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The following Bill which will be introduced in the National Assembly is published for general information.

F. A. Narain,
Clerk of the National Assembly.



GUYANA

BILL No. 19 of 1997

TERMINATION OF EMPLOYMENT AND SEVERANCE PAY BILL 1997

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A BILL

Intituled .

AN ACT to provide for the conditions governing termination of employment and grant of redundancy or severance payment to employees and for matters connected therewith.

Enacted by the Parliament of Guyana:-

A.D. 1997

PART 1
PRELIMINARY

Short title.

- 1. This Act may be cited as the Termination of Employment and Severance Pay Act 1997.

Interpretation.

- 2. In This Act -

- (a) "continuous employment" means, subject to sections 4 and 5 an employee's period of uninterrupted employment with the same employer or the successor employer;
- (b) "contract worker" means a person who performs work for another person pursuant to a contract between the employer of the firstmentioned person and that other person;
- (c) "dependent contractor" means a person, whether or not employed under a contract of employment, who performs work or service for another person for compensation or reward on such terms and conditions that the firstmentioned person is, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for that other person more as an employee than an independent contractor;
- (d) "employee" means a person who offers his service to an employer under a

contract of employment or a dependent contractor and includes, where appropriate, a former employee;

- (e) "employer" means any person or undertaking, corporation, company, or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker; and includes the heirs, successors and assigns of any employer;
- (f) "employment" means part time employment and employment on an hourly, daily, weekly, fortnightly or monthly basis;
- (g) "employment agency" means any person who, whether for payment or not, assists persons to find employment or assists employers to find employees;
- (h) "family responsibilities" means the responsibilities in respect of any dependent family member;
- (i) "marital status" means the status or condition of being -
 - (i) single;
 - (ii) married;
 - (iii) married but living separately and apart from one's spouse;

- (iv) divorced;
 - (v) widowed; or
 - (vi) the de facto spouse of another person;
- (j) "principal" means -
- (i) in relation to a commission agent a person for whom work is done by the commission agent;
 - (ii) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;
- (k) "probationary period" means the period of three months following the date on which the employment of an employee by an employer commences, or such other period of time following that date as may be agreed upon between an employer and an employee;
- (l) "redundancy" means the loss of employment as defined in section 12 of this Act;
- (m) "redundancy allowance" means the amount of money that an employee whose employment has been terminated on account of redundancy is entitled to receive from his employer pursuant to this Act;
- (n) "serious misconduct" means misconduct that is such that the employer cannot

reasonably be expected to take any course other than to terminate the employment of the employee;

(o) "severance allowance" means the amount of money that an employee whose employment has been terminated on account of severance of employment, is entitled to receive under this Act;

(p) "severance of employment" means termination of the contract of employment by an employee under section 7 (a) or (c), or termination of the contract of employment by an employer for reasons other than serious misconduct under section 10, misconduct or unsatisfactory performance under section 11, or redundancy under section 12;

(q) "summary dismissal" means termination of the contract of employment by the employer without notice.

3. (1) Nothing in this Act shall preclude higher standards of benefit to employees than those set out in this Act, being agreed upon through collective bargaining or other forms of negotiations or agreement or arbitration award.

Higher standards permitted.

(2) Where at the coming into operation of this Act, there exists any higher standard of benefit to employees which has been agreed upon through collective bargaining or forms of negotiations or agreement, other than those set out in this Act, the employer shall continue to pay or apply such

higher standard of benefit as if it were provided for under this Act.

(3) Any provision in an agreement shall be void in so far as it excludes or in any way limits the operation of any provision of this Act to the detriment of the employee.

PART 11
CONTINUITY OF EMPLOYMENT

Continuity of employment.

4. (1) Continuous employment shall begin from and include the first day on which an employee begins to work for an employer and shall continue up to and including the date of termination of employment of such employee.

(2) An employee's continuous employment shall not be treated as interrupted if the employee is absent from work -

- (a) due to taking annual leave, maternity leave or sick leave or any other leave in accordance with any law or contract or agreement;
- (b) due to such employee's suspension, with or without payment in accordance with the provision of any law, contract or agreement;
- (c) due to such employee's termination of employment prior to being reinstated or re-engaged in his previous employment in accordance with this Act, or any other law or under any contract or agreement;

- (d) -due to having been temporarily laid off by the employer for a period not exceeding six weeks;
- (e) due to a lockout;
- (f) In accordance with the contract of employment or agreement of the employer of such employees.

