

**SAINT CHRISTOPHER AND NEVIS**  
**THE PROTECTION OF EMPLOYMENT ACT**

AN ACT to make certain provisions in respect of termination of employment, to provide for the establishment of a Severance Payments Fund and to provide for severance payments to employees, and for matters incidental thereto.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis and by the authority of the same as follows;

**PART I**  
**PRELIMINARY**

*Commencement: 30th June, 1986*

*Short title.*

1. (1) This Act may be cited as the Protection of Employment Act, 1986

1. (2) This Act shall come into operation on a day or days to be appointed by the Minister by Notice published in the Gazette.

*Interpretation.*

2. In this Act, unless the context otherwise requires-

“casual worker” means any person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer's trade or business;

“Commissioner” means the person for the time being holding office of Labour Commissioner;

“contribution period” means the prescribed period in respect of which a contribution is payable;

“employee” means any person who works with an employer under a contract of service in any capacity whether such contract is expressed or implied, oral or in writing;

"employer" means any person who employs or on whose behalf any other person employs any employee and includes a body of employers (whether such body is a firm, company, statutory corporation or trade union) or any person who on behalf of any other person employs any employee but does not include any person acting as agent for a disclosed principal;

"Fund" means the Severance Payments Fund established by subsection (1) of section 12;

"Minister" means the Minister for the time being charged with the responsibility of Labour;

"normal wages" includes any salary or money contracted to be paid or required by law to be paid or given as a recompense, reward or remuneration for any such services, work or labour done or to be done;

"prescribed" means prescribed by Regulation under this Act;

"probationary period" means a period not exceeding four weeks in the case of household employment or three months in the case of other employment;

"seasonal employment" means any employment provided by an employer during a specific part (commencing at approximately the same time each year) of each three or more consecutive years and "season" shall be construed accordingly;

"serious misconduct" includes fraud, dishonesty or any other conduct of such nature that it is unreasonable to require the employer to continue employment during the notice period;

"temporary worker" means any person whose period of employment does not exceed the probationary period;

"trade dispute" means a trade dispute as defined under the Trades Union Act.

*Application of Act.*

3. This Act shall not apply –

- (a) to employees of the Crown and of statutory corporations in respect of whom special provisions apply both as regards termination notice and retiring benefits;
- (b) to a director of a company incorporated, registered or conducting business under the laws of Saint Christopher and Nevis or to any member of a partnership agreement;

- (c) to an employee who is either husband, wife, father, mother, brother, sister or child of the employer living in the employer's household;
- (d) to a master of a member of a fishing vessel, if payment is made in respect of the employment by way, of a share in the profit of that vessel;
- (e) to a temporary worker, except in respect of maternity leave qualification; and
- (f) to a casual worker, except in respect of maternity leave qualification;

Provided however that notwithstanding the provisions of this section, this Act shall apply in all cases except where the benefits to be derived by the employee are more favourable than those provided in the Act, whether or not the more favourable benefits accrue or will accrue by law, custom, contract or any other arrangement.

*Terms and conditions of employment to be in writing or request.*

4. (1) The terms and conditions of employment shall be provided in writing by an employer to an employee within fourteen (14) days of a request from the employee.

4. (2) The Minister shall by regulation made under this Act provide a specimen form indicating the terms and conditions of employment which must be provided in writing pursuant to the preceding subsection.

## **PART II TERMINATION OF EMPLOYMENT**

*Termination of employment.*

5. Except under paragraph (f) of this section employment may be terminated in writing by the employee in the following circumstances:

- (a) without notice during the probationary period of the employee except as may otherwise be provided in writing in a contract of employment;
- (b) without notice where the employee is guilty of serious misconduct in or in relation to his employment,
- (c) without notice where the employee is guilty of misconduct in or in relation to his employment or the employee is no longer performing his duties satisfactorily:

Provided that the employee has been warned in writing on at least two occasions within a period of six months indicating the nature of the misconduct or unsatisfactory performance of duties, and in the case of the last warning, the intention of the employer to terminate the services of an employee shall be indicated, where there is a repeated misconduct or unsatisfactory performance of duty;

