

Client Advisory

11 July 2021

General Employment Regulation

In Brief

This Advisory summarises the imperative aspects of the General Employment Regulation¹ gazetted by the Ministry of Economic Development on 9 May 2021. The Regulation focuses on rules relating to redundancy and recordkeeping with respect to working hours, overtime, and disbursement of salary.

Redundancy

An employee can be terminated for economic reasons only in the following circumstances where the position of the employee has to be made redundant.

- Cessation of the business or service operated by the employer.
- Restructuring of the business operation.
- Unfavorable financial position of the employer.

¹ Regulation Number 2021/R-63.



Cessation of the business or service

Where a position is made redundant due to the cessation of the business or service the following conditions should be met:

1. The position made redundant must be directly involved in providing the discontinued business or service.
2. If the position was not directly involved, at least 50% of the responsibilities of the position should relate to the discontinued business or service.
3. For a position to be deemed redundant due to the cessation of the business or service, the business or service should not be recommenced within 12 months from the date of cessation.

Restructuring

- Similar to cessation, for a position to be deemed redundant due to restructuring of business, the position should not be recreated within 12 months from the date the position was made redundant.
- Where an employer creates a similar position with the same responsibilities in a different name, it would still be considered as the recreation of the position previously made redundant.

Unfavourable financial position

Financial position of the employer would be considered unfavourable if the:

- Revenue of the employer has been unfavorable for a duration not less than the past six months.
- Revenue of the employer is expected to be unfavourable for at least the next six months.



Informing the employee of the redundancy situation

The employer is required to inform the employee of the decision to make the position redundant, prior to terminating an employee due to a redundancy situation.

The following should be included in the notice issued to the employee.

1. The reason for which the employer is terminating the employment (i.e., cessation of business, restructuring or unfavourable financial position);
2. The policy determining the way in which the employee would be selected for termination; and
3. Measures taken by the employer to prevent the termination or reduce the number of employees being terminated. Measures that could be taken by the employer includes:
 - Providing the employee with an opportunity to resign from the position.
 - Transferring the employee to another job or a position with different obligations and responsibilities.
 - Giving the employee an opportunity to take no pay leave for a duration.
 - Cutting back or limiting the number of new recruits.
 - Decreasing the number of temporary employees.
 - Adapting a more feasible work structure and adjusting the salary and allowances of the employee accordingly.

The employer is required to consider the following in formulating the policy prepared for selection of employees for termination.

- Period of employment.
- Educational qualification, experience and talent of the employee.



- Attendance and disciplinary records.
- Work performance or staff appraisal.

Employees should be selected in accordance with the policy, in good faith and in a justifiable manner.

Notice period

In accordance with the Employment Act, the employee should be given notice or pay in lieu of notice prior to the termination of an employee under redundancy.

Recordkeeping and Reporting

Redundancy

Records of employees terminated due to redundancy should be shared with the Ministry of Economic Development within 5 days from a request for information from the Ministry. Where the employer fails to share such records in accordance with the request of the Ministry, the Ministry retains the discretion to penalize the employer for an amount not more than MVR 2,000.

Working hours and Overtime

Attendance records are required to be kept for a period of minimum 2 years from the date of record. However, records that are required to be kept for a longer duration under another Act, should be kept accordingly.



The employer is required to facilitate a mechanism through which the employee would be able to verify the records of working hours and the attendance details. The following information should be included in the attendance records of the employee.

- Attendance of the employee (including the start and end time).
- Overtime hours worked by the employee (including the start and end time).
- Details of any non-attendance of the employee.
- Details of any leave taken by the employee.
- If the work is to be carried out on a shift basis, details of hours and days required to be worked by the employee and details of hours and days of overtime worked by the employee should be maintained daily.
- Hours required to be worked by the employee in addition to the normal daily working hours stipulated in the agreement should be separately recorded and overtime pay for such additional hours worked should be paid to the employee in accordance with the Act and Regulation.

Records should be shared with the LRA within 7 days of receiving a notice to provide the records. If an employer fails to share the records with the LRA within the timeframe stated in the notice, LRA may at their discretion:

- Take an action against the employee in accordance with section 86 of the Employment Act; or
- Penalise the employee in accordance with section 32 of the Employment Act in the following manner.
 - A fine of not more than MVR 2,500 for the first offence.
 - A fine of not more than MVR 5,000 for each subsequent offence.



Disbursement of salary

The employer shall keep records of salary and Ramadan allowances paid to the employee. This includes records and documentations to substantiate the payment of the salary to the employee. These records should be kept for a period of minimum 2 years from the date of record.

Filing of complaint

In an instance where the employer fails to act in accordance with the Employment Act in the payment of salary and allowances, the employee has the right to file a complaint with the LRA.

The LRA will act in the following manner in reviewing the complaint and taking administrative actions.

- Employer would be given a period of 7 days to respond to the complaint.
- If the employer fails to respond within the time frame, LRA can penalise the employer for an amount not more than MVR 2,000.
- If the employer fails to respond within the time frame more than one time, name and shame the employer on the website of the LRA. This action will cease once the employer settles the due salary payments and makes a request to the LRA in accordance.



Contact us

If you have any questions or need our assistance, please contact your principal advisor or any one of the following members of our team.



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Rafa leads our litigation and arbitration practice. She has a particular interest in employment law matters. Over her years of practice, she has written on and resolved several contentious issues surrounding employment in the Maldives, including matters related to service charge and occupational safety and health.

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Naufa specializes in the corporate and commercial practices of the firm. Her practice is focused on insurance law and has advised large corporate clients in several insurance disputes. She also takes a particular interest in arbitration and is now an Associate CI Arb (ACI Arb) member of the Chartered Institute of Arbitrators.

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About us

CTL Strategies is a multi-disciplinary law firm registered in the Maldives, specialised in tax advisory services. We advise international hotel chains, multinational companies, some of the big four audit firms, and a number of the world's largest companies as well as high net-worth individuals on commercial transactions, tax compliance, planning and tax disputes.

We are ranked in the 2021 edition of Chambers and Partners, and as a Highly Recommended Tax Disputes Firm by Asia Law Profiles.

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