

**Amended 2020-06-12 @ 11:35**

**OBJECTS AND REASONS**

This Bill would amend the *Severance Payments Act*, Cap. 355A.

*Arrangement of Sections*

1. Short title
2. Application of Act
3. Amendment of the Severance Payments Act
4. Amendment of Cap. 355A
5. Amendment of *Fifth Schedule* to Cap. 355A
6. Non-application of Tribunal
7. Suspension of sections 6 and 7 and paragraph 7 of the *Fifth Schedule* to Cap. 355A
8. Preservation of rights
9. Revival of sections 6 and 7 and paragraph 7 of the *Fifth Schedule* to Cap. 355A
10. Commencement and duration of amendments to Cap. 355A

**BARBADOS**

A Bill entitled

An Act to amend the *Severance Payments Act*, Cap. 355A.

ENACTED by the Parliament of Barbados in accordance with section 49 of the *Constitution* as follows:

**Short title**

1. This Act may be cited as the *Severance Payments (Amendment) Act, 2020*.

**Application of Act**

2. *The amendments herein made to the Severance Payments Act, Cap. 355A, are in consequence of the public health emergency declared by the Proclamation made by the Governor General on 28<sup>th</sup> day of March, 2020.*

**Amendment of the Severance Payments Act, Cap. 355A**

3. *The Severance Payments Act, Cap. 355A, in this Act referred to as the principal Act, is amended by inserting immediately after section 6 the following new sections:*

**“Temporary right to severance payment for lay-off or short-time**

**6A.(1)** Where an employee has been laid off or kept on short-time

- (a) commencing at any time between the 1<sup>st</sup> day of March, 2020 and the 30<sup>th</sup> day of April, 2020 that employee will not be entitled to claim severance payment, unless he had been laid off or kept on short-time for 22 consecutive weeks; or
- (b) for a series of 18 or more weeks within a period of 24 weeks,

then, if the employee, within 4 weeks after the relevant date, gives notice in writing to his employer indicating (in whatsoever terms) his intention to claim a severance payment in respect of the lay-off or short-time (in this section and section 7 referred to as "a notice of intention to claim") the employee is, subject to this section, entitled to a severance payment for being laid off or kept on short-time.

(2) Where an employee had been laid off or kept on short-time before the 1<sup>st</sup> day of June, 2020 as a result of

- (a) the restrictions on international travel due to the declaration of a public health emergency; and
- (b) the consequent restriction in the operation of business imposed by the making of the *Emergency Management (Covid-19) Curfew (Nos. 1-5) Directives, 2020*

that employee shall not be entitled to claim severance, unless he had been laid off or kept on short-time for 22 consecutive weeks or for a series of 18 or more weeks within a period of 24 weeks.

(3) For the purposes of this section “the relevant date” in relation to a notice of intention to claim the right to a severance payment pursuant to such notice means the date on which the last of the 22 consecutive weeks or the series of 18 or more weeks referred in subsection (2), as the case may be, came to an end.

(4) Where an employee has given notice of intention to claim

- (a) he is not entitled to a severance payment in pursuance of that notice unless he terminated his contract of employment by a week's notice which (whether given before or after or at the same time as the notice of intention to claim) is given before the end of the period allowed for the purposes of this paragraph (as specified in subsection (5) of section 7); and
- (b) he is not entitled to a severance payment in pursuance of the notice of intention to claim if he is dismissed by his employer (but without prejudice to any right to a severance payment because of the dismissal).

(5) If an employee is required by his contract of employment to give more than a week's notice to terminate the contract, the reference in paragraph (a) of subsection (4) to a week's notice shall be construed as a reference to the minimum notice which is so required to give.

(6) Subject to subsection (7), an employee is not entitled to a severance payment in pursuance of a notice of intention to claim if, on the date of service of that notice, it was reasonably to be expected that the employee (if he continued to be employed by the same employer) would, not later than 4 weeks after that date, enter upon a period of employment of not less than 24 weeks during which he would not be laid off or kept on short-time for any week.

(7) Subsection (6) shall not apply unless, within 7 days after the service of the notice of intention to claim, the employer gives to the employee notice in writing (in section 7 referred to as a "counter-notice") that he will contest any liability to pay to him a severance payment in pursuance of the notice of intention to claim.

(8) For the purposes of this section and section 7, "week" in relation to an employee whose remuneration is calculated weekly by a week ending on a day other than Saturday, means a week ending on that other day, and, in relation to any other employee, means a week ending with Saturday.