(d) where a medical practitioner certifies that an employee is suffering from infirmity of the mind or body which is likely to be permanent, provided such infirmity was lasted for a period of at least three (3) months;

(e) where the employee has become redundant for the reason that -

(i) the employer has discontinued or ceased to carry on all or part of his business,

(ii) the employer has modernised, automated or mechanised all or part of his business,

(iii) the employer has reorganised his business to improve efficiency,

(iv) the employer finds that it is impossible for him to carry on his business at the usual rate or level due to shortage of material or a mechanical breakdown or for any cause beyond his control;

(v) the employer is forced to reduce his business due to lack of change or change in markets;

(f) where the employer dies and his business ceases to operate; or

(g) where the business is liquidated by bankruptcy or otherwise.

*Sales of business not to affect rights of employee.*

6. (1) The sale or other disposition of a business or part of its shall not affect the rights of an employee and the obligations accruing to any employee at the time of the sale or disposition shall be met by the buyer or the person acquiring the business.

6. (2) The rights of the employees and the obligations accruing to each employee shall be recorded at the time of the sale or disposition of the business with the Commissioner.

*Notice of termination of employment*

7. (1) Subject to the provisions of section 5 of this Act, an employer shall give an employee notice of termination of services of the employee on the following basis –

- (a) an employee with three months but less than one year's continuous service, one week;
- (b) an employee with one year but less than five years' continuous service, two weeks;
- (c) an employee with five years but less than ten years continuous service, three weeks;
- (d) an employee with ten years but less than fifteen years continuous service, four weeks;
- (e) an employee with fifteen years continuous service, eight weeks;
- (f) any employee paid on a monthly basis who has less than fifteen continuous service, one month and
- (g) any employee paid on a monthly basis who has fifteen years continuous service and over, two months.

7. (2) In lieu of notice, the employer may provide the employee wages and other benefits to which the employee is entitled during the period of notice.

7. (3) Where an employer contemplates terminating the employment of ten or more employees on the grounds provided in paragraph (e) of section 5 of this act, he shall, not less than one month before any proposed termination, notify the labour commissioner in writing of the reasons for the terminations, the number and categories affected, the period over which the terminations are intended to be carried out, and summarizing the results of the consultations with any trade union representing the employee.

*Employee to give Notice of termination of employment.*

8. (1) An employee shall give his employer notice of termination of employment equivalent to the period such employee is entitled to receive from his employer under section 7 for the termination of his employment.

8. (2) Where the contract of employment is not in writing the period of notice of termination of employment by the employee shall not exceed four weeks.

8. (3) An employee may terminate his services without notice if the conduct of his employer is of such a nature that the employee cannot reasonably

be expected to continue his employment and any such termination shall be deemed to be termination by the employer.

8. (4) The burden of proof in any termination under subsection (3) shall be on the employer.

*Labour Commissioner to be notified.*

9. An employer shall not give an employee pay in lieu of notice where the employee's services are terminated for mental or physical incapacity or infirmity without prior notification to the Labour Commissioner.

*Continuity of employment sent not interrupted.*

10. The cessation of employment of an employee for the following reasons shall not constitute a break in continuity of a contract of employment –

- (a) a trade dispute
- (b) accident, sickness, injury or for absence during maternity period as certified by a medical practitioner;
- (c) operation of any other law;
- (d) an Act of God;
- (e) any agreement with the employer;
- (f) absence permitted or condoned by the employer;
- (g) suspension or temporary lay off where there is no severance payment to which an employee would normally be entitled as a result.

*Prohibition against termination of employment.*

11. An employer shall not terminate the contract of an employee on any of the following grounds –

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of a worker's representative;
- (c) making a complaint or participating on proceedings against an employer involving an alleged violation of laws or regulations;
- (d) race, place of origin, birth out of wedlock, political opinions or affiliations, colour, sex or creed, marital status or family responsibilities;

(e) absence from work during maternity period as certified by a medical practitioner;

(f) temporary absence from work due to injury or illness as certified by a medical practitioner and provided that the employee submits the certificate to his employer within 48 hours of his absence; [Cap 38]

(g) absence from work in the performance of Jury service as required under the Jury Act.