(3) Any period of time elapsing in the circumstances referred to in subsection (2), shall count for the purpose of calculating the continuous period of employment.

(4) Any period during which an employee is absent from work because of his participation in industrial action in conformity with the provisions of any law or collective labour agreement, shall not interrupt the continuity of employment but such period shall not count for the purpose of calculating length of continuous employment.

5. Subject to the provisions of this Act, where a business or part of it is sold, leased, transferred or otherwise disposed of, the period of employment of an employee with a previous employer shall be deemed to constitute a single period of continuous employment with the successor employer provided that the successor employer has agreed therefor.

Successor employer.

6. It shall be the duty of every employer to keep such records as are necessary to show that the provisions of this Act are being complied with in respect of persons in his employment and if he fails to do so, he shall be liable on summary conviction in respect of each offence to a fine of fifteen thousand, six hundred and twenty-five dollars.

Records to be kept.

TERMINATION OF EMPLOYMENT

Termination of
employment.

7. A contract of employment for an unspecified period of time may at any time be terminated -

- (a) by mutual consent of the parties;
- (b) on any ground of redundancy under section 12;
- (c) by either party -
 - (i) for good or sufficient cause;
 - (ii) by notice given to or served upon the other party .

Unfair
dismissal.

8. (1) The following reasons do not constitute good or sufficient cause for dismissal or for imposition of disciplinary action -

- (a) an employee's race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, family responsibility, or marital status;
- (b) an employee's age, subject to any law or collective bargaining provisions regarding retirement;
- (c) a female employee's pregnancy or a reason connected with her pregnancy;
- (d) an employee's absence from work because of sickness or injury certified by a registered medical practitioner;

- (e) an employee's absence from work due to compulsory military service or other civic obligation in accordance with any law;
- (f) an employee's participation in industrial action in conformity with the provisions of any law or collective labour agreement;
- (g) an employee's refusal to do any work normally done by an employee who is engaged in industrial action as described in subsection (1) (f);
- (h) the filing by an employee of a complaint or the participation in proceedings against an employer involving alleged violations of any rule or law.

(2) A dismissal or imposition of disciplinary action is unfair if it is based on any of the grounds contained in subsection (1) or on the failure of any of the employer's obligations under section 11 or 18.

9. A new employee may be required to serve a probationary period of employment, but the employer or employee may terminate the employment at any time during the probationary period for any reason and without notice.

Termination of employment during probationary period.

10. (1) An employer is entitled to dismiss summarily without notice or payment of any severance or redundancy allowance or terminal benefit any employee who is guilty of serious misconduct.

Summary dismissal for serious misconduct.

(2) The serious misconduct referred to in subsection (1) is restricted to that conduct which is directly

related to the employment relationship and has a detrimental effect on the employer's business.

Termination of employment for misconduct, breach of contract and unsatisfactory performance.

11. (1) Where the employee is guilty of an offence in breach of his condition of employment or any misconduct that is not serious or any misconduct on account of which the employer cannot be expected to continue to employ the employee if it is repeated, the employer may give the employee a written warning.

(2) If the employee after being warned in writing pursuant to subsection (1) is guilty of the same or similar offence or misconduct in the following twelve months, the employer may terminate the employee's contract of employment without notice.

(3) The employer shall be deemed to have waived any right to terminate the employment of an employee for misconduct if such employer has failed to do so after having knowledge of the misconduct or at the end of any investigation of the said misconduct.

(4) The employment of an employee shall not be terminated for unsatisfactory performance unless the employer has given the employee instructions as to how the employee should perform his duties and a written warning to adhere to the employer's instructions and the employee continues to perform any duty unsatisfactorily.

Termination of employment due to redundancy.

12. (1) The employer may terminate the employment of the employee because the employee is redundant under the provisions of subsection (2).

