

EMPLOYMENT (AMENDMENT) BILL, 2023

(Bill No. 16 of 2023)

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

The object of this Bill to provide for special provision for payment of Thirteenth Month Pay to workers for the year 2023, 2024 and 2025.

Dated this 25th day of September, 2023.

**PATRICIA FRAN COURT
MINISTER OF EMPLOYMENT
AND SOCIAL AFFAIRS**

EMPLOYMENT (AMENDMENT) BILL, 2023

(Bill No. 16 of 2023)

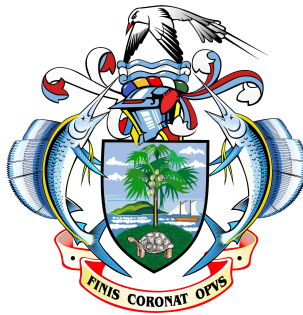
ARRANGEMENT OF SECTIONS

Sections

1. Short title
2. Amendment of section 46C
3. Amendment of section 46D
4. Amendment of section 76

EMPLOYMENT (AMENDMENT) BILL, 2023

(Bill No. 16 of 2023)



A BILL

FOR

AN ACT TO AMEND THE EMPLOYMENT ACT, (CAP. 69).

ENACTED by the President and the National Assembly.

Short title

1. This Act may be cited as the Employment (Amendment) Act, 2023, amending the Employment Act, (Cap 69) (hereinafter the “principal Act”).

Amendment of Section 46C

2. The principal Act is amended in section 46C as follows —

- (a) in subsection (1) by inserting after the words “this section” the words “and section 46D”;
- (b) by deleting the words “and” immediately after the definition of “corresponding year” and inserting immediately after the following definitions —

“period of service” means the period that a worker has been in employment with the employer during the corresponding year;

“prescribed salary” means the amount prescribed by the Minister under section 46C(10)(c); and”;

- (c) in subsection (3) by repealing the word “The” the first time it appears and substituting therefor the words “Except where provided otherwise, the ”;
- (d) by repealing subsection (4)(a) and renumbering paragraphs (b) and (c) as paragraphs (a) and (b) respectively;
- (e) by repealing the word “employee” in subsection 4(b) and substituting therefor the word “worker”;
- (f) in subsection 5 by repealing the word “overseas” and substituting therefor the word “full-time”;
- (g) by repealing subsection (6) and substituting therefor the following subsections as (6), (7) and (8) and renumbering subsection (7) as (9) and (8) as (10) —

“(6) A worker who has been employed with an employer for a period less than 12 months in a corresponding year and who on 31 December of the corresponding year is not on probation shall be paid

thirteenth month pay in proportion to the period of service inclusive of the probationary period.

(7) Notwithstanding anything to the contrary in section 46D and this section, a worker receiving less than the prescribed salary who is employed with an employer in the course of the years 2024 and 2025 and who ceases employment prior to 31 December of the corresponding year shall be paid thirteenth month pay under section 46D(4)(b)(i) in proportion to the period of service inclusive of the probationary period, where applicable, upon cessation of employment unless —

- (a) the worker was on probation and the worker terminated his employment during probationary period;
- (b) the worker was on probation and his employment was terminated on grounds of unsatisfactory performance;
- (c) the worker's employment was terminated on grounds of serious disciplinary offence.

(8) Where a worker who is eligible for thirteenth month pay has been in detention by order of a competent court or has served a term of imprisonment during the corresponding year, the period of detention or imprisonment shall be deducted from the 13th month pay.”;

- (h) by repealing subsection (9), (10), (11), and (12).

Amendment of Section 46D

3. The principal Act is amended in section 46D —

- (a) by repealing subsection 46D(1) and (2) and substituting therefor the following —

“Thirteenth month pay for the years 2023, 2024 and 2025

46D.(1) Notwithstanding section 46C(4) of the principal Act the amount of thirteenth month pay payable by an employer under section 46C in respect of years 2023, 2024 and 2025 shall be payable to a worker in accordance with the provisions of this section.

(2) Except for the calculation of thirteenth month pay under subsection (4), section 46C shall apply to thirteenth month pay under Section 46C and this section”.

- (b) by repealing subsection (6) and substituting therefor the following subsection —

“(6) 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 indicate any deductions made under subsection (4) and notify the worker of the amount due and payable to the worker under subsection (4)”.

- (c) by repealing subsection (7) and substituting therefor the following subsection —

“(7) Where performance appraisal applies in respect of thirteenth month pay and an employer does not have a performance appraisal system in place before the expiration of the corresponding year, or fails to conduct performance appraisal of the worker on or before 31 January of the year following the expiration of the corresponding year, the employer 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 Act or in proportion to the period of service, as the case may be”.

- (d) by repealing subsection (9) and substituting therefor the following subsection —

“(9) Notwithstanding anything to the contrary in section 46C and subsections (1) to (8) —

- (a) an employer may pay to the employer’s Seychellois worker whose monthly salary is less than the prescribed salary and who does not qualify for a thirteenth month pay under this Act, a thirteenth month pay in accordance with subsections (2), (3), (4), (5), (6), (7) and (8).
- (b) an employer may pay to the employer’s Seychellois worker whose monthly salary is in excess of the prescribed salary thirteenth month pay in accordance with subsections (2), (3), (4), (5), (6), (7) and (8) subject that the amount of the thirteenth month pay in excess of the prescribed salary shall not be exempt emolument under the Income and Non-Monetary Benefits Tax (Cap 273)”.
- (c) in subsection (10) by repealing the word “The” the first time it appears and substituting therefor the words “Subject to subsection (9)(b),” ;

Amendment of section 76

4. Section 76 of the principal Act is amended in subsection 2 by inserting after item “(d)” the following —

- “(dd) fails to pay the thirteenth month pay under section 46C or 46D;”.