

Seychelles

Employment Act

## Employment (Coronavirus Special Leave)(Temporary Measures) Regulations, 2020

Statutory Instrument 57 of 2020

Legislation as at 1 June 2020

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# Seychelles

## Employment Act

### Employment (Coronavirus Special Leave) (Temporary Measures) Regulations, 2020 Statutory Instrument 57 of 2020

#### Commenced

*[This is the version of this document at 1 June 2020.]*

#### 1.

These regulations may be cited as the Employment (Coronavirus Special Leave) (Temporary Measures) Regulations, 2020.

#### 2.

In these regulations, unless the context otherwise requires—

- (a) "coronavirus" means the virus known as Wuhan novel coronavirus (2019-nCov) or Covid-19;
  - (b) "essential service" means—
    - (i) a service relating to the generation, supply or distribution of electricity;
    - (ii) any hospital or medical services;
    - (iii) a service relating to the supply or distribution of water;
    - (iv) a service relating to the sewerage service;
    - (v) airport and port and marine services including civil aviation, customs, immigration, airline catering and loading, unloading and service of ships or aircrafts;
    - (vi) fire and rescue services;
    - (vii) a service relating to retail or distribution of pharmaceutical products and medical equipment;
    - (viii) wireless, telephone, internet and cable communication services;
- [Please note: numbering as in original.]*
- (ix) meteorological service;
  - (x) postal services;
  - (xi) banking and financial services;
  - (xii) service relating to retail, wholesale, distribution and supplies of, food and water;
  - (xiii) service of manufacturing of essential commodities;
  - (xiv) service of public transportation including inter-island air and sea transportation;
  - (xv) waste collection and disposal service;
  - (xvi) petroleum and gas retail services;
  - (xvii) storage, supply and distribution of petroleum and gas services;

- (xviii) security services;
  - (xix) disaster management services;
  - (xx) print, audio and visual media or broadcasting services;
  - (xxi) service of Government treasury; and
  - (xxii) district administration service;
- (c) "isolation", in relation to a worker, means the process where—
- (i) a worker is isolating himself, from other people as a precautionary measure to prevent the spread of coronavirus, in accordance with the directive of the health authorities or under the relevant law and by reason of the isolation, the worker is unable to attend the work; or
  - (ii) a worker is in quarantine in accordance with the Quarantine Act; or
  - (iii) a worker is segregated or separated from any other person in such a manner as to prevent the spread of, or to undergo treatment for, coronavirus;
- (d) "parent" means the father, mother, or any other person who has actual custody, charge, or control of a relevant child;
- (e) "relevant child" means a child who—
- (i) is between 3½ months and 4 years old; or
  - (ii) has not attained the age of 15 years and who attends a relevant institution and the relevant institution is closed down during the specified period, in pursuance of—
    - (A) a directive of the Ministry responsible for education;
    - (B) a directive of the management of a relevant institution; or
    - (C) an order made under any relevant law;
- (f) "relevant institution" means—
- (i) a childminding establishment under the Institute of Early Childhood Development Act, 2014;
  - (ii) an institution providing formal early childhood education under the Education Act; or
  - (iii) an educational institution, under the Education Act;
- (g) "relevant worker" means a worker who satisfies the following conditions—
- (i) the worker is not employed in an essential service or as a home caregiver; and
  - (ii) the worker is a parent who—
    - (A) is a single parent; or
    - (B) is cohabiting with the other parent of a relevant child or a spouse, who is—
      - (I) employed in an essential service or as a home caregiver;
      - (II) in isolation;
      - (III) employed and is not on special leave; or
      - (IV) incapable of caring for, and looking after the wellbeing of, a relevant child for any reasonable cause, including on the basis of disability, confinement or absence from Seychelles.

- (h) "special leave" means paid leave granted to a relevant worker under regulation 4(1), (3)(a), (8) or (10) or to a worker under regulation 4(3)(b), (5), (6) or (8) during the specified period or to a worker under regulation 7;
- (i) "specified period" means the period starting from 16th March, 2020, to such date as the Minister, may, from time to time, prescribe by notice published in the *Gazette*;
- (j) "spouse", in relation to a parent, means a person cohabiting with a parent by virtue of marriage or concubinage.

