

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4300 of 13th October, 2016



I ASSENT,

N J PYLE,

GOVERNOR.

12th October, 2016.



GIBRALTAR

No. 20 of 2016

AN ACT to amend the Employment Act.

ENACTED by the Legislature of Gibraltar.

Short title and Commencement.

1. This Act may be cited as the Employment (Amendment) Act 2016 and comes in to operation on the day appointed by the Government by notice in the Gazette.

Amendment of the Employment Act.

2.(1) The Employment Act is amended as follows.

(2) Substitute the following section for section 12–

“Power to establish an Employment Tribunal.

12.(1) The Minister may by rules or regulations establish an Employment Tribunal and may by such rules or regulations provide for–

- (a) the constitution, membership and procedure of such tribunal;
- (b) the appointment of a chairperson of such tribunal (a Chairperson);
- (c) the powers of such tribunal;
- (d) extending or shortening time limits;
- (e) dealing with irregularities and non-compliance with the rules and regulations;
- (f) multiple claimants making a claim on a single claim form;
- (g) the acceptance or rejection of a claim form and response;
- (h) the reconsideration of a rejected claim form or response;

- (i) the determination of proceedings without a hearing;
- (j) the fixing of a time and place for preliminary hearings and final hearings;
- (k) the scope of preliminary hearings and final hearings;
- (l) the effect of the non-presentation of a response, the uncontested rejection of a response or an uncontested case;
- (m) appointed persons to act as mediators to disputed matters and issue conciliation certificates;
- (n) the initial consideration of a claim and response;
- (o) the dismissal of a claim or response, or part of a claim or response;
- (p) requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses;
- (q) the addition, substitution and removal of parties and participation of other persons;
- (r) order a claim to be a lead case where there are two or more claims giving rise to common or related issues of fact and/or law;
- (s) the striking out of a claim or response;
- (t) requiring or enabling such tribunal to sit in private and restrict the publicity of cases;
- (u) the award of costs;
- (v) authorising such tribunal to order a party to make a payment to any other party in respect of time spent in preparing that other party's case; and

- (w) such other matters as appear to the Minister to be necessary or expedient.
- (2) The Minister may make rules or regulations for the purposes of hearing complaints by the Employment Tribunal and for the enforcement of awards and without prejudice to the generality of the foregoing such rules or regulations may prescribe—
- (a) the form and presentation of a claim;
 - (b) the form and presentation of response;
 - (c) the consideration of written representations;
 - (d) the delivery of documents to the Employment Tribunal and the parties;
 - (e) the standing of oral evidence by a witness and the inspection of witness statements;
 - (f) timetabling limits for hearings;
 - (g) the withdrawal or end of a claim;
 - (h) the issue of decisions and reasons by the Employment Tribunal;
 - (i) keeping a register of judgments of the Employment Tribunal;
 - (j) correcting clerical mistakes and accidental slips;
 - (k) the calculation of compensation; and
 - (l) such other matters as appear to the Minister to be necessary or expedient.
- (3) The Minister may by order confer further jurisdiction on the Employment Tribunal.”
- (3) Substitute the following section for section 13—

“Appeals.

13. An appeal lies to the Supreme Court on any question of law arising from any decision of, or arising in any proceedings before, the Employment Tribunal.”

(4) Insert the following section at section 14–

“Industrial Tribunal to be known as Employment Tribunal.

14. Wherever they occur in any enactment, for the words “Industrial Tribunal” substitute “Employment Tribunal”.”

(5) Insert the following sections after section 14–

“Originating applications to be known as claim forms.

- 14A. Proceedings before the Employment Tribunal shall be instituted by means of a claim form, accordingly references in legislation to an “originating application” or to “originating applications” in the context of such proceedings shall be substituted with references to a “claim form” or “claim forms”.

Complaint to be known as claim.

- 14B. The Employment Tribunal shall determine claims, accordingly references in legislation to a “complaint” or to “complaints” in the context of such proceedings shall be substituted with references to a “claim” or “claims”.

Chairperson.

- 14C.(1) A Chairperson shall be appointed by the Minister, acting on the advice of the Judicial Services Commission, as a person with relevant experience, qualifications and background to serve as a Chairperson to the Employment Tribunal.

(2) A Chairperson shall be appointed by notice in the Gazette and as–

- (a) a full time Chairperson;
- (b) a part-time Chairperson for the period stated in the notice; or
- (c) a Chairperson appointed to act for the period stated in the notice;

and such persons shall form the panel of appointed Chairpersons.

- (3) The Secretary to the Employment Tribunal shall allocate a Chairperson for each case from the panel of appointed Chairpersons available to preside over the case.

Composition of Employment Tribunal.

- 14D.(1) Proceedings before an Employment Tribunal shall be heard by a Chairperson.
- (2) A Chairperson's appointment 14C(1) may only be revoked by the Minister.
- (3) A Chairperson's allocation under section 14C(3) may only be substituted by the Secretary to the Employment Tribunal.

Oaths.

14E. Before entering upon the functions of his office every person appointed as Chairperson shall make and subscribe before the Governor, or some other person authorised in that behalf by the Governor, an oath of allegiance and for the due execution of his office in the forms set out in Schedule 1 to this Act.

Remuneration of Chairpersons and Mediators.

14F.(1) The Minister may prescribe by Regulations the remuneration to be paid to Chairpersons and Mediators.

(2) The Minister may determine the allowances to be paid to any person for the purposes of, or in connection with, their attendance at an Employment Tribunal.

Conduct of hearings.

14G. A person may appear before an Employment Tribunal in person or be represented by any other person whom he desires to represent him.”

(6) Substitute the following section for section 71–

“Awards.

71. Where an Employment Tribunal makes an award of compensation for unfair dismissal under section 70 the award shall consist of–

- (a) a basic award, and
- (b) a compensatory award,

such awards to be calculated in a manner to be prescribed by the Minister in Regulations.”

(7) Repeal section 72.

(8) Insert the following sections after section 90–

“Repeal.

91. The Industrial Tribunal (Calculation of Compensation) Regulations 1992 are repealed subject as provided for in section 92 (1).

Savings and transitional provisions.

92.(1) Notwithstanding the repeal of the Industrial Tribunal (Calculation of Compensation) Regulations 1992 (the Repealed Regulations) by section 91, any complaint filed by a complainant prior to the date of commencement of the Employment

(Amendment) Act 2016, and which on the date of the commencement has not been determined, shall be determined and calculated in accordance with the provisions of the Repealed Regulations.”

(9) Insert the following schedule as Schedule 1–

“SCHEDULE 1

Chairperson Oath

I, _____, do swear [or solemnly affirm] that I will well and truly serve Our Sovereign [Lady Queen Elizabeth II, Her Heirs and Successors, in the office of Chairperson of the Employment Tribunal of the City of Gibraltar and will do right to all manner of people after the laws and usages of the City of Gibraltar without fear or favour, affection or ill will. [So help me God.]”

Passed by the Gibraltar Parliament on the 7th day of October, 2016.

P E MARTINEZ,
Clerk to the Parliament.

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