

Seychelles

Employment Act

## Employment (Conditions of Employment of Domestic Workers) Regulations, 2019

Statutory Instrument 37 of 2019

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# Seychelles

## Employment Act

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## Statutory Instrument 37 of 2019

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## Part I – Preliminary

### 1. Citation

These Regulations may be cited as the Employment (Conditions of Employment of Domestic Workers) Regulations, 2019.

### 2. Definitions

In these Regulations—

"**alternative holiday**" means a day off work granted in lieu of a holiday;

"**holiday**" means Sunday or a public holiday;

"**live-in domestic worker**" means a domestic worker who resides on the premises of the employer for a minimum of 24 consecutive hours per week;

"**medical certificate**" means a certificate by a medical practitioner, or other person authorised by the Minister responsible for Health to issue certificates for the purposes of these Regulations;

"**part-time domestic worker**" means a domestic worker other than a casual domestic worker who works for the same employer for a period less than 25 hours a week or irrespective of the period of work for a period less than 3 days a week;

"**rest period**" in relation to a domestic worker means a period which is not working time and does not include a rest break or leave to which the domestic worker is entitled under these Regulations;

"**shift work**" means work on which 2 or more persons are regularly and alternately employed at different times;

"**week-day**" means any day other than a holiday;

"**working time**" in relation to a domestic worker means any period during which the domestic worker is performing his or her duties or is at the employer's disposal for performing duties.

## Part II – Working time

### 3. Maximum number of working hours

An employer shall not require a domestic worker to work for more than 60 hours per week or 12 hours per day, whichever is the less.

### 4. Daily and weekly rest periods

- (1) An employer shall grant to his or her domestic worker at least 24 consecutive hours' rest in any period of 7 days.
- (2) An employer shall also ensure that there is an interval of at least 8 consecutive hours between the end of a workday and the beginning of the next workday.
- (3) The workday shall be established in such a way that both at the beginning and at the end of the workday, the worker is at his or her work post.
- (4) Whenever the length of a continuous daily working schedule exceeds 4 hours, a rest period of 30 minutes shall be permitted at the latest after every 4 hours of work and this rest period shall be treated as effective working time and any time spent on break in excess of those 30 minutes shall not be counted as effective working time.

### 5. Holidays

- (1) An employer shall not require a domestic worker, other than a domestic worker performing shift work, to work on holidays.
- (2) A domestic worker other than a domestic worker performing shift work who works on a holiday is entitled to an additional day's pay for that day, or to an alternative holiday, at the option of the employer.
- (3) A domestic worker performing shift work who works on a public holiday is entitled to an additional day's pay for that day, or to an alternative holiday, at the option of the employer.
- (4) Nothing in subregulation (2) or (3) shall be construed as preventing an employer who requires any domestic worker to work on a holiday from agreeing to allow an additional day's pay for that day or an alternative holiday at the domestic worker's option.

### 6. Overtime

- (1) Notwithstanding regulation 3, a domestic worker—
  - (a) may agree;
  - (b) may, in exceptional circumstances, be required by his or her employer, to work for up to 60 additional hours per month or an aggregate of 15 hours per week.
- (2) Overtime is payable for additional hours of work—
  - (a) in the case of a domestic worker, other than a domestic worker performing shift work, at the rate of—
    - (i) 1½ hours' pay for 1 hour's work on a week-day;
    - (ii) 2 hours' pay for 1 hour's work on a holiday;
  - (b) in the case of a domestic worker performing shift work, at the rate of
    - (i) 1½ hours' pay for 1 hour's work on a week-day or Sunday;

- (ii) 3 hours' pay for 1 hour's work on a public holiday,

but the employer may give the domestic worker time off equivalent to not more than two-thirds of the number of hours worked as overtime in lieu of payment, unless the employer and the domestic worker agree to convert any part or all of the overtime hours worked into cash.