### 3.

- (1) These regulations apply to a contract of employment—
  - (a) of continuous employment;
  - (b) for a fixed term; and
  - (c) of a part-time worker.
- (2) These regulations shall not apply to—
  - (a) a worker or class of workers that are exempted from the application of the Act;
  - (b) a non-Seychellois worker who is out of the jurisdiction during the specified period or any part thereof.

### 4.

- (1) A relevant worker shall be eligible for special leave.
- (2) A relevant worker, who is a parent to more than one relevant child and who applies for special leave, shall be deemed to have applied for special leave in respect of all of his or her relevant children.
- (3) Notwithstanding anything to the contrary under any regulations made under the Act, where—
  - (a) a relevant worker is on annual leave or compassionate leave during the specified period, that was applied for and approved between 16th March, 2020, and the coming into operation of these regulations; or
  - (b) an employer has given permission to a worker to be absent from work for any period between 16th March, 2020, and the date of the coming into operation of these regulations, the compassionate leave or annual leave of the relevant worker or absence of the worker shall not constitute or be treated as annual leave or compassionate leave, as the case may be.
- (4) Where subregulation (3) is applicable, the period of such leave or absence, as the case may be, shall not be deducted from the annual leave or compassionate leave of the relevant worker or the worker, and he or she shall be entitled to his or her wages during the relevant period.
- (5) Subject to regulation 4(12), where a public body or the undertaking or business of an employer has ceased to operate in whole or in part during the specified period and the employer permits a worker, other than a relevant worker, to be absent from work, the worker shall be deemed to be on special leave during the worker's absence provided that during such absence—
  - (a) the worker shall be at the disposal of the employer to perform any work remotely from the home of the worker or from such other place; and
  - (b) the employer may at any time request the worker to resume work at the workplace or at such other place provided by the employer.

- (6) Where a worker is employed in an essential service or as a home caregiver and satisfies the condition under regulation 2 (g) (ii), special leave may be taken by mutual arrangement between the employer and the worker, which special leave shall not be unreasonably denied by the employer.
- (7) In considering an application for special leave under subregulation (6), an employer shall, *inter alia*, take into account the following—
  - (a) the fact that the worker is a single parent;
  - (b) the fact that the worker is a parent of a relevant child and his or her spouse is employed in an essential service or as a home caregiver; or
  - (c) the fact that the spouse of the worker or the other parent of a relevant child is incapable of caring for, and looking after the wellbeing of, the relevant child for any reasonable cause, including on the basis of disability, confinement or absence from Seychelles.
- (8) Where an order restricting, controlling or prohibiting the movement of persons outdoors in the whole or any part of Seychelles is in force under any written law during the specified period a worker shall be deemed to be on special leave.
- (9) Subregulation (8) shall not apply to—
  - (a) a worker employed in essential service or as a home caregiver who is not on special leave; or
  - (b) a worker who works and resides in an area of Seychelles that is excluded from the order referred to in subregulation (8).
- (10) Notwithstanding anything to the contrary under any regulations made under the Act and subject to subregulation (11), any annual leave or compassionate leave taken by a relevant worker during the period from the coming into operation of these regulations to the expiration of the specified period shall constitute special leave and the period of such leave shall not be deducted from the annual leave or compassionate leave of the relevant worker and he or she shall be entitled to his or her wages during the relevant period.
- (11) A relevant worker who is a parent of a relevant child shall not be entitled to special leave under subregulation (1) or (6) at the same time, his or her spouse, or the other parent of the relevant child.
- (12) Notwithstanding anything to the contrary in subregulation (5) and subject to subregulation (6), an employer may with the consent of a worker grant annual leave to the worker during the specified period.

## 5.

- (1) An application for special leave shall be made by a relevant worker under regulation 4(1) or by a worker under regulation 4(6).
- (2) Where on the coming into operation of these regulations, a worker or relevant worker is on annual leave or compassionate leave or is absent from work under regulation 4(3)(a) or (5), the employer may require the worker or relevant worker to submit an application to confirm the eligibility of the worker or relevant worker for special leave under regulation 4(1), (3) or (5).
- (3) Where—
  - (a) an employer is in receipt of an application for special leave; or
  - (b) a relevant worker of an employer is absent from work during the specified period,the employer may request the employer of, the other parent of the relevant child, or the spouse of the relevant worker, for information relating to eligibility of, or grant of special leave to, that other parent or the spouse.