### **PART III SEVERANCE PAYMENT**

#### *Severance Payments Fund*

12. (1) For the purpose of this Act there shall be established under the control and management of the Commissioner a fund called "The Severance Payments Fund".

12. (2) There shall be paid into the fund –

(a) all contributions;

(b) all sums recovered for the fund under the Act; and

(c) all sums properly accruing to the Fund under this Act including, without prejudice to the generality of the foregoing, the repayment of benefit or assistance.

12. (3) There shall be paid or met out of the Fund -

(a) all claims for benefits or assistance;

(b) all refunds of contribution paid in error;

(c) all expenses properly incurred in the administration of this Act.

12. (4) Regulations shall provide for the form and conduct of the accounts and for the deposit with the Accountant General of all sums collected.

12. (5) The Director of Audit shall annually conduct and audit of the Fund and his annual Report shall be laid before the National Assembly.

*Source of Funds.*

13. (1) For the purpose of providing the funds required for this payment of severance payment benefits and for making any other payments which under this Act are to be made out of the Fund, contributions shall be payable by employers.

13. (2) The contributions payable by an employer in respect of an employee shall be at the rate of one per centum of the normal wages of the employee.

13. (3) Regulations made under the preceding subsection may provide for exempting any employer from liability to pay contribution or reducing or varying any rate of contribution for the periods when the employer has over any prescribed period not terminated the employment of any employee under circumstances requiring payment of severance pay in accordance with the provisions of this Act.

*Payment of severance payment contributions.*

14. (1) The contribution payable under this Act by any employer in respect of any employee shall be paid by the employer to the Commissioner at the end of every month.

14. (2) The employer shall pay the contribution within such period as may be prescribed.

14. (3) Any employer paying a contribution shall furnish to the Commissioner at the time of such payment, a statement stating the wages of every employee in his employment and the amount paid in respect of severance payment contribution.

*Social Security Board to administer and collect severance payment contribution on behalf of the Commissioner.*

15. The Social Security Board is hereby vested with the responsibility of the administration and collection of the Contribution on behalf of the commissioner and such contribution shall be payable at the office of the Social Security Board.

*Penalties.*

16. Where the payment of the contribution is in default, the defaulting employer shall become liable to pay in addition to such contribution –

(a) a penalty of a sum equivalent to ten per centum of such contribution; and

(b) where such contribution is not paid to the commissioner after a period of thirty days after such contribution has been in default, a penalty of a sum equivalent to one per centum of the contribution in respect to each further period of thirty days.



Provided that a defaulting employer shall not be required to pay the penalty under this section –

- (a) if the defaulting employer proves to the satisfaction of the Commissioner that the failure of payment was due to circumstances beyond his control; and
- (b) if the defaulting employer furnishes to the Commissioner a correct return of the emoluments and pays the amount in default.

*Power of commissioner to call for information.*

17. The Commissioner shall have the power –

- (a) by notice in writing to require any employer to furnish within the period specified in the notice, such information as the Commissioner may by notice require for the purpose of this Act;
- (b) to require any employer to produce for examination within a specified time any book, document register or record which is under his control or in his possession and which, in the opinion of the Commissioner contains information useful for the purpose of this Act.

*Power of Commissioner to make any decision or determination.*

18. The Commissioner may, upon good cause adduced by the control by the Social Security Board or of his own motion, make any decision or determination in respect of the contribution payable by any employer.

*Appeals.*

19. (1) An employer, if he is dissatisfied with any decision or determination made in respect of him by the Commissioner under this Act may appeal against the decision or determination to the Commissioners appointed under the Income Tax Ordinance, 1966 within the time prescribed for such appeal.

19. (2) Notwithstanding the provisions of subsection (1) until the determination of any appeal the employer shall pay the contribution amount required to be paid by him by reason of any variation, decision or determination by the Comptroller.

19. (3) The Commissioners shall, before making their decision or determination on any appeal made under subsection (1), give the employer or his authorized representative an opportunity to present his case to the Commissioners.

19. (4) Any employer who is aggrieved by the decision of the Commissioner in respect of any appeal made to them under subsection (1) may further appeal against that decision to the High Court.

