

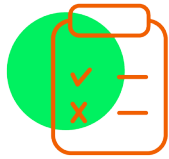
an overview of the

# Bill on Sixth Amendment to the Employment Act



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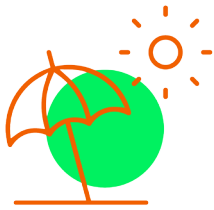
## Areas Addressed



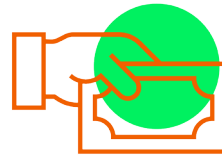
Employment Terms



Employment Agreements



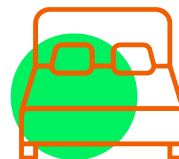
Statutory Leaves



Minimum Wage



Foreign Workers



Accommodation & Training

# Introduction

Bill on Sixth Amendment to the Employment Act proposes to introduce new rules on minimum wage along with strengthening other key areas of the Employment Act. As the previous amendment to the Act was brought about in 2016, some of the changes have been long-awaited.

Legislative intent of the Bill includes:

- △ defining the rules on overtime and service charge;
- △ redefining the rights afforded to exempted employees;
- △ establishing a procedure for the determination of minimum wage;
- △ establishing policies and guidelines for the determination of minimum wage;
- △ determining the role of Minimum Wage Advisory Board.

This Overview provides a summary of the provisions of the Bill in comparison with the existing employment laws, and additional provisions of the Bill that are worth considering.

# Employment Terms



## **Resignation & Termination** (Sections 25 & 26)

The Employment Act provides that an employee must not be dismissed from employment without showing a just cause. The Bill proposes to include provisions on redundancy situations where employees are dismissed due to the closure of the business, or where the requirements for employees to undertake work has ceased due to the restructuring of the workplace, as an appropriate cause for dismissal of an employee.

The specific procedures to be followed and the redundancy pay to be offered to employees that are dismissed due to redundancy are to be provided for in the Regulation made pursuant to the Bill once it becomes law.

The Employment Act currently affords employees the opportunity to notify employers of any infringement of statutory rights of employees or any breaches of the employment agreement by employers. The Bill goes further and offers a legal ground/right for resignation on the conditions of failure of the employer to rectify any such infringement or breach.

## **Working Hours & Overtime** (Section 32)

In addition to the obligation to not subject employees to work of more than 48 hours a week (excluding overtime) and providing one day off following six consecutive days of work, the Bill requires employers to;

- △ maintain records of the working hours, overtime hours and overtime pay in accordance with the relevant regulation (Section 33),
- △ make the records readily available to the Labor Relations Authority (“LRA”) where the authority requires the details to be submitted; failure of which would result in a fine of not more than MVR 5,000.

## **Exempted Employees** (Section 34)

Section 34(a) of the Employment Act exempts certain employees such as employees in Senior Management Positions, from rights provided under Chapter 4 of the Employment Act. This has caused much controversy in the past as Chapter 4 consists of several rights including the right to file a complaint to the Employment Tribunal.

However, the proposed Amendment changes this rule and provides that employees specified in Section 34 of the Act are only exempt from Sections 32 (working hours), 37 (overtime) and 38 (working on public holidays). This effectively means that although, issues relating to working hours and overtime would not be within legislative purview of protections afforded to exempted employees under Section 34(a), the employees would still be eligible for the rights and protections under the remaining provisions of Chapter 4.

Employees in ‘Senior Management Positions’ are redefined as employees determined by the employer as senior management employees from the employer’s managerial positions. The requirements and conditions determining ‘Senior Management Positions’ are to be provided for under the Regulation made pursuant to the Bill once it becomes law.

# Employment Agreements



## **Job Description** (Section 15)

The Bill proposes to remove following details from the Job Description.

- △ date of commencement of employment agreement;
- △ methods and guidelines for calculation of salary;
- △ durations at which salary is to be paid;
- △ eligible leave provisions; and
- △ the internal disciplinary guidelines.

However, in addition to providing the designation of the employees, employers will be required to include the category of work and specific details of works to be carried out by the employees, in the job description.

## **Probation Period** (Section 14)

Following the First Amendment to the Employment Act<sup>1</sup> the period which an employee can be subject to probation was reduced to three months.

The Bill, however, is set to reverse this period to the period initially followed when the Employment Act came into force back in 2008, i.e. six months.

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<sup>1</sup> Law Number 3/2018

## **Service Charge** (Section 52)

The Bill sets out additional rules in respect of service charges collected by employers.

