If the number of foreign workers from a specific country exceeds 100,000 (one hundred thousand), the numbers should be complied with within 3 years from the date on which the Sixth Amendment came into force.

### **Payment of wages to expatriates**

The section which details the manner and form in which wages are required to be paid to expatriates has been repealed by the Sixth Amendment. As such, employers are no longer required to pay the wages of expatriates to a bank account under their name.

## **MINIMUM WAGE & MINIMUM WAGE ADVISORY BOARD**

### **Minimum Wage**

Under the Sixth Amendment, the Minister of Economic Development is obligated to declare a minimum wage to be given to workers in Maldives, pursuant to the EA.

### **Minimum Wage Advisory Board**

#### **Establishment of the Minimum Wage Advisory Board**

The Sixth Amendment obligates the Government to establish a “Minimum Wage Advisory Board” within 30 days from the date on which it came into force and to appoint members to the board as specified in section 60 of the EA.

#### **Duties and responsibilities of the Minimum Wage Advisory Board**

- The Minimum Wage Advisory Board is required to collect data and conduct research on the policy and manner which a minimum wage can be established and submit their advice on the matter to the Minister of Economic Development.
- The Minimum Wage Advisory Board is required to ensure that specific industries are addressed in their advice. These industries include: -
  - fisheries and agriculture;
  - tourism;
  - construction;
  - transport;
  - health;
  - education;
  - small and medium sized businesses;
  - information, communication and technology; and
  - maritime industry.

- In establishing the policy for determination of the minimum wage, the Minimum Wage Advisory Board is required to consider the expenses which the employee will bear for the basic needs of the employee and his/her family, current living standards and economic situation of the country, among other factors.
- The Minimum Wage Advisory Board is required to advise the Minister every 2 years if a change to the minimum wage needs to be ordered. However, due to the economic condition of the country, if the Minimum Wage Advisory Board deems it necessary to revise the minimum wage, they are granted the right to advise the Minister prior to the 2-year period.

### **Powers of the Minimum Wage Advisory Board**

- The Minimum Wage Advisory Board and the Minister of Economic Development has the power to require employers to submit information related to wages, based on the policy contained in the regulation issued under the EA.
- A fine not exceeding MVR 50,000/- will be imposed in cases where the employer fails to provide information requested by the Ministry of Economic Development or the Minimum Wage Advisory Board.

### **Order establishing Minimum Wage**

- Minister of Economic Development is required to establish, through an order, a minimum wage within 30 days of receiving advice from the Minimum Wage Advisory Board.
- The order establishing the minimum wage must include in detail the wage to be paid on an hourly basis, for part of the work, as well as the wage to be paid for overtime. Furthermore, in such an order the Minister of Economic Development has the discretion to set a specific minimum wage for specific industry and grant employers a time period for compliance.
- Once the order establishing the minimum wage has been published in the Gazette, the order will have legal standing until such order has been repealed or revised under the EA.
- All employers are obligated to ensure compliance, for local workers, with the first order establishing the minimum wage before the end of the year, 2021. With regard to expatriate workers, employers are granted a maximum period of 2 years from the date on which the Sixth Amendment came into force, to ensure compliance with the minimum wage order.

## **EMPLOYMENT TRIBUNAL**

### **Submission of employment cases to the Employment Tribunal through Magistrate Courts**

- The Sixth Amendment now allows employees to file complaints against employers through the magistrate courts in the respective islands in which the dispute occurred. A case submitted to the magistrate court, can be heard pursuant to the regulation (to be) published by the Employment Tribunal. However, even though the case is heard through the Magistrate Court, the final ruling on the complaint itself will be made by the Employment Tribunal.
- The regulation on how cases filed by employees will be heard in at Magistrate Courts must be published 6 months from the date on which the Sixth Amendment came into force.

## Enforcement of Tribunal decisions

- The Employment Tribunal is now obligated to ensure that its decision is being complied with by the parties, on its own initiative. Where the Employment Tribunal finds or a party to the complaint informs the tribunal of non-compliance by the other, the Tribunal must refer the case to the relevant court with the jurisdiction for the enforcement of the decision.
- The enforcement hearings in the relevant courts must be carried out in the same manner as any other enforcement hearings. The Employment Tribunal shall not be a party to the enforcement hearing between the parties to the dispute.
- Notwithstanding anything in this section, none of this shall be interpreted in a way that affect the rights of an individual to seek enforcement of a decision by the Employment Tribunal on their own.

## Employment Tribunal hearings

- All Employment Tribunal hearings are to be conducted and decisions to be conveyed in a manner open to the public.
- However, the Sixth Amendment provide that a Member of the Employment Tribunal may hold the hearing behind closed doors in accordance with democratic norms, for the following reasons:
  - in the interest of public morals, public order, and national security;
  - where the interests of juveniles or the victims of a crime so require; or
  - where circumstances in which an open hearing is prohibited under any other law occurs.

## Summoning to the Employment Tribunal

- The Employment Tribunal is now granted the power to summon parties for questioning, where they deem necessary and furthermore to require the submission of documents and other relevant information necessary related to a complaint filed.
- The actions which the Employment Tribunal can take for the failure to appear before the Tribunal as required under the summon issued by the Employment Tribunal must be specified in the regulation to be published under the EA.

## Remote hearings

- This new amendment allows the Employment Tribunal to conduct remote hearings where:
  - there is a state of emergency declared by the Government pursuant to the Constitution or any other law;
  - it is unsafe to attend hearings in person due to a disaster; or
  - there is a difficulty for a party to attend a hearing in person due to a difficulty in travelling, be it from an adverse weather condition or the financial burden to travel is too heavy on the party.
- The Tribunal is required to publish a regulation on how remote hearings will be conducted within 1 (one) month from the date on which the Sixth Amendment came into force.
- Furthermore, all recordings of remote hearings are to be maintained for a period of 10 years from the date on which the decision is rendered by the Tribunal.

*If you have any queries regarding the Sixth Amendment to the Employment Act, please contact any of the following members of our team:*

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