*Contribution to be deductible expense under the income Tax Act. (No. 17 of 1966).*

20. For the purpose of ascertaining the assessable income of a company under section 9 of the Income Tax Ordinance, 1966, the amount of the contribution which a company is liable to pay shall be deemed to be an expense incurred in the production of the income.

*Refunds.*

21. If it is proved to the satisfaction of the Commissioner, by claim to him in writing, that any employer has paid in respect of the contribution under this Act an amount in excess of the amount due from him, the employer shall be entitled to a refund of the amount paid in excess.

*Forms.*

22. The Minister may from time to time prescribe the forms to be issued and used for the purpose of this Act and may vary and amend such forms from time to time.

*Payment into Fund.*

23. (1) All sums paid to or recovered by the Commissioner by way of the Social Security Board shall be paid into his Severance Payments Fund.

23. (2) All sums received by the Commissioner by way of penalties under this Act shall be paid by him into the Severance Payments Fund.

*Expenses of Social Security Board.*

24. There shall be paid to the Social Security Board at such times and at such rate as may be determined by the Minister after consultation with the Minister responsible for Social Security and the Social Security Board, such sums as may be estimated to be the amount of the expenses of the Social Security Board in the administration of this Act.

*Right to severance payment.*

25. (1) Where an employee has been continuously employed for a period of not less than one year and the employer has terminated the services of that employee on any of the grounds specified in paragraph (e), (f) or (g) of section 5, or the employee has terminated his services in pursuance of subsection (3) of section 8, the employee shall be entitled to severance payment.

25. (2) An employee who has worked for the same employer on a seasonal basis for the three seasons immediately preceding the termination of his employment shall be deemed to qualify for severance payment if he has

worked for the same employer for three-fourths of the number of working days in each of the reckonable years.

25. (3) An employee entitles to severance payment may claim payment in such manner as may be prescribed.

*No right to severance pay.*

25. Where there is a change of ownership or operation of the business or where the employer dies or where the employee is made redundant under paragraph (e) of section 5, the employee shall not be entitled to severance payment if the contract of employment continues or if he is offered a new contract of employment by the new owners or operators of the business or the personal representatives of the deceased employer, case may be, on terms and conditions of employment and at a place of employment no less favorable than in his earlier contract.

*Laid suspended employee to claims severance payment.*

27. Where an employee lays off an employee or suspends an employee for a period of at least twelve weeks, the employee may request his employer to treat his employment as terminated and the employee shall then be entitled to severance payment if he has worked for the same employer for at least one year and would be entitled to severance payment under section 25.

*Employment may be treated as terminated.*

28. The services of an employee shall be deemed to be terminated under the preceding section unless the employer is able to offer employment to that employee within twelve weeks from the time of lay-off or suspension and such employment is substantially the same in relation to terms, conditions and place of employment for a period of not less than thirteen weeks.

*Rate of severance payment.*

29. (1) The rate of severance payment shall be two weeks for each year of continuous service for a period of up to five years service, three weeks for a period of five years to ten years service and four weeks for any period of service in excess of ten years calculated backward from the date of the termination of employment, except in the case of seasonal workers, where the rate shall be one week's pay for each period that such employee qualifies under subsection (2) of section 25.

29. (2) In the computation of severance payment, a period of a half of a year or more shall be counted as a full year and a period less than half of a year shall be ignored.

29. (3) In the computation of severance payment, no employee shall be entitled to more than fifty-two weeks' severance payment.

*Determination of claim.*

30. (1) It shall be the duty of the Commissioner to determine, where necessary in consultation with the employer and the employee, the claim of any employee in respect of this severance payment.

*No. 17 of 1966.*

30. (2) Where any person disputes the determination or decision of the Commissioner he may appeal that determination or decision to the Commissioners appointed under the Income Tax Ordinance, 1966.

*Computation of week's pay.*

31. For the purpose of section 30, a week's pay –

(a) in the case of an employee not paid on a piece work basis is equivalent to the aggregate of the employee's normal wages for the fifty-two weeks immediately preceding the termination for employment divided by the number of weeks worked;

(b) in the case of an employee paid on a piece work basis is equivalent to the normal wages for a period of fifty-two weeks immediately preceding the termination of employment divided by the number of weeks worked;

(c) in the case of a seasonal worker, is equivalent to the total of his normal wages in the last three seasons preceding the termination of employment divided by the number of days worked and multiplied by the number of days constituting the working week.

