

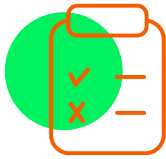
an overview of the

Sixth Amendment to the Employment Act



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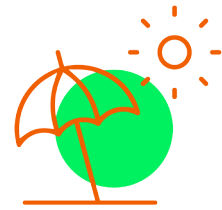
Areas Addressed



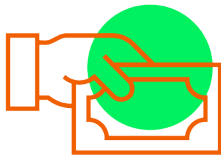
Employment Terms



Employment Agreements



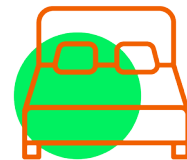
Statutory Leaves



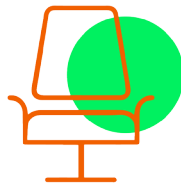
Minimum Wage



Foreign Workers



Accommodation & Training



Employment Tribunal

Introduction

The Sixth Amendment to the Employment Act (the “Amendment”) passed by the Parliament on 6 September 2020 and ratified by the President on 22 September 2020 provides additional guidelines on minimum wage, statutory leaves, dismissal of employees and functioning of the Employment Tribunal.

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

Employment Terms



Dismissal of Employee (Section 21)

The Amendment includes the following redundancy situations, as appropriate causes for dismissal of an employee:

- △ Intended closure of the business;
- △ Restructuring of workforce;
- △ Elimination of a position due to a change in the management or financial downturn.

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 Amendment. However, where employers decide to dismiss employees under redundancy, employers are required to substantiate that the action was taken in good faith, and that it was not directed at specific employee or employees.

When dismissing employees under redundancy, employees must also be given notice, or pay in lieu of notice in the following manner:

- △ 1 month's notice, if the employee's period of employment is less than 1 year;
- △ 2 months' notice, if the employee's period of employment is more than 1 year but less than 4 years;
- △ 3 months' notice, if the employee's period of employment is more than 4 years.

Resignation (Section 26)

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

Overtime (Section 32)

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

- △ maintain records of the working hours, overtime hours and overtime pay in accordance with the Regulation made pursuant to the Amendment,
- △ 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, 34-1)

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 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 cannot be forced to stay at the worksite, island or vessel after work hours and the Employer or Owner should not restrict employees from leaving the work site after work hours and from returning back to work.

Interpretation (Section 97)

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 Amendment.

Employment Agreements



Written Agreement (Section 13)

A copy of the employment agreement signed between the employer and the employee should be handed over to the employee. Employers who have not provided a copy of the employment agreement, must provide a copy to employees within 3 months from the commencement of the Amendment.

Probation Period (Section 14)

The probation period of 3 months is maintained in the Amendment. Both employee and employer have the discretion to terminate the Employment Contract during this period without prior notice.

The Amendment provides that employees are eligible to all rights stipulated under sections 32 to 57 of the Employment Act and the Minimum Wage stipulated in section 59 of the Amendment during the probation period as well.

Job Description (Section 15)

The Amendment removes the 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 nature of work and specific details of works to be carried out by the employees, in the job descriptions.

Service Charge (Section 52)

The Amendment sets out additional rules in respect of service charges collected by the employer. Below are some significant rules:

- △ Service charge of not less than 10% must be collected from all the services provided by the businesses operating in the tourism industry. Businesses operating in industries other than tourism have the discretion to collect service charge.
- △ The distribution of service charges 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;
- △ Service charge collected by the employer must be entirely distributed between all the employees. Employers are permitted to deduct maximum of 1% as an administrative charge;
- △ Employers must maintain monthly records relating to service charges, including the total service charge received, amount entitled to each employee, the amount paid and the number of employees who were paid the service charge. Such records must be submitted to the LRA and the Maldives Inland Revenue Authority twice every year in accordance with the Regulation made by the LRA.

Additional rules relating to service charge included in the Amendment will come to effect from 1 January 2021.

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 Amendment, if annual leave arrangements are not agreed in employment agreement, this rule on annual leave pay will not apply. Further, the rules do not apply to state employees.

Sick Leave [\(Section 42\)](#)

Although 30 days of paid sick leave is maintained in the Amendment, the right 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 employee's illness and recommended duration of leave issued by a licensed medical practitioner is submitted on the first day back at work. However, for 15 days out of 30 days of sick leave, employees have the discretion to take no more than two consecutive days without the need for submitting a medical certificate.

