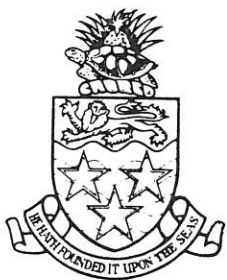


CAYMAN ISLANDS



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**THE LABOUR (AMENDMENT) LAW, 1995**  
**(LAW 10 OF 1995)**

CAYMAN ISLANDS

Law 10 of 1995

I Assent

JAMES M. RYAN  
Acting Governor

13th October, 1996

## **A LAW TO AMEND THE LABOUR LAW**

ENACTED by the Legislature of the Cayman Islands.

Short title.

Amendments to  
Labour Law.

1. This Law may be cited as the Labour (Amendment) Law, 1995.
2. The Labour Law shall have effect as specified in the Schedule.

### **THE SCHEDULE**

Section 2

#### **AMENDMENTS TO THE LABOUR LAW**

##### **Amendments to Part 1 of the Labour Law**

1. (1) In section 2 of the Labour Law -
  - (a) the definition of "Member" shall be repealed and the following definitions substituted -

" "mental disability" has the same meaning as in the Mental Health Law;

"Minister" means the Minister charged with responsibility for the administration of this Law under section 9 of the Constitution;" and

- (b) in the definitions of "predecessor-employer" and "successor-employer" the words "without a break" where they respectively occur in those definitions shall be repealed.

(2) Section 6A shall be amended by inserting after the words "the same employer" the words "or, where the severance pay required under this Law has not been paid to the employee, by the successor-employer".

(3) Section 7 shall be amended by inserting in subsection (1) after the word "agreed" the words "in writing".

(4) Section 9 (1)(b) shall be amended by inserting after the word "notice" the words "at least".

(5) Section 10 (1) shall be amended by repealing paragraph (b) and substituting the following paragraphs -

"(b) when a period of notice is required by his contract of employment, that period;

(c) in all other cases, notice equal to the interval of time between his pay days or 30 days, whichever is the less."

(6) Section 10 (2)(b) shall be repealed and the following substituted -

"(b) forfeit all vacation leave accrued during the current employment year."

#### **Amendments to Part 2 of the Labour Law**

2. (1) Section 13 (1) of the Labour Law shall be amended by repealing the words "two clear calendar weeks earned leave in each twelve month period of employment" and substituting "at least the period of earned leave in each twelve month period of employment which is specified in respect of each such period in subsection (1B)".

(2) After section 13 (1) there shall be inserted the following -

"(1A) The proviso in subsection (1) above shall not apply where the employer and employee have agreed in writing that the entitlement of earned vacation leave shall accrue proportionately to the employee at the end of each month during each twelve month period of employment.

(1B) The minimum entitlement of earned leave referred to in subsection (1) is specified in the right hand column of the table below in respect of the completed period of employment specified in the left hand column of the table -

Period of employment	Minimum annual entitlement to earned leave in respect of each twelve month period of employment
Not exceeding 4 completed years	2 weeks
Exceeding 4 but not exceeding 10 completed years	3 weeks
Exceeding 10 completed years	4 weeks,

the minimum annual entitlement of earned leave shall be in such proportions and at such time as the employer and employee shall agree.

(1C) The Governor may by regulations prescribe that employers in such industries or businesses as may be specified in the regulations, being industries or businesses which have seasonal employment requirements, shall -

(a) proportion leave in accordance with the time worked by their employees during each year; and

(b) require their employees to take their leave during such periods in each year as may be specified in the regulations as being the agreed leave periods for the employer's industry or business."

(3) After section 13 (8) there shall be added -

"(9) Every employee to whom this Part applies shall, in addition to any entitlement to earned vacation leave, be entitled (during each 12 month period of employment) to a maximum of five days compassionate leave on the occurrence of a death or serious illness in the employee's immediate family provided reasonable evidence of such serious illness or death is provided to the employer; and for the purposes of this entitlement the employee's immediate family means the spouse, parents and children of the employee.

(10) For the purposes of subsection (9) "serious illness" includes any period of a person's admittance to hospital as in-patient, recuperation from such hospitalisation or any period of overseas travel related to such hospitalisation or recuperation."

(4) Section 16 shall be amended by inserting after subsection (2)

the following -

"(2A) A doctor's certificate furnished by an employee which provides evidence that the employee was ill or otherwise physically incapacitated from working for his employer on a particular day shall be satisfactory evidence of that illness or incapacity for the purpose of the entitlement of the employee to sick leave pay under this Part.

