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EMPLOYMENT (AMENDMENT) ACT, 2017

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No. 5 of 2017

EMPLOYMENT (AMENDMENT) ACT, 2017

AN ACT TO AMEND THE EMPLOYMENT

[Date of Assent - 4th April, 2017]

Enacted by the Parliament of The Bahamas

1. Short title and commencement.

- (1) This Act which amends the Employment Act (*Ch. 321A*), may be cited as the Employment (Amendment) Act, 2017.
- (2) This Act shall come into operation on such day as the Minister may appoint, by notice published in the Gazette.

2. Repeal and replacement of Part VI of the principal Act.

Part VI of the principal Act is repealed and replaced as follows—

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PART VI

REDUNDANCY, LAY-OFFS AND SHORT-TIME

26. Redundancy of employees.

- (1) An employer may lawfully dismiss an employee because of redundancy provided that the provisions of this Part have been complied with.
- (2) For the purposes of this Part, an employee shall be deemed to be dismissed because of redundancy if his dismissal is wholly or mainly attributable to —
 - (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or

- (b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish;

Provided that an employee shall not be deemed to be dismissed because of redundancy where such employee is required to carry out work for a fixed term of less than two years in respect of a specific construction project and such term has come to an end.

- (3) For the purposes of this section —
“cease” and “ceased” means to come to an end permanently, from whatever cause; and
“diminish” and “diminished” means to be reduced.

26A. Obligation of employer contemplating redundancy.

- (1) Where it is contemplated by an employer that twenty or more employees are to be dismissed because of redundancy, prior to dismissing those employees, the employer shall —
 - (a) inform the trade union recognized in accordance with Part III of the Industrial Relations Act (*Ch. 321*) or, if none exists, the employees’ representative of the situation giving rise to such contemplation and provide a written statement with the following particulars —
 - (i) the reasons for the dismissal contemplated and the facts relevant to those reasons;
 - (ii) the number and category of persons likely to be affected; and
 - (iii) the period over which such dismissals are likely to be carried out; and
 - (b) not later than one week prior to any employee being dismissed, consult with the recognized trade union, or if none exists, the employees’ representatives on —
 - (i) the possible measures that could be taken to avoid or mitigate the adverse effects of the redundancy including but not limited to an offer of re-employment in accordance with section 26C;
 - (ii) the appropriate method of selection of employees to be dismissed because of redundancy, taking into account seniority, the needs of the business and the principles of good industrial relations practice;
 - (iii) the procedures for dismissal, including the period of time over which the dismissals are to take place;

- (iv) any measures that the employer might be able to take to find alternative employment for those who are to be dismissed because of redundancy; and
 - (c) consult with the Minister in writing no less than two weeks of the contemplation and give —
 - (i) the reasons for the dismissals;
 - (ii) the number and category of employees to be affected; and
 - (iii) the period of time over which the dismissals are likely to be carried out; and
 - (d) notify the affected employees in accordance with section 26B after all consultations referred to herein have been concluded.
- (2) Where it is contemplated by an employer that less than twenty employees are to be dismissed because of redundancy, the employer shall—
- (a) comply with the provisions of paragraphs (a) and (b) of subsection (1); and
 - (b) consult with and notify the Minister in writing no later than one week prior to any employee being dismissed.
- (3) Where an employer fails to give notice to the Minister in accordance with subsection (1)(c), the employer shall be liable to pay each affected employee thirty days basic pay in addition to any pay that the employee is entitled to under this Part.
- (4) For the purposes of this Part, an **“affected employee”** means an employee impacted by the circumstances resulting in the necessity for redundancy.
- (5) The Minister may, after consultation with representatives of employees and employers, make regulations with respect to the redundancy for certain sectors of industry and for specific categories of workers.

26B. Right to redundancy payment.

- (1) Where an employee who has been continuously employed for one year or more is dismissed by his employer because of redundancy, his employer is, subject to the provisions of this Part, liable to pay to him a sum (in this Act referred to as a “redundancy payment” or “redundancy pay”) calculated in accordance with subsection (2).
- (2) Subject to subsection (3), the amount of the redundancy payment shall be calculated by reference to the date of the employee’s redundancy by starting on that date and reckoning backwards the number of complete years of employment and allowing —
 - (a) where the employee has been employed for twelve months or more —