*Seasonal workers.*

32. The services of a seasonal worker shall be deemed to have been terminated if he offers his services and is not re-employed by the same employer within the first four weeks at the beginning of the next season.

*Recovery severance payment and notice of payment.*

33. (1) An employee may recover by civil proceedings in a court of competent jurisdiction the notice payment and severance payment to which he is entitled under this Act.

33. (2) In event of bankruptcy or liquidation of the business of the employer or on any other closure of business the amount owing to an employee as payment in lieu of notice shall be deemed to be a priority debt under the provisions of the relevant enactments.

*Transitional provision.*

34. (1) Notwithstanding anything contained in this Act, where any employee has worked for an employer for more than ten years and within five years from the commencement of this Act, his services are terminated in

accordance with the provisions of paragraph (e), (f) or (g) of section 5 of this Act the employee shall in addition to any benefits payable under this Act, be entitled to receive severance payment from his employer in respect of the termination.

34. (2) For the purpose of the calculation of severance payment required under subsection (1), a period of five years shall be deemed to be the period in respect of which payment by an employer shall be made.

#### **PART IV MATERNITY LEAVE**

*Period for which maternity leave must be granted.*

35. (1) An employee shall be entitled to thirteen weeks' maternity leave, that is to say, at least two weeks up to and including the date of her confinement and at least six weeks immediately from that date.

35. (2) In the case of illness medically certified arising out of the pregnancy or out of confinement, she shall be entitled to an additional period of leave not exceeding three months.

35. (3) The benefits to be paid to an employee during maternity leave shall be in accordance with the provisions of the Social Security Act.

35. (4) Where no benefit is payable under the Social Security Act for any period of maternity leave to which an employee is entitled under subsection (1) of this section, the employer shall pay the employee benefits in respect of that period of maternity leave at the rate payable under The Social Security Act.

*Qualifying period of employment for maternity leave.*

36. (1) No employee shall be entitled to maternity leave unless she has worked for the employer from whom she claims such benefit for not less than one hundred and fifty days within the period of the one year immediately preceding the date of her confinement.

36. (2) For the purposes of reckoning the one hundred and fifty days referred in Subsection (1), an employee shall be deemed to have worked on –

- (a) the days on which she was not provided work by her employer by reason of her pregnancy.
- (b) the holidays to which she was entitled under any written law;
- (c) the days of her absence on leave granted by her employer or allowed by any written law;

(d) the days of her absence due to injury or illness medically certified arising out of or in the course of her employment; and

(e) any period of cessation of work falling under the provisions of section 10.

36. (3) Where a change of employer occurs in any business, ship, estate, factory or other enterprise in which an employee is employed, service rendered by that employee to the previous employer shall be deemed to be service rendered under the new employer for the purpose of computing the period of employment by virtue of which she may be entitled to maternity leave under subsection (1).

*Notice to employer of confinement or expected confinement.*

37. (1) An employee shall, prior to her confinement give notice to her employer that she expects to be confined within six weeks from the date of such notice.

37. (2) An employee who has been confined shall within one week of her confinement, give notice to her employer of the date on which she was confined.

37. (3) The employer shall, on receipt of a notice from an employee under section (2), permit that employee to absent herself from employment until the expiry of the remainder of the period of maternity leave for which she is eligible under the provisions of subsection (1) of section 25 calculated from the day of her confinement.

*Employee not to be given notice of dismissal during maternity leave from employment.*

38. If an employee absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give notice of dismissal during such absence or on such a day that the notice will expire during such absence.

*Employment not to be terminated because of pregnancy or confinement or illness consequent hereto.*

39. (1) The employment of an employee shall not be terminated by reason only of her pregnancy or confinement or of any illness consequent upon her pregnancy or confinement.

39. (2) Where an employer is prosecuted for the offence of acting in contravention of the provisions of subsection (1), the burden of proving that the employment of an employee was terminated by reason of a fact other than her pregnancy or confinement or any illness consequent upon her pregnancy or confinement shall be upon the employer.