### Part III – Leave

#### 7. Annual Leave

- (1) A domestic worker, other than a casual or part-time domestic worker, is entitled to 24 days' paid annual leave or, where the employment is for less than a year, to 2 days for each month of employment, the aggregate number of days being rounded up upon addition to the highest integer.
- (2) Subject to this sub regulation (1), the annual leave entitlement is taken each year by mutual arrangement between employer and domestic worker but the employer shall ensure that a domestic worker, engaged by him or her under a contract of continuous employment or under a contract for a fixed term which lasts for a year or more, takes a minimum period of 14 consecutive days' leave in a year, unless the domestic worker has, under the mutual arrangement, agreed to accumulate his or her leave entitlement.
- (3) Leave not taken in a year may be accumulated.
- (4) The Leave entitlement of a domestic worker may only be converted into cash upon termination of the contract and any private arrangement to convert accumulated leave into cash before termination shall be void.
- (5) A part-time domestic worker is entitled to leave under subregulation (1) in the proportion which the number of hours worked by him or her bears to the number of hours which a full-time domestic worker in the same occupation would have worked.
- (6) Saturdays, Sundays and Public Holidays shall be excluded in calculating a period of annual leave earned after 1st January, 2006, and where resumption of duty of a domestic worker performing shift work is on a Monday, the Saturday and Sunday preceding that Monday shall also be excluded in calculating the period of annual leave.
- (7)
  - (a) Subject to paragraph (b), the following formula shall apply for the purpose of converting accumulated leave into cash:  
$$\frac{\text{Salary per year} \times \text{Number of days entitled}}{365}$$
  - (b) Where an employer allows a domestic worker to accumulate the domestic worker's leave and the number of days' leave so accumulated exceeds 42, the domestic worker shall be entitled to one and a half times the normal pay for each day in excess.
- (8) Time spent by domestic workers accompanying the household members on holiday is not to be counted as part of their paid annual leave.

#### 8. Compassionate leave

- (1) Wherever a domestic worker loses a very close relative or there are other compassionate reasons which require the presence or attendance of the domestic worker, he or she shall be entitled to compassionate leave.
- (2) Where leave taken under subregulation (1) is in excess of 4 days in a period of 12 months the excess may either be unpaid or, at the discretion of the employer, may be deducted from the domestic worker's entitlement to annual leave.

- (3) A domestic worker shall also be allowed reasonable time off work, with or without pay at the discretion of the employer, to attend to matters which cannot normally be attended to except during the domestic worker's working hours.

## 9. Education leave

- (1) Where there is a training programme approved by the Minister responsible for Human Resources Development, directed towards domestic workers, a domestic worker who has not previously attended such or a similar programme, is entitled to education leave for the purpose of attending the programme.
- (2) The employer is responsible to the domestic worker for payment of his or her wages while absent on education leave—
  - (a) for a period of 6 months, where the training programme referred to in subregulation (1) is a full-time one;
  - (b) for the duration of the programme, where it is on a parttime basis only.
- (3) Payment of the allowance referred to in subregulation (3) shall be conditional on the domestic worker complying with any agreement entered into between the domestic worker and the employer relating to the training programme.
- (4) A domestic worker whose application for leave under subregulation (1) is refused, may initiate the grievance procedure.
- (5) Where education leave extends to a period beyond 12 consecutive months, the provisions relating to annual leave shall not apply to the domestic worker during that period.