- (4) An employer who receives a request for information from an employer under subregulation (3) shall provide the information to the requestor as soon as practicable.
- (5) Where a worker is absent from work from 16th March, 2020, and is not eligible for special leave, an employer may request the worker to resume work on such date that the employer shall direct the worker in writing or by electronic correspondence to do so.
- (6) Subject to regulation 6(1), a worker who has been requested to resume work under subregulation (5) shall promptly comply with the request.

## 6.

- (1) A worker aggrieved by a decision of an employer refusing an application for special leave or requesting the worker to resume work under regulation 4(5) or the Union on behalf of the worker, may within 7 days of service of the decision of the employer on the worker, appeal to the Minister.
- (2) An appeal against the decision of an employer refusing an application for special leave shall not be construed as a suspension of the decision of the employer unless otherwise directed by the Minister.
- (3) In hearing the appeal, the Minister shall invite oral or written representation of the worker and the employer.
- (4) The Minister may consult the Employment Advisory Board on any appeal before deciding the appeal.
- (5) Where the Minister consults the Employment Advisory Board, the Minister may direct the Employment Advisory Board to hear representation of the worker or the employer.
- (6) Where the Minister or the Employment Advisory Board hears representation of the worker or the employer, the Minister or the Employment Advisory Board shall have powers to—
  - (a) summon any person to appear before it;
  - (b) examine a witness or any person appearing before it on oath;
  - (c) require any person to produce any document which the Minister or the Employment Advisory Board considers relevant.
- (7) Where the Employment Advisory Board hears representation of the worker or the employer, it shall submit its report of finding to the Minister immediately after the conclusion of the hearing.
- (8) The Minister shall, after hearing an appeal—
  - (a) confirm the decision of the employer;
  - (b) vary the decision of the employer;
  - (c) reverse or set aside the decision of the employer; or
  - (d) order that the employer grants the worker special leave during the specified period or any part of the specified period.
- (9) A decision of the Minister under this regulation shall be given within 7 days or such longer period as may be prescribed after the date of filing of the notice of appeal.
- (10) The decision of the Minister on appeal shall be final.
- (11) A decision of the Minister made under this regulation shall not be invalidated on the ground that it was not given within the period specified in subregulation (9).
- (12) The Minister may revoke the decision given under subregulation (9) within a period of 7 days after the date of the decision and make a new decision if the Minister is satisfied that the relevant facts in existence at the time when the decision was made, were not made known to the Minister and that it is just and equitable.

- (13) The Minister shall hear the relevant worker and the employer before making a decision under subregulation (12).
- (14) Where an employer or a relevant worker is dissatisfied with the decision of the Minister under subregulation (11) or (12), the employer or relevant worker may make an application to the Supreme Court for review of the Minister's decision.
- (15) Where an application for review is made under subregulation (14), the application shall not operate as a suspension of the decision of the Minister unless otherwise directed by the Supreme Court.

## 7.

Notwithstanding anything to the contrary under any regulations made under the Act, where a worker is in isolation, the period that the worker is in isolation shall constitute special leave and the period of such leave shall not be deducted from the annual leave, compassionate leave, or sick leave of the worker and the worker shall be entitled to his or her wages during the period of his or her isolation.

## 8.

For the avoidance of doubt, special leave or absence from work by a worker under these regulations shall not constitute or be interpreted as unauthorised absence for eligibility for thirteenth month pay or a break in the length of service for calculating compensation under the Act.

## 9.

- (1) Schedule 2 to the Act is amended—
  - (a) by inserting in Part I, after subparagraph (k) the following subparagraph—
    - "(l) wilfully or intentionally apply for special leave under the Employment (Coronavirus Special Leave) (Temporary) Regulations, 2020, in circumstances where the worker is not eligible for special leave;"
  - (b) by inserting in Part II after subparagraph (m) the following subparagraph (n)—
    - "(n) knowingly makes false statements in an application for special leave under the Employment (Coronavirus Special Leave) (Temporary Measures) Regulations, 2020.";
- (2) Schedule 6 to the Act is amended by inserting in paragraph 3, after subparagraph (4) the following subparagraph—
  - "(5) This paragraph shall not apply to an appeal in respect of a special leave under regulation 5 of the Employment (Coronavirus Special Leave) (Temporary Measures) Regulations, 2020."