GUIDE

APPLEBY

GUIDE TO EMPLOYMENT LAW IN MAURITIUS

CONTENTS

PREFACE

This is the Second Edition of the Guide, which we have produced for the information of our clients and professional colleagues. This edition takes account of changes that the National Assembly made to the Employment Rights Act 2008 that came into force on 02 February 2009.

This Guide is divided into four parts: 1) Introduction; 2) The Non-Negotiable Elements; 3) The Negotiable Elements; 4) The New Features.

This Guide is concerned primarily at providing general information for parties wishing to understand the basic tenets of Mauritian employment law with particular emphasis on the changes brought to the Employment Rights Act 2008 this year by the National Assembly. In this regard the Employment Rights Act is increasingly being transformed as the all-embracing code of our employment laws.

It is anticipated that this Guide will not completely answer detailed questions which clients and their advisers may have. The Guide is, therefore, designed as a starting-point for a more detailed and comprehensive discussion of the issues, and should not be used as a substitute for professional advice. Whilst we have made every effort to ensure the accuracy of the statements made herein, we accept no liability for any errors. In all cases expert legal advice from a qualified practitioner of Mauritius law should be obtained. If any such questions arise in relation to the contents, they may be addressed to any member of the team, using the contact information provided at the end of this Guide.

Before proceeding with any matter discussed herein, persons are advised to consult their legal advisers.

Appleby
Mauritius
February 2015

1. INTRODUCTION

The Employment Rights Act 2008 (the **Act**) came into force on 02 February 2009. The Act was introduced at a crucial time in the history of employment law in Mauritius in that until its advent the laws of employment were governed predominantly by the Labour Act 1975 (the **old law**) and other pieces of legislation that were not enabling in nature and in respect of which the old law was the "feeder" piece of legislation.

Over the years it was felt that the changes that were made to the old law were not sufficiently consonant with the needs of the modern employment environment in Mauritius that now accommodates a substantial percentage of foreign workers at all levels of the work stratum.

While it cannot be said that in repealing the old law, the Act has revolutionised the existing employment law structure in Mauritius, it is apposite to mention that it has achieved a two-fold result. First, the Act has consolidated the old law and contracts of employment. Second, it has endorsed concepts that are now accepted as intrinsic to most modern employment law régimes. Accordingly, it has opened the doors for the possibility to negotiate a well-defined group of elements forming the essence of the contract of employment (under the old law the latter elements were well engraved in "tablets of stone").

The Act therefore marks the beginning of a new era in approach to the principles underpinning the employment laws of Mauritius.

This year the National Assembly revised the Act. Among the amendments that were made to the Act the enhanced role of trade unions in the employer-worker relationship is noteworthy. Furthermore, it is a fact that the effectiveness of the changes made to the Act remains to be tested. Yet, the enhanced role of trade unions is undoubtedly a welcome change to the employment scene that is more accustomed to strained State/Union relations.

2. THE NON-NEGOTIABLE ELEMENTS

2.1 Discrimination in Employment and Remuneration

As a novelty to our employment law, "discrimination" is expressly defined and prohibited under the Act. Further, the definition is comprehensive and thus comprises "different treatment to different workers attributable wholly or mainly to their respective descriptions by age, race, colour, caste, creed, sex, sexual orientation, HIV status, religion, political opinion, place of origin, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation" (see §4(5)(a) of the Act).

2.2 Equal Remuneration for Work of Equal Value

The Act imposes a positive duty on every employer to ensure that the "remuneration" of any worker "shall not be less favourable than that of another worker performing the same type of work" (see §20 of the Act).

The Act has gone a step further than the old law as it has actually defined the term "remuneration" as comprising "all emoluments, in cash or in kind, earned by a worker under an agreement". It captures: (a) any sum paid by the employer to a worker to cover expenses incurred in relation to the special nature of his work; (b) any money to be paid to a job contractor, for work, by the person employing the job contractor; and (c) any money due as a share of profits (see §2 of the Act).