## 10. Sick leave

- (1) A domestic worker, other than a casual worker, who works 5 or 6 days in a week, is entitled to sick leave in any period of 12 months as follows—
  - (a) an aggregate maximum of 21 days' paid sick leave;
  - (b) when a domestic worker is required by a medical practitioner to be confined to a hospital or similar institutions or at home, if—
    - (i) the domestic worker has not exhausted his or her 21 days' paid sick leave referred to in paragraph (a), and
    - (ii) the domestic worker is confined at the hospital or similar institutions or at home for a continuous period which extends beyond the unexhausted part of the 21 days' paid sick leave,the domestic worker shall be entitled to a further maximum 30 days' paid sick leave during that continuous period;
- (2) Subject to subregulation (1) a domestic worker shall be entitled to an aggregate maximum of 60 days' unpaid sick leave after the exhaustion of paid sick leave.
- (3) Where a domestic worker's child under 12 years of age is medically certified sick and a medical practitioner or official authorised by the Minister of Health recommends that the domestic worker attends to the child, the domestic worker is entitled to a maximum of 7 days of sick leave independent of the domestic worker's own sick leave entitlement.
- (4) Entitlement to sick leave under subregulation (1) arises where—
  - (a) a medical certificate of unfitness for work or confinement, as the case may be, is produced;



- (b) in the case of subregulation (1)(a) or subregulation (2), a domestic worker's child under 12 years of age is medically certified sick and a medical practitioner or official authorised by the Minister of Health recommends that the domestic worker attends the child and the sick child leave entitlement at subregulation (3) has been exhausted;
  - (c) in the case of subregulation (1)(a) or subregulation (2), a domestic worker's dependant other than a child under 12 years of age is medically certified sick and a social worker certifies that the sick person requires the attendance of the domestic worker.
- (5) Where a domestic worker is under a contract for a fixed term and the duration of the contract is less than 12 months, the eligibility to sick leave under subregulation (1) is of a number of days bearing the same proportion to the term of the contract as the periods of sick leave referred to in subregulation (1) bear to 12 months, but in any case ends upon the date of expiry of the contract.
  - (6) The entitlement to paid sick leave of a worker who works less than 5 days in a week is limited to a number of working days' absence which bears the same proportion to the period of paid sick leave referred to in subregulation (1) as the number of days worked by the worker in a week bears to 5 days.
  - (7) Where following the full period of paid sick leave, a medical practitioner certifies that the domestic worker will not recover and be fit for work the contract is deemed to be frustrated.
  - (8) Where a domestic worker for reasons attributable to sickness fails to report for work after a full period of unpaid sick leave, the contract is deemed to be frustrated.
  - (9) Where a domestic worker for reasons not attributable to sickness fails to report for work after the full period of unpaid sick leave, the contract is deemed to have been terminated by the domestic worker.
  - (10) Whenever a domestic worker is, for reasons attributable to sickness, unable to report for work, the domestic worker shall so inform the employer as soon as possible or within 24 hours hereafter.

## 11. Unfitness for particular duties

- (1) Where a medical certificate is produced to the effect that a domestic worker is unfit for the particular duties for which he was engaged but may perform alternative duties and no alternative duties are available, the domestic worker is entitled to sick leave under regulation 10.
- (2) Where, consequent upon the production of a certificate under subregulation (1), alternative duties are available, the domestic worker shall be temporarily redeployed to those duties but the wages for his or her normal duties are maintained.
- (3) Where a domestic worker temporarily redeployed under subregulation (2) is still unfit for his or her previous duties after 60 days, he or she may, subject to section 49 of the Act, be permanently redeployed to his or her new duties in which case the terms and conditions attaching to the new duties shall apply.
- (4) Where a permanent redeployment pursuant to subregulation (3) is not available, the domestic worker shall, subject to regulation 10(3), be entitled to 60 days' unpaid sick leave unless a medical certificate is produced under regulation 10(4) in which case the contract of employment is deemed to be frustrated.

## Part IV – Maternity and childhood protection

### 12. Notice of pregnancy to employer

A pregnant domestic worker shall give to her employer at least 3 months' notice of her expected date of confinement.