(2B) Subsection (2A) shall not require an employer to accept a doctor's certificate as evidence of an employee's sickness or incapacity where there are reasonable grounds for the employer to suspect that the certificate has been procured in furtherance of, or as part of, a course of absenteeism."

(5) Section 18 (2) shall be repealed and the following substituted -

"(2) An employee entitled to maternity leave under subsection (1) shall be entitled to receive and her employer shall pay -

- (a) in respect of any entitlement to maternity leave for a period not exceeding 20 working days, the basic wage that the employee would have received had she worked on those days; and
- (b) in respect of any period of entitlement to 20 working days maternity leave next following the first 20 days, one half of the amount of the basic wage she would have received had she worked on those days."

(6) Section 18 shall be amended by adding after subsection (4) the following subsection -

"(5) A female employee who adopts a child under 3 years of age shall be entitled to adoption leave of 9 calendar weeks and to receive from her employer the basic wage that the employee would have received had she worked on the days of her entitlement to adoption leave for a period not exceeding 15 working days of that entitlement.

(6) Adoption leave may be granted to any female employee once in any 36 calendar month period."

#### **Amendments to Part 3 of the Labour Law**

3. (1) Section 22 of the Labour Law shall be amended by repealing subsection (2) and substituting the following -

"(2) Every employer in a specified industry or business shall permit each of his hourly-paid employees during each

period of work -

- (a) of 3 to 5 hours, a minimum of 15 minutes break;
- (b) of more than 5 hours, a minimum of two breaks of 15 minutes each; and
- (c) of more than 5 hours, and in addition to any entitlement to breaks under paragraphs (a) or (b), a meal break of 30 minutes,

the employee to be paid for the period of each 15 minute break (but not for the period of any meal break) the wage the employee would, but for the break, have otherwise been entitled to receive.

(3) For the purposes of subsection (2) the specified industries and businesses are -

- (a) construction;
- (b) manufacturing;
- (c) heavy equipment operators;
- (d) hospitality; and
- (e) gardening or landscaping.

(4) Any employer who does not comply with any requirement imposed on him by subsections (1) or (2) shall be guilty of an offence.

(5) Any employee not entitled to the breaks specified in subsection (2) is nevertheless entitled to reasonable rest and meal breaks.

(6) All rest and meal breaks required by subsection (2), and all other rest and meal breaks to which an employee is entitled under subsection (5), shall, having regard to all the circumstances of the employment concerned, be taken at such reasonable times as are agreed between the employer and the employee."

(2) Section 24A shall be amended by repealing the words "the Director" in both places where they occur in that section and substituting the words "the Labour Tribunal".

(3) Section 27(2) shall be amended by deleting paragraph (d) and substituting the following:

"(d) bad or negligent work, other than a shortfall in cash collected by an employee on behalf of an employer or in a cash float provided to the employee by the employer."

(4) Section 27 (3) shall be amended by adding at the end the following paragraph -

"(f) any wages deducted by virtue of the suspension of an employee where the employee has been given a written warning under section 45 (2) or 46 (1) and the employee has been guilty of further misconduct or has continued to perform his duties unsatisfactorily."

(5) Section 31 (1) shall be amended by inserting after the word "wage" the words "or gratuity" and by repealing the words "if so requested by the recipient employee".

#### **Amendments to Part 4 of the Labour Law**

4. (1) Section 35 (2) of the Labour Law shall be amended by repealing the words "all other debts" and substituting the words "all other debts, secured or unsecured".

(2) Subsection (2) of section 37 shall be amended by repealing the words "six months" in both places where they occur and substituting the words "thirty days".

(3) Section 37 shall be amended by inserting after subsection (2) the following subsection -

"(2A) Subsection (2) above shall apply to employees in agriculture and construction with the words "six months" substituted for the words "thirty days" in both places where they occur in that subsection."

#### **Amendments to Part 5 of the Labour Law**

5. (1) Section 42 (1)(b) of the Labour Law shall be amended by repealing the words "six months" and substituting "three months".

(2) Section 44 shall be amended by inserting after the section number the subsection designation "(1)", after that the words "Subject to subsections (2) and (3)," and adding at the end the following subsections -

"(2) Where the reason for the dismissal of an employee was that he was redundant but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking, who were employed to perform work of the kind he was employed to do and who have not been dismissed by the employer, and -

- (a) that those other employees do not hold the same status as the redundant employee for the purposes of Parts III to V of the Immigration Law (Caymanian Status, Permanent Residence and work permits); and
- (b) that the redundant employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case, then, for the purposes of this Part of this Law, the dismissal shall be regarded as unfair.