2.3 Maternity Benefits

A female worker is entitled to 12 weeks' maternity leave on full pay provided, for the purposes of payment, she has been in the continuous employment of the employer for a period of 12 consecutive

months immediately preceding the beginning of leave and she has produced a medical certificate(see §30 of the Act).

Under the Act, maternity leave may be taken either before or after confinement. If it is to be taken before confinement, at least six weeks' maternity leave shall be taken immediately following the confinement (see §30(1) of the Act). Furthermore, a female worker who gives birth and reckons 12 consecutive months of employment with the same worker shall be paid an allowance set out in the Act within a period of seven days of her confinement (see §30(1A) of the Act). Currently the quantum of this allowance stands to the order of MUR 3,000 [USD 100] (see Third Schedule of the Act).

Under the Act, a female worker who is in part-time employment will be entitled to be paid in accordance with the formula set out under the Act, provided she fulfils the above requirements that apply to a (full-time) female worker i.e. continuous employment and production of a medical certificate.

It is to be noted that under the Act a female worker who fails the requirement to be in 12 months continuous employment prior to leave is still entitled to maternity leave, but she is not entitled to pay.

The Act goes further than the old law as it covers for the loophole under the old law as regards the entitlement to maternity leave where the new born is stillborn or the female worker suffers a miscarriage. Thus, where the female worker who fulfils the test for continuous employment gives birth to a stillborn child, she is entitled to a maximum of 12 weeks leave. The only condition precedent to her entitlement is that she must produce a medical certificate confirming the need for leave. In the event of a miscarriage that is duly certified by a medical practitioner the female worker is entitled to two weeks' leave on full pay immediately after the miscarriage.

2.4 Paternity Leave

The Act legitimates the rights of a father of a new born child to take five continuous days off work following the birth of his child (see §31 of the Act). Under the old law, this could be achieved by applying for "local leaves"; however, in this respect, the Act is innovative as it enhances the image of a father within the family unit but it retains a conservative aspect in that "common law" fathers are disentitled to paternity leave under the Act.

In order to be granted paternity leave, the following conditions must be satisfied by the father: first, the father must produce a medical certificate to confirm the birth of the new born child by his spouse; and second, he must produce a written statement signed by him to the effect that he is living with his spouse under a common roof. Pursuant to the Act, paternity leave must begin within one week from the birth of the child and will be on full pay provided the father has been in continuous employment with the same employer for a period of at least 12 months prior to the date of birth of the child.

Under the Act the meaning of "spouse" is limited to marriage whether religious or civil (see §31(3) of the Act). Thus, a common law husband cannot avail himself of paternity leave under the Act.

2.5 Termination of Agreement

(a) Requirement to Issue a Notice of Termination

Under the old law, an employer who intended to terminate the employment of a worker who had reckoned a year or more continuous service with the employer had defined time-frames during which the employer had to notify a worker of his intention to terminate the worker's contract. The time-frame varied according to the number of years of service the worker reckoned with the employer.

The Act, however, has created a standard procedure that applies to all employees, irrespective of the time served with their employer. The governing provision in the Act is that an employer must give a worker 30 days' notice of his intention to terminate the contract of employment (see §37(4) of the Act), or within "any [longer] reasonable time" (see §37(3) of the Act). The

notice period provided in the Act is subject, however, to any provision in the contract of employment. Notice may be in verbal or written form.

(b) **Payment in Lieu of Notice**

The Act has maintained the rights under the old law by which an employer is authorised to pay to the worker a sum that represents the remuneration that the worker would have been paid had s/he been in the employment of the employer during the period that constitutes the "notice period" (see §37(5) of the Act).

(c) **Protection against Termination under Specific Circumstances**

The Act sets out a number of instances which prevent termination of employment by reason of, for example, race, colour, caste, political opinion or sexual orientation, absence during maternity leave, absence through illness when accompanied by a medical certificate, membership to a trade union or because of a complaint filed against the employer (see §38(1) of the Act for a full list of prohibited reasons for termination).

(d) **Rights of Worker under a Notice of Termination**

An employer, having issued a worker with a notice of termination of employment must, on satisfactory proof of a request, authorise a worker reasonable time-off in order to seek further employment (see §39 of the Act).