### 13. Maternity leave

- (1) A female domestic worker under a contract of continuous employment or, subject to subregulation (3), under a contract for a fixed term or a part-time female domestic worker is entitled 16 weeks' paid maternity leave of which not less than 12 weeks shall be taken after the date of confinement, and to 4 weeks' unpaid maternity leave to be taken either before or after paid maternity leave.
- (2) Where, whether before or after the period of paid maternity leave under subregulation (1), a female domestic worker is medically certified as unfit for work on grounds of illness, or of disability arising out of pregnancy or confinement, she is entitled to sick leave under regulation 10.
- (3) Where a female domestic worker is under a contract for a fixed term her eligibility to maternity leave under these regulations ends upon the date of expiry of the contract.
- (4) An employer shall not permit or induce a female domestic worker entitled to paid maternity leave to return to work before the end of her maternity leave.
- (5) Where a female domestic worker fails to return to work after the full period of maternity leave allowed under subregulation (1) then, unless she produces a medical certificate under subregulation (2), the contract of employment is deemed to have been terminated by her.

### 14. Maternity protection

- (1) A female domestic worker, from the time she is 6 months' pregnant and up to 3 months after resuming duty following the maternity leave shall not be required to work overtime or at night between the hours of 10 p.m. and 5 a.m.
- (2) Where, at any time during pregnancy and up to 3 months after resuming duty following the maternity leave, a female domestic worker produces a medical certificate that a change in the nature of her work or duties is necessary in the interest of her health or that of her child, she has the right to be transferred to other work or duties appropriate to her condition without loss of wages.
- (3) Where a transfer is not possible pursuant to subregulation (2), the female domestic worker is entitled to the sick leave specified under regulation 10.

### 15. Paternity leave

- (1) A male domestic worker under a contract of continuous employment or for a fixed term or a part-time male domestic worker, is entitled to paid paternity leave of 10 consecutive working days.
- (2) A male domestic worker shall be entitled to paternity leave under subregulation (1) if—
  - (a) he becomes father of a child;
  - (b) he has acknowledged paternity of the child;
  - (c) he takes paternity leave within a period of 4 months of the birth of the child, whether or not the birth of the child takes place in Seychelles; and
  - (d) the child is alive and he takes care of the child during paternity leave.
- (3) A male worker who intends to take paternity leave shall—
  - (a) notify his employer in writing of his intention to take paternity leave, at least 8 weeks prior to the expected date of the birth of the child, indicating therein the expected date of the birth of the child, with the endorsement by the mother of the expected child giving full name, national identification number and address of the mother; and
  - (b) apply in writing for the dates for which he intends to take paternity leave, at least 2 weeks prior to such date, with a certificate of confinement of the mother of the expected child.

- (4) The male worker shall, before going on paternity leave, furnish to the employer a copy of the birth certificate of the child evidencing his paternity and the date of the birth of the child.
- (5) The male worker who intends to take paternity leave shall inform his employer of any change to the dates of such leave, where—
  - (a) the child is born before or after the expected date of birth;
  - (b) the newborn child is hospitalised; or
  - (c) the mother of the child dies and the child survives.
- (6) Where a male worker has applied for paternity leave and the mother of the child dies during or shortly after the birth of the child and that male worker intends to take care of the child, he shall be entitled to an extended paternity leave for the remaining period of the maternity leave which would have otherwise been enjoyed by the mother of the child under regulation 13.
- (7) The period of extended paternity leave under subregulation (6) shall not exceed the period to which the mother of the child, after giving birth to the child, would have been entitled under regulation 13 if she was alive.
- (8) A male domestic worker shall be entitled to take paternity leave once in a calendar year not later than 4 months following the birth of the child.

## 16. Leave for civic duties

A domestic worker shall be entitled to an aggregate maximum of 14 days' paid leave in any period of 12 months for the purpose of fulfilling or in connection with any civic duties approved by the Minister.

## 17. Entitlement to benefits

An employer who pays sick leave under regulation 10, maternity leave under regulation 13 or paternity leave under regulation 15 to a domestic worker is subrogated in the rights of the domestic worker to any sickness, maternity or paternity benefit to which the domestic worker is entitled under the Social Security Act.