#### **Minister may make Order**

**6B.** The Minister may by order prescribe the procedure for investigating and settling claims.”.

#### **Amendment of Cap. 355A**

**4.** *The principal Act is amended by inserting immediately after section 7 the following new section:*

#### **“Temporary supplementary provisions as to severance payments in respect of lay-off or short-time**

**7A.(1)** Where, in a case where an employee gives notice of intention to claim and the employer gives a counter-notice, the employee

continues or has continued, during the next 4 weeks after the date of service of the notice of intention to claim, to be employed by the same employer, and he is or has been laid off or kept on short-time for each of those weeks, it shall be conclusively presumed that the condition specified in subsection (6) of section 6A was not fulfilled.

(2) For the purposes of section 6A(1) and subsection (1), it is immaterial whether the 22 consecutive weeks referred to in paragraph (a) of section 6A(1) or the series of 18 or more weeks referred to in paragraph (b) of that section consist wholly of weeks for which the employee is laid off or wholly of weeks for which he is kept on short-time or partly of one and partly of the other.

(3) For the purposes mentioned in subsection (2), no account shall be taken of any week for which an employee is laid off or kept on short-time where the lay-off or short-time is wholly or mainly attributable to a strike or a lock-out, whether the strike or lock-out is in the trade or industry in which the employee is employed or not and whether it is in Barbados or elsewhere.

(4) Where the employer gives a counter-notice within 7 days after the service of a notice of intention to claim and does not withdraw the counter-notice by a subsequent notice in writing, the employee shall not be entitled to a severance payment in pursuance of the notice of intention to claim except in accordance with a decision of a tribunal.

(5) The period allowed for the purposes of paragraph (a) of subsection (4) of section 6A is as follows, that is to say

- (a) if the employer does not give a counter-notice within 7 days after the service of the notice of intention to claim, that period is 3 weeks after the end of those 7 days;
- (b) if the employer gives a counter-notice within those 7 days, but withdraws it by a subsequent notice in writing, that period is 3 weeks after the service of the notice of withdrawal;

- (c) if the employer gives a counter-notice within those 7 days and does not so withdraw it and a question as to the right of the employee to a severance payment in pursuance of the notice of intention to claim is referred to a tribunal, that period is 3 weeks after the tribunal has notified to the employee its decision on that reference.
- (6) For the purposes of paragraph (c) of subsection (5), no account shall be taken of any appeal against the decision of the tribunal or of any proceedings or decision in consequence of such an appeal.”.

**Amendment of *Fifth Schedule to Cap. 355A***

**5. *The Fifth Schedule to the principal Act is amended by inserting immediately after paragraph 7 the following new paragraph:***

“7A. Where the employee has before the death of the deceased employer been laid off or kept on short-time for one or more weeks, but has not given to the deceased employer notice of intention to claim, then if after the death of the deceased employer

- (a) his contract of employment is renewed, or he is re-engaged under a new contract, as mentioned in sub-paragraphs (a) and (b) of paragraph 3; and
- (b) after the renewal or re-engagement, he is laid off or kept on short-time for one or more weeks by the personal representative of the deceased employer,

sections 6A and 7A shall apply as if the week in which the deceased employer died and the first week of the employee’s employment by the personal representative were consecutive weeks, and any reference in those sections, except in subsection (6) of section 6A, to 22 weeks or 24 weeks shall be construed accordingly.”.

**Non-application of Tribunal**

**6.** *Section 38 of the principal Act does not apply to claims made under these amendments.*

**Suspension of sections 6 and 7 and paragraph 7 of the Fifth Schedule to Cap. 355A**

**7.** *The amendments made to Cap. 355A*

- (a) shall suspend the operation of section 6, section 7 and paragraph 7 of the Fifth Schedule for the duration of the amendments, that is to say, from the 1<sup>st</sup> day of June, 2020 to the 31<sup>st</sup> day of July, 2020, inclusive; and*
- (b) mentioned in section 5, shall apply and operate in place of and in the stead of the suspended provisions of Cap. 355A.*

**Preservation of rights**

**8.** *Notwithstanding section 7, where the right of an employee other than an employee referred to in section 6A(1) and 6A(2), to make a claim for severance payment accrued during the period mentioned in section 7 the right is not affected by anything contained in this amendment, but is preserved and may be exercised at any time after the 31<sup>st</sup> day of July, 2020.*

**Revival of sections 6 and 7 and paragraph 7 of the Fifth Schedule to Cap. 355A**

**9.** *With effect from the day immediately succeeding the 31<sup>st</sup> day of July, 2020, section 6, section 7 and paragraph 7 of the Fifth Schedule shall resume their operation and shall continue to operate with the same force and to the same effect as they had operated on the day immediately preceding the 1<sup>st</sup> day of June, 2020.*

**Commencement and duration of amendments to Cap. 355A**

**10.** *The amendments made by this Act to the principal Act shall be deemed to have come into operation on the 1<sup>st</sup> day of June, 2020 and shall cease to have effect on the 31<sup>st</sup> day of July, 2020.*