(2) The employee is redundant under subsection (1) where in relation to his employer's business where he is

employed, his termination of employment is or is part of a reduction in the work force that is a direct result of -

- (a) the modernisation, automation or mechanisation by the employer of all or part of the business;
- (b) the discontinuance by the employer to carry on all or part of the business;
- (c) the sale or other disposition by the employer of all or part of the business;
- (d) the reorganisation of the business by the employer to improve efficiency;
- (e) the impossibility or impracticability for the employer to carry on the business at its usual rate or level or at all due to -
 - (i) a shortage of materials'
 - (ii) a mechanical breakdown;
 - (iii) a force majeure; or
 - (iv) an act of God;
- (f) a reduced operation in the employer business made necessary by economic conditions, including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

(3) Prior to terminating the employment of any employee pursuant to this section, the employer shall -

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(a) inform as early as possible but not later than one month from the date of the existence of any circumstances mentioned in subsection (2), the recognized trade union, or if none exists, the employee or the employee's representative and the Chief Labour Officer of -

(i) the existence of any of the circumstances mentioned in subsection (2);

(ii) the reasons for the contemplated termination of employment;

(iii) the number and categories of the persons likely to be affected;

(iv) the period over which such termination is likely to be carried out; and

(v) such other matters as may be relevant;

(b) consult as early as possible but not later than one month from the date of the existence of any of the circumstances mentioned in subsection (2), with the recognised trade union, or if none exists the employee or the employee's representative and the

Chief Labour Officer, on the possible measures that could be taken to avert or mitigate the adverse effects of such circumstances in relation to employment generally and the employees concerned;

(4) Any employer who contravenes any of the provisions of this section shall be liable on summary conviction to a fine of twenty thousand dollars and imprisonment for a period of three months.

13. Where upon the sale or other disposition by an employer of a business as provided for in section 12 (2) (c), the successor employer agrees to honour any of the obligations under this Act of the first mentioned employer all such obligations of the first mentioned employer shall fall upon and are binding on the successor employer who has acquired the business.

Effect of sale of employer's business.

14. (1) No employer shall lay off an employee except where the employer is empowered by this Act to terminate the employment of the employee because of redundancy under section 12.

Lay offs.

(2) No lay off under subsection (1) shall exceed six weeks.

(3) Any employer who contravenes the provisions of this section shall be liable on summary conviction to a fine of fifteen thousand dollars.

15. (1) Where a contract of employment for an unspecified period of time is being terminated for any reason of redundancy under section 12, or by notice under section 7 (c)

Notice period.

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(ii), such contract of employment, shall except during the probationary period, be terminated by the employer upon giving the following minimum period of notice in writing. -

- (a) two weeks where the employee has been employed by the employer for less than one year;
- (b) one month, where the employee has been employed by the employer for one year or more.

(2) Where the employee terminates his contract of employment with the employer, the periods of notice under subsection (1) shall also be the periods of notice that such employee shall give to his employer.

(3) The periods of notice under subsection (1) shall not apply where the employer is entitled to summarily dismiss an employee under this Part.

(4) A notice of termination under subsection (1) shall not be given by an employer during an employee's period of absence on any authorised leave granted under any employment law or the employee's contract of employment.

(5) Nothing in this section shall prevent -

- (a) the parties to the contract from agreeing to a longer period of notice of termination than is provided for in this section;
- (b) an employer waiving the right to receive notice under subsection (2).

16. (1) In lieu of giving notice of termination under section 15 (1) the employer shall pay the employee a sum equal to the remuneration and benefits due to the employee up to the expiry of any required period of notice.

(2) In lieu of giving notice of termination under section 15 (2), the employee shall pay the employer a sum equal to the remuneration and benefits payable by the employer to the employee up to the expiry of any required period of notice.

17. On the termination of a contract of employment an employer, if so requested by the employee, shall provide the employee with a certificate of termination.

Certificate of
termination.

18. (1) An employer shall be entitled to take disciplinary action other than dismissal against an employee when it is reasonable to do so under the circumstances.

Disciplinary
action.

(2) For purposes of this section "disciplinary action" includes in order of severity -

(a) a written warning;

(b) suspension without pay.

(3) No employer may impose a fine or other monetary penalty on an employee.

(4) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard to the nature of the violation, the employee's duties, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

(5) A complaint that disciplinary action is unreasonable may be made to the Chief Labour Officer for determination.

(6) Where any determination under subsection (5) reveals that any disciplinary action under this section was unreasonable such disciplinary action shall be withdrawn and in the case of any disciplinary action under subsection (2) (b), any payment withheld shall be refunded and the employee reinstated in his employment.

Complaints of
unfair dismissal.

19. Without prejudice to any right an employee may enjoy under a collective agreement, such employee shall have the right to seek redress from the High Court where he is unfairly dismissed or disciplined in violation of section 8.

Remedies.

20. (1) If the employee's complaint of unfair dismissal or imposition of disciplinary action is proved to the satisfaction of the High Court it shall award the employee compensation as specified in subsections (2) and (3).