2.6 **Reduction of Workforce and/or Closure of Business**

See below under New Features at Section 4.

2.7 **The Workfare Programme**

The Government of Mauritius (the **Government**) introduced this feature to Mauritius to sustain levels of employment and to improve quality of services and industry (see Part IX of the Act). Under the Act, the Government will grant a Transition Unemployment Benefit to every worker whose agreement has been terminated and who has joined the Workfare Programme, which will be paid for a minimum period of one month and a maximum period of 12 months.

The rate at which such benefit will be paid is set out in the Thirteenth Schedule to the Act, and is computed on the basis of the basic wage of the worker as follows:

- 90% of the basic wage for the first three months but not less than MUR 3,000 [USD 100];
- 60% of the basic wage for the next three months but not less than MUR 3,000 [USD 100]; and
- 30% of the basic wage for the remaining six months but not less than MUR 3,000 [USD 100].

Under the Act, in order that a worker joins the Workfare Programme the worker must satisfy two criteria namely:

- the worker must have been in the continuous employment of the employer for a period not less than 180 days on a determinate agreement and the employer has terminated the agreement or the agreement came to an end; and
- the worker's employment was terminated by the employer for the following reasons:
  - because of ill-treatment by the employer which entitled the worker to treat the employment as terminated;
  - because the employer failed to pay to the worker the remuneration due under the agreement with the worker which entitled the worker to treat the employment as terminated;
  - for the reasons stated at section 38(1),(2) and (3) of the Act;

- for reasons of economic, technological or similar nature affecting the enterprise, misconduct or poor performance;
- without any justification

(see §42(1) of the Act).

Where a worker registers himself in the Workfare Programme, he must, within 14 days, opt for any of the activities under section 41(2)(b) of the Act, namely, job placement, training and re-skilling or starting up a small business. The Permanent Secretary of the Ministry responsible for the subject of labour and employment relations (**Permanent Secretary**) has discretion to extend the deadline of 14 days to any such time limit that the Permanent Secretary may decide upon reasonable cause shown to his satisfaction. The Act makes it mandatory for such a worker to inform the Permanent Secretary within a period of 14 days of the activity that the worker has chosen in the form prescribed at the Fifth Schedule of the Act (see §43(3) of the Act).

Upon registration by a worker to the Workfare Programme, the Permanent Secretary will then refer the worker, as the case may be, to the Employment Service Ministry (for job placement), the Human Resource Development Council (for training and re-skilling) or the Small Enterprises and Handicraft Development Authority (for starting up small businesses).

The Act specifically provides for the financing of the Transition Unemployment Benefit from two sources: first, from 1% contribution of the worker and the recycling fee in the National Savings Fund account of the worker and any interests accrued thereon, to the level of 50% of the Transition Unemployment Benefit; and second, from the Workfare Programme Fund to the level of 50% of the Transition Unemployment Benefit (see Seventh Schedule of the Act).

The Act goes a step further in that it provides for the procedures to be followed once a worker has become entitled to the Transition Unemployment Benefit. These are outlined below:

- first, as soon as a worker becomes entitled to the Transition Unemployment Benefit he must register himself with the Permanent Secretary within a period of 14 days of the date on which the worker is informed that the Permanent Secretary has entered proceedings on behalf of the worker before the Industrial Court (see §43(3A) of the Act) or such other time limit that the Permanent Secretary has extended on reasonable cause shown to his satisfaction;
- secondly, within a period of 14 days after registration above, the Permanent Secretary must inform the Permanent Secretary of the Ministry responsible for the subject of social security of the worker's registration in the form prescribed at the Fourteenth Schedule of the Act (see §43(3B) of the Act);
- thirdly, upon receipt of the notice of registration under the form prescribed at the Fourteenth Schedule of the Act, the Permanent Secretary of the Ministry responsible for the subject of social security shall pay the Transition Unemployment Benefit to the worker (see §43(4) of the Act)

2.8 Compensation

That is the payment of "severance allowance", "recycling fee" as defined and in the terms set out under the Act, the payment of the gratuity fee upon retirement, the payment of the death grant, the issue of the Certificate of Employment, the payment of gratuity to a worker under a fixed term employment contract.