Below are some significant rules:

- △ Service charge collected by employers must be entirely distributed between all the employees. Employers are permitted to deduct 1% as an administrative charge;
- △ The distribution must be equally made between all employees. No discrimination should be made against employees working in different positions;
- △ Service charges collected for the preceding month must be distributed before the end of the ensuing month;
- △ Employees in Senior Management Positions may be exempted from payments in accordance with any such agreement between the parties;
- △ Employers have the right to allocate service charges based on the number of hours worked by employees. In effect, employers can make deductions for absent days and as late fines.
- △ Employers must maintain records relating to service charges, including the total service charge received, employee working hours and working days and allocated service charge amounts. Such records must be submitted to the LRA annually and whenever requested by the LRA.

# Statutory Leaves



## **Annual Leave** (Section 41)

Currently employers are obligated to pay employees for the days employees are on annual leave, before the employee goes on leave. However, as per the proposed Bill, if annual leave arrangements are not agreed in employment agreement, this rule on annual leave pay will not apply.

## **Sick Leave** (Section 42)

Although 30 days of paid sick leave is maintained in the Bill, protection afforded to employees to take sick leave for two days or less without the need for submitting a medical certificate will no longer be available.

Employers are only required to grant paid sick leave if a medical certificate specifying the nature of the employees illness and recommended duration of leave issued by a licensed medical practitioner is submitted on the first day back at work.



# Minimum Wage



The minimum wage to be given to employees working in Maldives, is to be determined by the Minister.

## **Minimum Wage Advisory Board** (Sections 59 & 60)

A Minimum Wage Advisory Board is to be established within 30 days of the Bill becoming law. The Board will consist of 11 members appointed by the President of the Maldives, for a period of three years from the date of appointment.

The Board consists of a Chairperson appointed by the Minister of Economic Development, a member appointed by the Minister of Finance along with four members appointed by specified four sectors of the business community and another five members proposed by the associations representing employees.

Responsibilities of the Board includes;

- △ Research and ascertain policies and standards required to determine minimum wage;
- △ Review the minimum wage determined by the Minister, every two years and advise the Minister on the same;
- △ Undertaking all technical, administrative and legal obligations, such as carrying out research, conducting surveys, obtaining information and publication of information;
- △ Take into consideration, among other things, the level of household expenditure, living expenditure, social protection benefit, economic development standards and economic stability in determining the relevant policies.

## **Power to Obtain Information** (Section 59-3)

The Minister and Minimum Wage Advisory Board has the power to order employers to provide information of the salary paid to employees, if required by the Board for the determination of the minimum wage.

Employers failing to act in accordance with such an order, will be fined an amount not more than MVR 5,000.

## **Order Determining Minimum Wage** (Section 62)

The Minister should issue an order determining minimum wage - 'Minimum Wage Order' within 30 days from the date of the advice of the Minimum Wage Advisory Board, determining the minimum wage.

The Order may include determination of hourly rates, part time pay, and overtime payments. In addition, the order may prescribe the minimum wage in respect of certain fields, and where required the timeline given for the employers to implement the wage determined.

Once published in gazette, the Minimum Wage Order issued by the Minister must be valid unless it is annulled or amended, and will be enforceable against all its recipients.

# Foreign Workers (Section 65)



The Bill intends to repeal Section 53 of the Employment Act, which requires employers to open bank accounts for foreign employees and to make all payments to the foreign employees through a bank account by depositing the amount in cash or a cheque to a bank.

Once the Bill becomes law, in accordance with the Regulation made thereunder, the Minister is empowered to issue quota, permit to employ foreign nationals, and work permits granting foreign nationals leave to remain in the Maldives for employment purposes.

The Regulation will include the conditions and rules to be followed in issuing quotas. A fee of MVR 2,000 must be paid to an authority determined by the Minister.

Work permit would be issued in accordance with the standards stipulated in the Regulation, and upon payment of a fee of MVR 350 per month.

# Accommodation & Training



(Section 74-1 & 75-1)

Minister is mandated to organise training programs to improve the employment skills of Maldivians. The Bill instructs the Minister to focus on job sectors where there is a shortage of Maldivian employees when organising training.

The necessary amenities, and other general standards of the employee accommodations or sleeping quarters provided by employers, will be determined in the Regulation made pursuant to the Act. The Regulation must allow six months to employers to comply with the accommodation standards set in the Regulation.

# Offences & Penalties

The Bill proposes the below penalties where an employer acts in contravention of the provisions under the Bill.

Offence	Penalty
Failure to maintain and submit records of working hours, overtime hours and overtime pay to the LRA	≤MVR 5,000
Failure to maintain and submit records of service charge calculations to the LRA	≤MVR 5,000
Failure to provide information of the salary paid to employees in accordance with an order issued by the Minister/Minimum Wage Advisory Board	≤MVR 5,000

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