Minimum Wage



Minimum Wage (Section 59)

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

Minimum Wage Advisory Board (Sections 59-1, 59-2 & 60)

A Minimum Wage Advisory Board is to be established within 30 days from the effective date of the Amendment. 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 proposed by the Ministry of Economic Development, a member proposed by the Ministry of Finance along with four members proposed by specified four sectors of the business community and another five members proposed by the associations representing employees.

Responsibilities of the Board include;

- △ 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 have 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 may be fined an amount not more than MVR 50,000.

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,.

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

Employers are required to comply with the first Minimum Wage Order issued by the Minister, prior to the end of 2021. In the case of foreign employees, employers must comply with the Minimum Wage Order within 2 years from the commencement of the Amendment.

Once published in the 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



Employment of Foreigners (Sections 53 & 65)

The Amendment repeals 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.

In accordance with the Regulation made pursuant to the Amendment, the relevant Ministry 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 and the date of commencement. A fee of MVR 2,000 must be paid to an authority determined by the Minister.

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

Maximum number of employees that can be brought from one country is limited to 100,000. Where the number of employees currently permitted to work in the Maldives exceeds this limit, the number of employees should be reduced to 100,000 within 3 years from the commencement of the Amendment.

Accommodation & Training



Training of Maldivian Employees (Section 74-1)

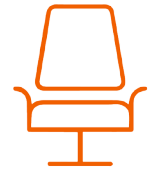
Minister is mandated to organise training programs to improve the employment skills of Maldivians. The Amendment instructs the Minister to focus on job sectors where there is a shortage of Maldivian employees when organising training.

Businesses employing more than 50 employees, must appoint a Maldivian employee as the head of human resources and sixty percent of the senior management must also be Maldivians. The aforementioned requirements must be implemented within 5 years from the commencement of the Amendment.

Employment Accommodation (Section 75-1)

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.

Employment Tribunal



Case Filing (Section 87-1)

Employment claims originating at islands other than Male' may be submitted to the Employment Tribunal through the Magistrate Court of the island. Hearings of such claims will be held via the Magistrate Court and the claims will be decided by the Employment Tribunal.

The specific rules to be followed in Employment cases submitted to the Employment Tribunal through magistrate courts, are to be provided for in the Regulation made by the Employment Tribunal pursuant to the Amendment.

Enforcement of Tribunal Decisions (Section 88-1)

It is the responsibility of the Employment Tribunal to ensure that the parties are complying with the decisions of the Employment Tribunal. If the party in whose favour the decision was made informs the Employment Tribunal of the failure of the other party to comply with the decision, such decision must be shared with the relevant Court for enforcement.

Although the Employment Tribunal generally conducts open hearings, the tribunal has the discretion to hold closed hearings in circumstances listed in Section 88-2(b) of the Amendment. Further in exceptional circumstances listed in Section 88-4(b) of the Amendment, the Employment Tribunal also has the discretion to conduct hearings remotely.

Offences & Penalties

The Amendment levies penalties where an employer acts in contravention of the provisions under the Amendment.

Offence	Penalty
Failure to prepare employment agreement or failure to provide a copy of employment agreement to the employee	MVR 2,000 - MVR 20,000
Failure to maintain and submit records of working hours, overtime hours and pay to the LRA when ordered to do so.	≤MVR 5,000
Failure to maintain and submit records of service charge calculations to the LRA and MIRA	≤MVR 50,000
Failure to collect service charge by tourism related businesses or failure to distribute the amounts equally between the employees	≤MVR 100,000
Failure to comply with the requirement in appointing a Maldivian employee as the head of human resources and failure to appoint Maldivians as 60% of the senior management, for businesses employing more than 50 employees	≤MVR 100,000
Failure to provide information of the salary paid to employees in accordance with an order issued by the Minister/Minimum Wage Advisory Board	≤MVR 50,000

For additional information with respect to the Sixth Amendment to the Employment Act, please contact one of the following members of our team:



Rafa Rasheed
Associate
rafa@ctlstrategies.com



Yameen Ibrahim
Senior Associate
yameen@ctlstrategies.com



Mariyam Naufa
Associate
naufa@ctlstrategies.com