(a) Severance Allowance

The computation of the figure varies according to the number of years of continuous service that the worker reckons with the employer. However the Act is unequivocal as regards the figure to be used for computation purposes namely the remuneration payable to a worker at the time of termination of his or her agreement (see §46 of the Act).

Thus, where the worker reckons continuous employment the computation is as follows (see §46(5) of the Act):

- for every period of 12 months, the sum paid represents the equivalent of three months' remuneration for every period of 12 months of employment with the employer; and
- for every period less than 12 months, the sum paid is 1/12 of the sum mentioned at (a) above multiplied by the number of months during which the worker has been in the continuous employment of the employer.

The Act permits an employer make certain deductions from the Severance Allowance payable to a worker (see §48 of the Act). These are as follows:

- any gratuity granted by the employer;
- any contribution made to any fund or scheme by the employer; and
- any recycling fee paid under the Act.

This year one of the noteworthy changes that the National Assembly brought to the Act concerned the question of Severance Allowance. Thus for the first time in our employment laws there is statutory recognition that Severance Allowance is not payable under certain circumstances namely:

- where a worker and an employer have entered into an agreement for a specified period contemplated at section (5)(3A) of the Act and the agreement has come to an end. Under section 5(3A) of the Act the foresaid agreement may relate to any of the following:
  - a specified piece of work;
  - in replacement of another worker who is on approved leave or suspended from work;
  - in respect of work and activity which are of a temporary, seasonal or short-term nature;
  - for the purposes of providing training to the workforce;
  - for a specific training contact; or
  - in accordance with a specific scheme set up by the Government of Mauritius or a statutory corporation.
- a worker and an employer enter into one or more determinate agreements for a total period of less than 24 continuous months in respect of a position of a permanent nature and the agreement comes to an end; or
- an employee (i.e. a person whose basic wage or salary is at a rate in excess of MUR 360,000 per annum [USD 12,000]) and an employer enter into a determinate agreement which comes to an end,

  (see §46(1A) of the Act).

Furthermore, it is now mandatory that for a worker who claims Severance Allowance under section 46(1) of the Act to register himself with the Permanent Secretary within a period of 14 days of the termination of his employment or the expiry of his contract, as the case may be. Thereafter, the Act casts a duty on the Permanent Secretary to enquire into the matter in order to find an amicable settlement (see §46(2) of the Act).

(b) **Recycling Fee**

See below at New Features at Section 4.

(c) **Gratuity at Retirement**

In well-defined circumstances the Act makes it mandatory on an employer to pay a gratuity to a worker who has been in his or her continuous employment for 12 months or more. The aforesaid gratuity is payable as a lump sum (see §49 of the Act).

The following are the three types of situations that are captured by this requirement to pay the aforementioned gratuity:

- where the worker has retired voluntarily at the age of 60;
- where the worker has retied before the age of 60 on grounds of permanent incapacity to perform his or her work that has been certified by a government medical practitioner. In order that the worker becomes entitled to gratuity under this heading, the worker must reckon not less than ten years continuous employment with the same employer; and
- where the worker has retired at the request of the employer either on or after attaining the retirement age.

The Act prescribes a formula for the computation of the lump sum and permits deductions to be made from the lump sum due by the employer to his or her worker (see §49(2) & §49(3) of the Act).

(d) **Payment of Death Grant**

See below under New Features at Section 4.

(e) **Certificate of Employment**

See below under New Features at Section 4.

(f) **Payment of Gratuity under a Fixed Loan Contract**

The Act extends the payment of the aforesaid gratuity to a contractual worker where the worker is employed on a contract of determinate duration that ends before 31 December of any year. This entitlement prevails notwithstanding the terms of his contract or any relevant piece of legislation, if any (see §53 of the Act).

Thus, gratuity is payable by the employer that represents 1/12 of the earnings of the worker in a relevant year.