## Part V – Calculation of wages and compensation

### 18. Calculation of wages and compensation

- (1) The following formula shall apply for the purpose of calculating the wages of a domestic worker whose wage is calculated on an hourly basis:

Salary per year

52 x weekly working hours

- (2) The following formula shall apply for the purpose of calculating compensation payable to a domestic worker under section 47(2) of the Act:

A x B x C

52 x D

A stands for salary per year;

B stands for working hours per day;

C stands for number of days entitled under section 47(2)(b)(i) of the Act;

D stands for number of working hours per week.

## Part VI – Work on outer islands

### 19. Advances to domestic worker entering into contract

- (1) An employer on entering into a contract of employment with a domestic worker under section 19 of the Act may give to the domestic worker an advance of wages not exceeding the equivalent of 2 months' wages.
- (2) Where an advance is given under subregulation (1), the manner of its repayment shall, without prejudice to section 33(1) (e) of the Act, be stipulated in the contract.

### 20. Free transportation and food

- (1) Subject to regulation 22, a domestic worker under a contract of employment for work on an outer island, proceeding to or returning from work on the outer island is entitled to free passage and food during the passage for himself or herself and members of his or her family accompanying him or her.
- (2) The entitlement to a free return passage and free food during passage for members of a domestic worker's family is available to them or any of them whether or not they accompany the domestic worker but so long as they avail themselves of the entitlement within 6 months after the date of departure of the domestic worker unless delayed beyond that period for reasons of pregnancy or illness.

### 21. Medical examination of domestic worker and family

- (1) A domestic worker or any member of his or her family benefiting from an entitlement under regulation 20 shall not proceed to the outer island where the domestic worker is to be employed unless he or she has been medically examined and certified fit by a registered medical practitioner.
- (2) A medical examination under subregulation (1) shall be held within 7 calendar days prior to the departure of the domestic worker or of the member of his family.

### 22. Breach of contract by domestic workers

- (1) Where a domestic worker returns to his or her home island in breach of his or her contract of employment on an outer island, then, unless he or she had at the time of his or her departure completed three fourths of his or her period of service, he or she shall bear the cost of his or her repatriation and of that of the members of his or her family in an amount not exceeding 25% of his monthly wages.
- (2) Notwithstanding subregulation (1), where consequent upon the grievance procedure, if any, instituted under section 61 of the Act the competent officer determines that the domestic worker was justified in terminating his or her contract, the repatriation expenses are fully borne by the employer.

### 23. Housing and amenities on outer islands

- (1) During the period of a domestic worker's contract of employment on an outer island the employer shall provide the domestic worker and his or her family with appropriate housing and amenities.
- (2) Every employer of a domestic worker on an outer island shall arrange for a sufficient supply of potable water for the domestic worker and his or her family and shall observe any reasonable directions which may be given to him or her by the competent officer in respect of such water supply.

## 24. Medical facilities and care

- (1) Every employer of a domestic worker on an outer island shall keep and provide for the use of the domestic worker and his or her family such first-aid equipment and medicines and such general health facilities as satisfy the requirements of the Ministry of Health.
- (2) Where a domestic worker is ill and facilities for his or her treatment are not available on the island or where a female domestic worker or spouse or dependent of a domestic worker is pregnant, the employer shall, at his or her expense, arrange for the repatriation of the sick domestic worker or of the pregnant woman to Mahe or to a hospital or health centre where adequate care and treatment are available.

## 25. Death of domestic worker

Where a domestic worker dies during his or her period of employment on an outer island, the employer shall as soon as possible give notice thereof to the competent officer together with a written report of the circumstances in which the domestic worker died, and shall pay all remuneration and benefits due and deliver all property belonging to the deceased domestic worker to the competent officer for distribution in accordance with the law.

