

EMPLOYMENT (AMENDMENT) BILL, 2022

(Bill No. 21 of 2022)

**EXPLANATORY STATEMENT OF THE OBJECTS OF AND
REASONS FOR THE BILL**

The object of this Bill is to provide for special provision for payment of Thirteenth Month Pay to workers for the year 2022 in place of that provided under section 46C of the Employment Act (Cap. 69).

Dated this 15th day of September, 2022.

**PATRICIA FRANCOUR
MINISTER OF EMPLOYMENT
AND SOCIAL AFFAIRS**

EMPLOYMENT (AMENDMENT) BILL, 2022

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ARRANGEMENT OF SECTIONS

Sections

1. Short title
2. Applicability of Section 46C
3. Calculation of thirteenth month pay
4. Performance Appraisal System
5. Employer may pay thirteenth month pay to a worker otherwise disqualified
6. Exemption from Tax

EMPLOYMENT (AMENDMENT) BILL, 2022

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**A BILL
FOR**

AN ACT TO AMEND THE EMPLOYMENT ACT, (CAP. 69) TO PROVIDE FOR SPECIAL PROVISIONS FOR THE PAYMENT OF THIRTEENTH MONTH PAY TO WORKERS FOR THE YEAR 2022; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Employment (Amendment) Act, 2022, amending the Employment Act, (Cap 69) (hereinafter the “principal Act”).

Applicability of Section 46C

2.(1) Notwithstanding section 46C(4) of the principal Act, the amount of thirteenth month pay payable by an employer under section 46C of the principal Act in respect of the period from 1st January 2022 to 31st December 2022, due on the 31st December 2022 and payable on or before 31st January 2023 shall be payable to a worker in accordance with the provisions of sections 3, 4, 5 and 6.

(2) Except for the calculation of thirteenth month pay under section 3, section 46C shall apply to thirteenth month pay under this Act.

Calculation of thirteenth month pay

3. For the purpose of calculating the amount of the thirteenth month pay payable under section 2, an employer —

- (a) shall make all applicable deductions set out under section 46C of the principal Act from the worker's monthly salary referred to in section 46C(4) of the principal Act;
- (b) after the deductions under paragraph (a) have been made —
 - (i) shall pay 50% of such amount to the worker; and
 - (ii) may make deductions from the remaining 50% of such amount but any such deductions shall be based on the performance appraisal of the worker.

Performance Appraisal System

4.(1) In section 3 and this section —

“performance appraisal” means the assessment, appraisal or evaluation of the performance or productivity of a worker by the worker's employer in accordance with the employer's performance appraisal system; and

“performance appraisal system” means a system that is put in place by an employer to measure a worker's performance during the year 2022 against previously-agreed objectives, targets and ratings.

(2) An employer shall assess the sum due and payable to the worker 3 (b)(ii) in accordance with the worker's performance appraisal.

(3) Absence of a worker from work in respect of any leave to which entitled under the principal Act shall not be used as a criterion or a factor in assessing performance or productivity under a performance appraisal system.

(4) Except where an employer agrees in writing to pay or pays a worker thirteenth month pay equal to the monthly salary of the worker referred to in section 46C of the principal Act, an employer shall in writing notify the worker of the amount due and payable to the worker under section 3(b)(ii).

(5) An employer who does not have a performance appraisal system in place before the 31st December, 2022, or who fails to conduct performance appraisal of the worker on or before the 31st January, 2023, shall be liable to pay the worker thirteenth month pay equal to the monthly salary of the worker referred to in section 46C of the principal Act.

(6) Notwithstanding section 3 and anything to the contrary under this section, an employer may pay a worker thirteenth month pay equal to the monthly salary of the worker referred to under section 46C (4) of the principal Act without conducting a performance appraisal.

Employer may pay thirteenth month pay to a worker otherwise disqualified

5. Notwithstanding any provisions of this Act, an employer may pay to his or her Seychellois worker whose monthly salary is less than the amount prescribed by the Minister under Employment (Thirteenth month pay fixing of eligibility limit) Regulations, 2017 (S.I. 3 of 2017) and who does not qualify for a thirteenth month pay under this Act, a thirteenth month pay in respect of the year 2022 in accordance with sections 2, 3 and 4 of this Act.

Exemption from Tax

6. The thirteenth month pay payable under this Act shall be an exempt emolument under the Income and Non-Monetary Benefits Tax Act (Cap 273).