However in order that the worker is eligible, the worker must have performed a number of normal days' work equivalent to not less than 80% of the number of working days during his or her employment in that year.

2.9 **Violence at Work**

The meaning of "violence" under the Act comprises an exhaustive set of circumstances that will constitute "violence" at work whilst a worker is at work. Violence at work is an offence that attracts both criminal and civil liabilities under the Act (see §54 of the Act).

The types of behaviour that are captured under the Act are set out below namely:

- harassment (sexual or otherwise);
- assault;
- verbal abuse, swearing, insulting;
- express the intention to cause harm;
- bully or use threatening behaviour;
- use aggressive gesture indicating intimidation, contempt or disdain; and
- hinder (verbally or in the behaviour) a worker during the course of his work.

It is apposite to mention that the legislator has actually expounded on the scope of "sexual harassment" under the Act. The yardstick to assess whether there has been sexual harassment at work is that of the reasonable man i.e. whether the circumstances are those wherein a reasonable man would have foreseen that the worker would be humiliated, offended or intimidated where there was either an unwelcome sexual advance or an unwelcome request for a sexual favour or there was an unwelcome conduct of a sexual nature towards the worker (see §54(3) of the Act).

It is also worthy of note that the legislator has defined the term "harassment" namely "any unwanted conduct, verbal, non-verbal, visual, psychological or physical, based on age, disability, HIV status, domestic circumstances, sex, sexual orientation, race, colour, language, religion, political, trade union or other opinion or belief, national or social origin, association with a minority, birth or other status" that a reasonable person would have foreseen that a worker would be affected negatively in his dignity (see §2 of the Act).

2.10 End of Year Bonus

See below under New Features at Section 4.

3. THE NEGOTIABLE ELEMENTS

3.1 Normal Working Hours

The normal day's work of a worker other than a part-time worker or a watch person consists of eight hours daily or a maximum of 90 hours a day (see §14 of the Act).

The normal day may start on any day of the week, whether or not a public holiday.

The Act goes further and recognises as valid an agreement between an employer and a full-time worker wherein the worker agrees to work over and above the normal eight hours' rate and without any extra remuneration for the excess hours but provided that the number of hours worked by a worker does not exceed the maximum of 90 hours in a fortnight.

3.2 Overtime

The general principle is that a worker is to be given a 24 hour notice before s/he undertakes overtime work (see §16 of the Act).

For the purposes of computation, overtime denotes work completed by a worker who has completed the maximum number of 90 hours in a fortnight. The applicable rate for overtime hours per fortnight is 1.5 x normal rate.

In the event that the overtime hours are undertaken on Sundays or on public holidays the rate of overtime is twice the hourly rate for every hour of overtime undertaken.

3.3 Public Holidays

A worker is entitled to a full day's pay in respect of a public holiday, other than a Sunday, during which s/he would not have had to work provided s/he reckons 12 months' continuous employment with the employer (see §17 of the Act).

The Act recognises as valid an agreement that declares that the remuneration comprises payment for work on public holidays and for work in excess of the agreed hours of work. However, the Act requires that such an agreement must state (a) the maximum number of public holidays and (b) the maximum number of hours of overtime on a day not being a public holiday.

3.4 Meal and Tea Breaks

An employer is required to provide to a worker (a) a daily meal break of one hour not later than four consecutive hours of work and (b) a tea break of at least 20 minutes daily or two tea breaks of at least ten minutes each daily. However these may be agreed otherwise by the employer and the worker (see §18 of the Act).

3.5 Meal Allowances

Under the Act a worker who remains at work after the normal working hours is now entitled to either an "adequate free meal" or be paid a meal allowance specified at paragraph (a) of the Third Schedule of the Act namely MUR 70 daily [USD 2] (see §19 of the Act).

It is to be noted that this employer's duty will arise where the worker has worked either (a) for a period of at least two hours and up to 18:00 hours or (b) for less than two hours but up to 19:00 hours.

A female worker is entitled to the payment of a maternity allowance in the order of MUR 3, 000 [USD 100].