## **PART V MISCELLANEOUS**

### *Delegation of functions.*

40. The Commissioner may delegate any function which, by this Act, is to be performed by him, to any labour officer of the Department of Labour.

### *Powers of the Commissioner.*

41. The Commissioner shall, in addition to and not in derogation of any power conferred on him under any other law, have power –

- (a) to enter freely and without previous notice at any reasonable hour of day or night any work place where workers covered by this Act are employed;
- (b) to enter by day any premises which he may have reasonable cause to believe that workers covered by this Act are employed;
- (c) to require the production of books, registers or other records as may be necessary for the purposes of this Act;
- (d) to take copies of the whole or any part of such books, registers or other records;
- (e) to interview alone or in the presence of witnesses, the employer, the staff or former employees of any undertaking on any matter for the purpose of this Act;
- (f) to require the employer to provide returns relating to all his employees or former employees or any class or description of such employees and any such particulars as he may require for the purposes of this Act; and
- (g) to hold such enquiries as he may consider necessary for the purpose of this Act.

### *Preference to former employees.*

42. Where an employer terminates the services of an employee owing to a reduction of the work force and subsequently intends within a period of twelve weeks following the date of such termination of employment to employ persons to perform similar duties, the employer shall give preference to the former employee whose services have been terminated.

### *Proceedings before the Commissioner, Minister and Hearing Officer.*

43. (1) Any employer or employee or any person or organization acting on his behalf, as the case may be, may make a complaint to the Commissioner that the provisions of this Act have been contravened by an employer or employee and in any complaint made to the Commissioner in accordance with this subsection, the employee and employer shall have the right to be represented.

43. (2) Upon receipt of a complaint under the preceding subsection, the Commissioner shall forthwith take appropriate steps in accordance with the provisions of the Labour Ordinance to assist the parties to arrive at a settlement.

43. (3) If within fourteen days after the receipt of a complaint under this section, the Commissioner has failed to achieve a voluntary adjustment or settlement, he shall refer the matter, with a full report thereon, to the Minister.

43. (4) On referral of a matter to him the Minister shall seek to settle or adjust the matter or in any case that he considers necessary he may refer the matter to an officer hereinafter referred to as a Hearing Officer who shall have the same powers conferred on the Commissioner under the Labour Ordinance.

43. (5) The Minister may, by order, appoint one or more persons to function as Hearing Officer generally or in relation to one or more cases, or authorise any officer to exercise the powers of a Hearing Officer.

43. (6) The Hearing Officer shall after issue of notice to all the interested parties either-

(a) hold a conference and attempt to narrow down the issues and then adjudicate on the dispute; or

(b) proceed to hear the matter and make his findings on the dispute.

43. (7) The Hearing Officer shall within fourteen days of the closing of the hearing give his decision on the matter in writing.

43. (8) Any employer or employee who is dissatisfied with any recommendations or finding given or made under this section may appeal to a Judge in Chambers who may in addition to any other remedy, order reinstatement of any employee or make any award of compensation.

*Offences and burden of proof.*

44. (1) Any person who –

(a) makes any false statement knowingly to evade, increase or decrease the payments under this Act;



(b) produces or furnishes or knowingly allows to be produced or furnishes any document or information which is false in any material respect; or

(c) misrepresents or fails to disclose any material fact.

shall be guilty of an offence and on summary conviction shall be liable to a fine not exceeding two thousand five hundred dollars or a term of imprisonment not exceeding six months or to both such fine and imprisonment.

44.(2) Any employer who fails to comply with any of the provisions of this Act other than the offence specified in the above subsection shall be guilty of an offence and on summary conviction shall be liable to a fine not exceeding two thousand dollars.

44. (3) The burden of proof in all matters of termination of employment under this Act shall be on the employer.

*Regulations.*

45. The Minister may make regulation for carrying but the provisions and purposes of this Act.

*Order by minister.*

46. Where any difficulty arises in the interpretation of the provisions of this Act, the minister may make any order, not inconsistent with the purposes of this Act to remove the difficulty.

*More favorable terms and conditions.*

47. Nothing in this Act is to be interpreted to prevent any employer from providing in respect of any employee terms and conditions more favorable than those required by this Act