(3) The question whether an employer has acted reasonably for the purposes of this Part shall be determined in accordance with equity and the substantial merits of the case having regard to all the circumstances."

(3) Section 46 (2) shall be amended by inserting after the words "at the end of that one month period" the words ", or after the end of that period take such other action as may have been specified in the written warning."

(4) Section 48 shall be amended by repealing the words "the Director" in each place where they occur in that section and substituting the words "the Labour Tribunal".

#### **Amendments to Part 6 of the Labour Law**

6. (1) Section 59 (2) of the Labour Law shall be amended by inserting after the word "section" the number "50,".

(2) Section 59 (4) shall be amended -

- (a) by repealing the words "one hundred dollars" and substituting "\$1,000"; and
- (b) by repealing the words "fifty dollars" and substituting "\$100".

(3) Section 61 shall be amended by inserting after the section number the subsection designation "(1)" and by adding at the end of the section the following -

"(2) A copy of every report with respect to and in consequence of any accident in a workplace which is made by an authority appointed to hold a formal investigation under any Law, shall be sent by that authority to the Director."

#### **Amendments to Part 7 of the Labour Law**



7. (1) Section 64 of the Labour Law shall be amended -

(a) by repealing subsection (1) and substituting the following -

"(1) There shall be established a Department of Human Resources, comprising the Director of Labour and Deputy Director, and such Labour Inspectors and other staff as may be necessary for the due administration and enforcement of this Law.";

(b) by repealing the words "and inspectors" in subsection (2) and substituting ", Deputy Director, Labour Inspectors and all other staff of the Department";

(c) by repealing the words "the Labour Office" in subsection (3) and substituting "the Department of Labour"; and

(d) by adding after subsection (3) the following -

"(4) In addition to any other functions conferred on the Director of Labour by or under this Law, the Director shall -

(a) provide such services as may be prescribed in Regulations made by the Governor for the purposes of finding Caymanians employment with employers or supplying employers with Caymanians for employment by them; and

(b) encourage appropriate training of Caymanians employed or intending to be employed in any employment by -

(i) providing or facilitating the provision of courses for the training of Caymanians;

(ii) providing information about courses and qualifications in relation to any employment;

(iii) assisting Caymanians in finding facilities for being trained in any employment; and

(iv) providing such other advice or assistance as may be prescribed."

(2) Section 66 (1) shall be amended by repealing the words "the Director and any inspector" and substituting "the Director, Deputy Director and any Labour Inspector".

(3) Section 66 (2) shall be amended by repealing the words "The Director and any inspector" and substituting "the Director, Deputy Director and any Labour Inspector".

(4) After section 66 there shall be inserted the following sections -

" Labour  
Relation Board.

66A. (1) There shall be established a Labour Relations Board to promote the improvement of labour relations and to provide such services, including such assistance to the Director of Labour, as may be conferred on the Board by regulations made by the Governor.

(2) The Board shall consist of a Chairman and 8 members appointed by the Governor, at least 4 members being representative of the interests of employees and at least 4 members being representative of the interests of employers.

(3) The Governor may by regulations make provision for the constitution, procedure and administration of the Board and may, in particular, make provision for -

- (a) the terms of office of members and the Chairman of the Board;
- (b) the procedure, proceedings and quorum of the Board; and
- (c) staff and expenses of the Board.

(4) The Governor may also by regulations make provision for the powers of the Board to make recommendations on considering a complaint referred to it by the Director and the duties of the Director upon receiving such recommendations from the Board or a decision of the Labour Tribunal.

Labour  
Tribunals.

66B. (1) There shall be established Labour Tribunals each consisting of a Chairman and two other members for the purpose of hearing complaints from employers and employees.

(2) The members of each Labour Tribunal shall be appointed by the Governor, and shall hold office for the period of one year, but may be re-appointed from time to time for such further periods of one year as the Governor may consider appropriate.

(3) The Governor may appoint one of the members of Labour Tribunal to be the Deputy Chairman of that Tribunal; and any Deputy Chairman so appointed shall be entitled to perform all the functions of the Chairman of the Tribunal on any occasion when the Chairman is unable to do so.

(4) The Governor may by regulations make provision for the constitution, procedure and administration of the Labour Tribunals and may, in particular, make provision for -

- (a) the terms of office of members and the chairman of the Tribunals;
- (b) the procedure, proceedings and quorum of the Tribunals;
- (c) staff and expenses of the Tribunals."