3.6 Payment of Remuneration in Special Circumstances

In specific circumstances an employer is required to pay a worker a full day's remuneration. First, where the employer is unable to provide work to the worker. Second, where work has stopped after the worker has worked for more than two hours because of climatic conditions, power failure or a breakdown in machinery or appliances (see §24 of the Act).

However a worker will be entitled to only half a day's remuneration where work has been stopped before the worker has completed two hours or where the employer has taken the view that no work can be performed owing to climatic conditions, power failure or breakdown in machinery or appliances.

3.7 Transport of Workers

An employer must refund bus fares to a worker where the distance between the worker's place of residence and place of work exceeds three kilometres (see §26 of the Act).

Furthermore, the Act casts a duty on an employer who provides a worker with a means of transport to pay to the worker wages at the normal rate in respect of any waiting time that exceeds 45 minutes after the worker has stopped work (see §26A of the Act).

3.8 Annual Leave (also called the "Local Leave")

The Act has maintained the number of annual leaves available to a worker who reckons 12 months of continuous service with the employer. Thus a worker is entitled to 20 days fully paid leave for each period of 12 months. The computation of one day's leave is made according to a formula set out in the Act (see §27 of the Act).

Any unused Annual leaves in a period of 12 months are refunded, the latter being computed using the formula prescribed under the Act for one full day's pay.

3.9 Sick Leave

The Act has reduced the number of days under the old law. Thus a worker who reckons 12 months of continuous service with an employer is now entitled to 15n days of sick leave instead of 21 days (see §28 of the Act).

However the novelty under the Act is that a worker is entitled to accumulate up to a maximum of 90 days of sick leave in a period of 12 months.

4. THE NEW FEATURES

The new features are set out below:

4.1 The Definition of "worker"

Under the Act a "worker" is a person whose wages does not exceed the sum of MUR 360, 000 annually [USD 12, 000] (see §2 of the Act) and specifically excludes, among others, a person who reckons less than 180 days of continuous employment with an employer as at the date of the termination of his employment.

The phrase "basic wage or salary" is defined exhaustively under the Act as all the emoluments received by the worker, excluding any bonus or overtime (see §40(a) of the Act).

4.2 The Definition of "employer"

The Act defines an "employer" as a person who employs a worker and is responsible for the payment of remuneration to the worker (see §2 of the Act).

4.3 Written Particulars of Work Agreement

The Act casts a positive duty on every employer to provide every worker engaged for more than 30 consecutive working days with a written statement of particulars of employment in the form prescribed under the Act or in such form in French or Creole as may be prescribed within 14 days of the completion of 30 consecutive working days' service. Furthermore, a copy of the written particulars must be provided to the Permanent Secretary within a period of 30 days after the worker has completed 30 consecutive working days' service (see §8 of the Act).

4.4 Certificate of Employment

The Act imposes a duty on every employer who has terminated the employment of a worker or in respect of a worker who has resigned from his employment to issue the worker with a Certificate of Employment in the form prescribed under the Act. The delay for issuing the Certificate of Employment is a period of seven days within the termination of employment (see §51 of the Act).

4.5 The "recycling fee"

Under the Act, a "recycling fee" is payable to a worker whose employment has been terminated by the employer. The rate of the recycling fee is laid down by the Act (see the Eighth Schedule of the Act). The recycling fee is to be paid not later than a period of 30 days from the date of termination of employment. It is to be noted that the recycling fee is not paid directly to the worker but to the National Pensions Fund (**NPF**) that is managed by the Government of Mauritius. Upon receipt of the recycling fee the NPF is required under the Act to credit the same to another fund managed exclusively by the Government of Mauritius (see §47 of the Act).

However no recycling fee is to be paid to the NPF in three specific set of circumstances namely:

- where the employer is and the worker is employed or offered employment by the personal representative or the heir of the deceased employer after the death of the employer;
- the partnership that employed is dissolved and the worker is offered employment by the member of the dissolved partnership or a new partnership forthwith after the dissolution of the partnership;
- a worker's employment by a body corporate ceases on the dissolution of the body corporate and the worker is offered employment by another corporate body pursuant to a scheme of reconstruction forthwith after the dissolution of the body corporate;
- the worker's employment ceases on the disposal of the goodwill of the employer or of a substantial part of the business of the employer in which the worker is employed and the worker

is offered employment by the person who acquired the goodwill or business or part of the business forthwith after the disposal of the goodwill.