(2) An award of compensation shall be such amount as the Court considers just and equitable in all the circumstances having regard to the loss sustained by the employee as a consequence of the dismissal or discipline in so far as that loss is attributable to action taken by the employer, and the extent if any to which the employee caused or contributed to the dismissal or discipline.

(3) The High Court may, if it deems fit, award any other just remedy in addition to or in lieu of the award referred to in subsection (2).

PART 1V

SEVERANCE OR REDUNDANCY ALLOWANCE

21. (1) On termination of his employment, an employee who has completed one year or more years of continuous employment with an employer shall be entitled to be paid by such employer a severance or redundancy allowance equivalent to -

Severance or
redundancy
allowance.

- (a) one week's, wages for such completed year of service for the first five years including the entitlement year;
- (b) two weeks wages for each completed year of services after the fifth year and up to the tenth year;
- (c) three weeks wages for each completed year of service in excess of ten years up to a maximum of fifty-two weeks.

(2) For the purpose of subsection (1) termination of employment includes termination by reasons of redundancy and termination by reason of severance of employment.

(3) The payment of a severance or redundancy allowance under subsection (1) shall not affect the employee's entitlement if any, to payment in lieu of notice under section 16.

(4) Subsection (1) shall not apply where the employee

- (a) is summarily dismissed under section 10 or his employment is terminated under section 9 or 11;

- (L) unreasonably refuses in case of redundancy under section 12 to accept an offer of re-employment by the employer at the same place of

therefrom under no less favourable conditions than those such employee enjoyed immediately prior to the termination;

- (c) is employed by a partnership and the employment of the employee ceases on the dissolution of the partnership, and such employee either enters into employment with one or more of the partners immediately after such dissolution, or unreasonably refuses to accept an offer of employment by any such person on no less favourable terms than those such employee enjoyed prior to the dissolution.

(5) An employer who fails to comply with the provisions of this section shall be liable on summary conviction to a fine of thirty-one thousand two hundred and fifty dollars and to imprisonment for one year.

(6) Where an employer has been convicted under this section for failing to pay severance or redundancy allowance to an employee the court convicting him shall, in addition to any other penalty imposed, order such employer to pay such sum as in the opinion of the court represents the severance or redundancy allowance.

(7) For the purpose of subsection (1) "wages" means the basic wages excluding any allowance received by the employee at the time of termination of his employment.

22. The Chief Labour Officer may institute or cause to be instituted any prosecution for the purpose of enforcing any of the provisions of this Act and any officer of the Department of Labour may appear as prosecutor for and on behalf of the Chief Labour Officer.

Institution of prosecutions by Chief Labour Officer.

23. All complaints under this Act may be heard and determined and all offences and penalties may be prosecuted and enforced in the manner provided by the Summary Jurisdiction Acts:-

Procedure.

Provided that any order for payment or recovery of severance or redundancy allowance shall be enforceable in the same manner as an order for the payment of compensation under the Summary Jurisdiction (Procedure) Act.

Cap. 10:02

24. Any person who by an act or omission contravenes or fails to comply with any provision of this Act shall, unless a penalty is otherwise specifically provided, be liable to pay a fine of twenty thousand dollars and to imprisonment for eight months.

General penalty.

25. Section 16 (1) and (2) of the Labour Act are hereby repealed.

Repeal of Section 16(1) and (2) of the Labour Act.

Cap. 98:01.

EXPLANATORY MEMORANDUM

This Bill provides for the conditions governing termination of employment and the grant of redundancy or severance payment to employees.

Part 11 sets out the principles for determining continuity of employment.

- Part 111 -
- (a) sets out the grounds which makes dismissal from employment unfair;
 - (b) sets out the circumstances where dismissal can occur summarily due to serious misconduct, or because of breach of contract for unsatisfactory performance;
 - (c) establishes the grounds for termination of employment due to redundancy and the circumstances where disciplinary action such as written warning or suspension may be taken;
 - (d) allows an employee the right to make a complaint to the High Court for unfair dismissal; and
 - (e) empowers the High Court to apply remedies such as an award of compensation, where such complaint is proven.

Part IV provides for severance or redundancy pay to employees whose employment are terminated or who are made redundant and sets out the procedure for determining the amount of such payment.

H. B. Jeffrey,
Minister of Labour, Housing
Human Services and Social Security