(5) Section 67 shall be amended -

(a) by inserting after subsection (1) the following subsections -

"(1A) At the same time as the Director gives notice to an employer of a complaint the Director shall send a copy of the complaint and any document filed in its support to the Labour Relations Board; and a copy of any representations subsequently made by the employer shall also be sent to the Board.

(1B) The Board shall consider the complaint and any representations upon the complaint made by the employer and make a report on the complaint to the Labour Tribunal.

(1C) A report of the Board to the Labour Tribunal may recommend -

- (a) that the complaint be dealt with by a hearing held by the Labour Tribunal; or
- (b) that assistance offered by or on behalf of the Board to the complainant and employer, by way of conciliation or by other means, should be pursued in lieu of or before any hearing of the complaint by the Labour Tribunal."

(b) by repealing subsection (2) and substituting the following -

"(2) Within 21 days after receiving a report from the Board recommending that the Labour Tribunal hold a hearing of the complaint the Labour Tribunal shall fix a date for the hearing of the complaint to be held within the second or third month next following his receipt of the report.";

- (c) by repealing in subsection (5) the words "If any party fails to attend the hearing" and substituting "If either or both parties fail to attend the hearing"; and
- (d) by repealing in section 67 (4), (5), (6) and (7) the word "Director" where it appears therein and replacing it with the words "Labour Tribunal".

(6) Section 68 (1) shall be amended by repealing subsection (1) and substituting the following subsection -

"(1) Subject to subsection (3) of section 70, any refusal to comply with any decision of the Labour Tribunal made under section 41 (severance pay), section 48 (unfair dismissal), or any other decision of the Labour Tribunal mentioned in section 70, is an offence."

(7) Section 68 (2) shall be amended by repealing the words "the Director" and substituting the words "the Labour Tribunal".

(8) Section 69 shall be amended -

- (a) by repealing the word "Director" and substituting the words "Labour Tribunal"; and
- (b) by repealing subsection (3) and substituting the following -

"(3) The Governor may appoint one of the four other members of the Appeals Tribunal to be Deputy Chairman who shall be entitled to perform all the functions of the Chairman in relation to the hearing of appeals on any occasion when the Chairman is unable to do so."

(9) Section 70 shall be amended by repealing the word "Director" in each place where it occurs and substituting the words "Labour Tribunal".

(10) Subsection (1) of section 70 shall be amended by repealing paragraph (c) and substituting -

- "(c) any decision of the Labour Tribunal that his dismissal was fair; or
- (d) any refusal of the Labour Tribunal to register an overtime agreement; or

- (e) any decision of the Labour Tribunal that no award should be made."

**Amendments to Part 8 of the Labour Law**

8. (1) Section 72 of the Labour Law shall be amended -
- (a) by repealing in subsection (1) the words "am employer" and substituting "an employer";
  - (b) by repealing in that subsection the words "by reason of race, colour, creed, sex, age or political beliefs" and substituting "by reason of race, colour, creed, sex, pregnancy or any reason connected with pregnancy, age, mental or physical disability (provided their ability to perform the job is not impaired), political belief, or the exercise of any rights under this or any other Law"; and
  - (c) by repealing the words "one thousand dollars" in subsection (3) and substituting "\$5,000".
- (2) Section 73 (1) shall be amended -
- (a) by repealing the words "five hundred dollars" and substituting "\$2,500"; and
  - (b) by repealing the words "one thousand dollars" and substituting "\$5,000".
- (3) Section 73 (2) shall be amended by repealing the words "fifty dollars" and substituting "\$100".
- (4) Section 74 (1) shall be amended by repealing the words "two thousand dollars" in subsection (1) and substituting "\$5,000".
- (5) Section 74 (2) shall be amended -
- (a) by repealing the words "one thousand dollars" and substituting "\$2,500"; and
  - (b) by repealing the words "two thousand dollars" and substituting "\$5,000".
- (6) The Labour Law is amended by inserting immediately after section 77 the following new section:

" Directions.

77A. The Governor may give to any officer or statutory authority carrying out a function under this Law directions as to the execution of such function; and where any such directions are given that officer or authority shall comply with the directions."

Passed by the Legislative Assembly the 15th day of September, 1995.

SYBIL McLAUGHLIN  
Speaker.

GEORGETTE MYRIE  
Clerk of the Legislative Assembly.