4.6 Violence and Harassment at work

See above at Non-Negotiable Elements at Section 2.

4.7 Paternity Leave

See above at Non-Negotiable Elements at Section 2.

4.8 Death Grant

The Act provides that an employer shall pay a death grant of the order of MUR 3,500 [USD 117] to the spouse of a worker who has passed away whilst in the employment of the employer and who reckons 12 months of continuous employment with the employer (see §50 of the Act). The Act provides that this entitlement to a death grant is payable notwithstanding that the spouse is already in receipt of benefits under the National Pensions Act or any other enactment (see §50 of the Act).

A "spouse" for these purposes means a person having contracted a religious or civil marriage with the deceased worker and with whom the worker was living under a common roof at the time of the worker's death (see § 49A(1) of the Act).

Under the Act, in order to claim the death grant the spouse must produce a written statement declaring that s/he was living with the deceased worker under a common roof at the time of death. In the event that the deceased worker does not have a spouse the death grant is payable to the person who establishes that s/he met the funeral expenses of the deceased worker.

The Act goes a step further in that it provides that where there is no surviving spouse the employer shall pay the death grant to the dependants of the deceased worker in equal proportion irrespective of any benefits that the dependants may be entitled to under the National Pensions Act or any other enactment.

A "dependant" for these purposes means any person who was living in the worker's household and was wholly or partly dependent in the earnings of the worker at the time of that worker's death (see § 49A(1) of the Act).

4.9 Workfare Programme

See above under Non-Negotiable Elements at Section 2.

4.10 The Employment Relations Tribunal

The Act validates the establishment of the Employment Relations Tribunal set up by another piece of legislation namely the Employment Relations Act 2008. However it remains silent on the mode of operation of the Employment Relations Tribunal (see §2 of the Act).

4.11 Reduction of Workforce / Closure of Enterprise

Section 39B of the Act is a new provision that addresses the direct result of an international economic recession namely the reduction of workforce/closure of an enterprise. In order that the operation of this section is triggered the following two conditions must be satisfied namely:

- the employees in question fall within the scope of the definition of "worker" under the Act i.e. earning a basic wage or salary not in excess of MUR 360,000 per annum [± USD 12,000]; and
- whether the business enterprise comprises a minimum of 20 workers.

Once a business enterprise meets the above mentioned test, the following procedure is mandatory.

a. **Employer to Provide Notice**

- an employer must provide written notice (the **Notice**) to the Permanent Secretary of the Ministry of Labour, Industrial Relations and Employment (**Permanent Secretary**) of its intention to reduce workforce or permanently close the Company;
- the Notice must be sent at least 30 days before intended reduction or closure;
- the Notice must provide a statement of the reasons for reduction of workforce or closure;

b. **Employer to Consult Trade Union**

- employer to consult trade union and must look into possible means of avoiding reduction or closing down such as:
  - restrictions on recruitment;
  - retirement of workers who are beyond the retirement age:
  - reduction in overtime;
  - shorter working hours to cover temporary fluctuations in manpower needs;
  - providing training for other work within the same enterprise.
- Where redundancy has become inevitable the employer must –
  - establish the list of workers who are to be made redundant and the order of discharge on the basis of the principle of last in first out; and
  - serve the written Notice to the Permanent Secretary.