## 26. Manner of payment of wages and pay-slips

- (1) The payment of wages of a domestic worker employed on an outer island may be made—
  - (a) by remittances to persons in Mahe nominated by the domestic worker to receive the same;
  - (b) by settlement of accounts at the end of the contract and payment to the domestic worker in Mahe.
- (2) Without prejudice to sections 35 and 36 of the Act, every employer of a domestic worker employed on an outer island shall produce to the domestic worker at the end of each month a pay-slip specifying—
  - (a) the domestic worker's normal wages plus earnings arising from overtime work, work on holidays, payment in lieu of holidays or otherwise;
  - (b) the deductions made for social security, pension fund, personal income tax or remittances pursuant to subregulation 1 (a) and otherwise;
  - (c) the amount remaining due to the domestic worker;and such pay-slip shall be *prima facie* evidence as against the employer of the amount due.
- (3) No deduction is to be made under subregulation (2)(b) for any remittance unless the employer has received from the domestic worker a written authority to that effect.

## 27. Task work on outer islands

An employer may assign work to a domestic worker employed by him or her on an outer island but such work shall not exceed the amount of work capable of being performed in an ordinary day of 8 hours.

## 28. Visits of competent officer

- (1) An employer of a domestic worker employed on an outer island shall provide the competent officer travelling to the island in the exercise of his or her duties under the Act with transport, food and accommodation facilities to the island and with food and accommodation on the island but the cost thereof shall be met by the competent officer.

- (2) When a competent officer requests from an employer referred to in subregulation (1) transport to an outer island, such transport shall be made available as soon as possible and, in any case, not later than a month after the date of the request.

### **29. Registration of grievances**

Where a domestic worker on an outer island is empowered by the Act to initiate the grievance procedure and it is impracticable for him or her to register the grievance within the time limit set out in paragraph 2(1) of Part II of Schedule 1 to the Act, he or she may register the grievance within 14 days after his or her return from the outer island.

### **30. Definition**

In regulations 20, 21, and 24 references to "members of a domestic worker's family", "member of his or her family" or "family" are construed as references to the person cohabiting with the domestic worker and to the domestic worker's or their children normally living with the domestic worker.

## **Part VII – Miscellaneous and specific benefits**

### **31. Housing**

- (1) Subject to section 42 of the Act and to subregulation (2), an employer who provides proper housing for his domestic worker may deduct a maximum of SCR1500 a month from the domestic worker's wages, unless the competent officer authorises the deduction of a higher amount.
- (2) An employer shall not make a deduction under subregulation (1)—
  - (a) in respect of housing provided to a domestic worker on an outer island; or
  - (b) wherever a domestic worker is compelled, by reason of a transfer or other circumstances of his or her employment, to move from the house he or she owns or occupies rent-free in Seychelles to quarters provided by the employer.

### **32. Minimum employment age**

A person shall not have in that person's employment a domestic worker of less than 18 years of age.

### **33. Transport and uniform**

Where transport or uniforms are provided, no deduction shall be allowed therefor, if such deduction would result in the domestic worker receiving less than the national minimum wage.

## **Part VIII – Interest on compensation**

### **34. Interest on compensation**

The rate of interest for the purpose of section 63A of Act shall be the average lending rate of the commercial banks at the time payment is being made.

## **Part IX – Special provisions relating to live-in domestic workers**

### **35. Accommodation for live in domestic workers**

Where a domestic worker is required to live at the place of his or her employment, the employer shall provide live-in accommodation without charge and with minimum amenities such as a lockable room

with electricity, bed, mattress and beddings, access to potable water, toilet, bathing facilities and access to kitchen facilities for daily meals preparation.

**36. Permission to visit relatives and visitors**

Live-in domestic workers shall be allowed to visit relatives and visitors outside the domestic workers working time at set times in and out of the accommodation as may be specified in the contract.

**Part X – Offences**

**37. Offences**

An employer who contravenes the provisions of these Regulations is guilty of an offence and is liable on conviction to a fine not exceeding SCR20,000.