An employer that reduces its workforce or closes down its enterprise without notifying the Permanent Secretary and without prior consultation with the trade union must pay (i) a sum equivalent to 30 days' remuneration in lieu of notice and (ii) severance allowance according to the formula set out at E (a) and (b) below.

a. **Employer to Agree on Compensation with Worker**

- Under the ERA an employer and his workers may agree on the payment of compensation by way of settlement. Where such a settlement is reached, a worker shall not be entitled to join the Workfare Programme under the ERA. Furthermore, the employer will not be required to pay what is known as the Recycling Fee under the ERA.
- Where there is no such agreement, the worker may either join the Workfare Programme under the ERA or lodge a complaint with the Permanent Secretary within 14 days of the termination of his employment. The employer must pay the recycling fee provided under the ERA. As regards the worker, he is entitled to lodge a claim for severance allowance before the Industrial Court.

b. **Permanent Secretary to Inquire**

- Upon receipt of a complaint the Permanent Secretary will inquire into it in order to find an amicable settlement, failing which the Permanent Secretary has two options.
  - Either, the Permanent Secretary he takes the view that the worker has a bona fide case and this entitles the worker to join the Workfare Programme. Furthermore, in the event that the worker has not lodged a claim for severance allowance before the Industrial Court, the Permanent Secretary may also refer the matter before the Employment Relations Tribunal (**Tribunal**);
  - Or, the Permanent Secretary takes the view that the worker does not have a bona fide case and does not refer the matter before the Tribunal. The Permanent Secretary informs the worker that he may join the Workfare Programme.

c. **Role of Tribunal**

- Under the ERA once the Permanent Secretary has referred the matter before the Tribunal, the latte must hear the case and give its ward within 30 days of the date of referral unless there are exceptional circumstances that would justify a delay in delivering its award;
- The Tribunal must decide whether the reduction of workforce or termination was justified or not.
- If the Tribunal determines that the reduction of workforce was unjustified, it may order that the worker be paid severance allowance using the following formula:
    - for every period of 12 months of continuous employment, a sum equivalent to three months' remuneration; and
    - for any additional period of less than 12 months, a sum equal to one-twelfth of the sum calculated at (a) above multiplied by the number of months during which the worker has been in continuous employment of the employer.

  Furthermore, the Tribunal has the power to order that the worker be reinstated provided the worker consents.
- If the Tribunal determines that the closure is unjustified it may order that the worker be paid severance allowance using the formula set out at E (a) and (b) above.

4.12 **End of Year Bonus**

In introducing the End of Year Bonus to the Act earlier this year the National Assembly formally recognised this statutory entitlement as an integral part of the employment "package". Indeed, this entitlement was hitherto provided for by another piece of legislation namely the End of Year Gratuity Act which was first introduced in our laws in 1976.

Thus, where a worker remains in continuous employment with the same employer in a year, the worker shall be entitled at-the end of that year to a bonus equivalent to one-twelfth of his earnings for that year (see § 31A(1) of the Act).

In relation to workers who have taken up employment during the course of a year, the Act is to the effect that such workers shall be entitled at the end of that year to a bonus equivalent to one-twelfth of their earnings for that year provided two conditions are satisfied. First, the workers are still in the employment of the employer as at 31 December of that year. Secondly, the workers have performed a number of normal days' work with their employer, equivalent to not less than 80% of the number of working days during their employment in that year (see § 31A(2) of the Act).

Insofar as the timing for payment of the End of Year Bonus is concerned, the Act is to the effect that a sum amounting to 75% of the expected End of Year Bonus becomes payable to the worker not later than five clear working days before 25 December of that year, and the remaining balance shall be paid to the worker not later than on the last working day of the same year (see § 31A(3) of the Act).

Finally, the Act expressly provides that in the computation of working days that a worker has worked with the employer the following factors are to be taken into account namely:

- a day on which is absent with the employer's authorisation;
- a day on which a worker reports for work but is not offered work by the' employer;
- a day on which a worker is absent on grounds of—
    - illness after notification to the employer under section 28(4)(a) of the Act; or
    - injury arising out of and in the course of his employment.

For more specific advice on employment law in Mauritius, we invite you to contact one of the following:

Mauritius
Malcolm Moller
Managing Partner, Mauritius and Seychelles
Corporate
+230 203 4301
mmoller@applebyglobal.com

Gilbert Noel
Partner
Corporate
+230 203 4302
gnoel@applebyglobal.com

For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found here.