

Policy measures under the Worker’s Rights Act (WRA)

1. Social and economic Protection to workers

With a view to providing adequate social protection to laid off workers, provisions were made in the Workers’ Rights Act (WRA) so that –

- laid off workers can register themselves into the Workfare Programme (WP) which was made simpler so that any laid off worker can be *de facto* entitled to the payment of the Transition Unemployment Benefit (TUB) irrespective of any amount of compensation received from his employer. Under the previous legislation i.e. the Employment Rights Act, any payment of compensation would automatically debar a laid off worker from application and admission in the Workfare Programme;
- laid-off workers registering themselves into the WP during period 01 April 2020 to 31 March 2021, were entitled to the payment of an enhanced Transition Unemployment Benefit (TUB) of 90% of their basic wage (not exceeding the NPF exempt remuneration) for the first 6 months and 60% thereafter from the 7th to 12th months during their period of unemployment. Prior to this amendment of the WRA, laid-off workers were entitled to the payment of a TUB of 90% for the first 3 months followed by 60% from the 4th to the 6th month and 30% from the 7th to the 12th months of unemployment.
- workers reckoning less than 180 days continuous service who have been laid off after 01 June 2020, after the first lockdown, be entitled to the payment of a TUB of Rs 5,100 for period starting on 01 July 2020 and ending on 31 December 2020.

2. Protection of jobs

- The protection already granted under section 72 of the WRA (Reduction of workforce) was made more stringent with the introduction of a new section 72(1A) to make it, henceforth, mandatory for an employer, having a workforce of not less than 15 workers or an annual turnover of at least 25 million rupees and envisaging to temporary or permanently reduce its workforce during period 01 June 2020 to 30 June 2022, to seek beforehand financial assistance from the Development Bank of Mauritius, the Mauritius Investment Corporation Ltd or the State Investment Corporation Ltd prior to notifying the Redundancy Board of its intended decision to reduce its workforce.
- As a further deterrent to the laying off of workers, the WRA provides that where an employer terminates the employment of its workers in breach of section 72(1A), the termination shall be deemed to be unjustified and the laid off workers may now under section 72(8) of the WRA make an application to the Redundancy Board for an order for their reinstatement or else for the payment of severance allowance at the rate 3 months’ remuneration per year of service

3. Protecting terms and conditions of employment

(a) Reduction of number of hours of work and remuneration

Section 32 (1A) (b) (2) of the Workers’ Rights Act provides that an employer, can request a worker to work temporarily for a shorter number of hours than that specified in his agreement at a reduced remuneration only upon approval from the Supervising Officer of this Ministry of Labour.,

Additionally Section 15 “Agreement to perform part time or full time” of the WRA provides that only upon the approval of the Supervising Officer of this Ministry, an employer can reach an agreement with a full time employee to perform part time work for a specified period of time, not exceeding 3 months provided the employee has the option to revert back as full time at the expiry of that agreement.

Following the Covid-19 pandemic, Mauritius went into sanitary lockdown for a first time from 20 March 2020 to 01 June 2020 and a second time from 10 March 2021 to 30 April 2021.

From June 2020 – April 2021, **80** employers sent their application under the above provisions. Upon enquiry, only **7** eligible employers were granted the approval.

(b) Reduction of Workforce in certain enterprises in the services sector

Under Section 72 of the WRA exclusively makes provisions to regulate issues related to reduction of workforce. At first instant, employers facing financial difficulties are allowed to seek financial assistance with authorities set up by the Government. Section 64 of the WRA provides that employers who have benefitted from those financial assistance are not allowed to terminate the employment of a worker. This provision is valid until 30 June 2022.

An employer, who has not benefited any financial assistance, intends to reduce the number of workers in his employment or close down his enterprise, has to give written notice to the Redundancy Board, together with a statement showing the cause for the reduction or closure, at least 15 days before the intended reduction or closure. If the reasons are found to be unjustified, the worker may claim Severance Allowance from his employer. The Board may also, upon mutual agreement of parties, grant workers leave without pay for a defined period.

According to statistics, for period March 2020 to December 2021

- (i) **130** employers made application to the Redundancy Board for reduction of workforce, only were approved.*
- (ii) **116** cases of Reinstatement or payment of Severance Allowance were reported by workers/ workers' organisations at the Board.*

4. Contemporary forms of impact of Covid-19 pandemic

According to some publications, the Covid-19 pandemic has caused uncertainties whereby workers (young persons, disable, female or older persons) are likely to be vulnerable to discrimination, workplace violence, reduced payment of wages etc...

The WRA makes specific provisions to safeguard the rights of dignity of workers as follows:

(a) protection against Discrimination

Part II of the WRA, in particular section 5, stipulates that no worker shall be treated in a discriminatory manner by his employer in his employment or occupation and no person shall be treated in a discriminatory manner by a prospective employer in respect of access to employment or occupation.

As per the WRA -

“discrimination” includes affording different treatment to –

*(a) different workers attributable, wholly or mainly, to their respective description by **age**, race, colour, caste, creed, sex, sexual orientation, gender, HIV status, impairment, marital or family status, pregnancy, religion, political opinion, place of origin, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;*

(b) workers of a subsidiary company performing work of equal value as a worker employed by another subsidiary company of the parent company or the parent company, operating in the same line of business, on less favourable salary, terms and conditions of employment;

“employment” or “occupation” includes access to vocational training, to employment and to particular occupations, and terms and conditions of employment.

Furthermore, section 64(1A) of the Employment Relations Act 2008 (EReA), allows a worker whose employment has been terminated on ground of discrimination related to the worker's race, colour, caste, national extraction, social origin, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, marital status, disability or family responsibility or a worker being on maternity leave or for absence for purpose of nursing her unweaned child, or even a worker becoming/being a member of a trade union, to report a dispute for reinstatement at the Commission for Conciliation and Mediation (CCM).

Section 64 of the WRA on its part provides protection against termination of agreement as follows -

(1) An agreement shall not be terminated by an employer by reason of -

- (a) a worker's race, colour, caste, national extraction, social origin, place of his origin, **age**, pregnancy, religion, political opinion, sex, sexual orientation, HIV status, impairment, marital status or family responsibilities;
- (b) a worker's absence from work during maternity leave and for the purpose of nursing her unweaned child;
- (c) a worker's temporary absence from work because of injury or sickness duly notified to the employer and certified by a medical practitioner;
- (d) a worker becoming or being a member of a trade union, seeking or holding of trade union office, or participating in trade union activities outside working hours or, with the consent of the employer, within working hours;
- (e) a worker, in good faith, filing a complaint, or participating in proceedings, against an employer, involving alleged breach of any terms and conditions of employment;
- (f) a worker exercising any of the rights provided for in this Act or any other enactment, or in any agreement, collective agreement or award.

(b) Violence at Workplace

According to section 114 of the WRA, no person shall harass, sexually or otherwise; assault; verbally abuse, swear at or insult or humiliate in any manner whatsoever; express the intention to cause harm to; bully or use threatening behavior towards; use aggressive gesture indicating intimidation, contempt or disdain towards; or by words or act, hinder a worker, including any person undergoing training under training scheme, in the course of or as a result of his work or training.

In order to further fight against and eliminate forms of violence at work, sub-section (3) of section 114 has also stiffened the provisions of the law to provide that an employer shall be vicariously liable for violence at work including sexual harassment, committed by a worker and any third party where the employer knew or should have known of the violence at work and failed to take any action, within a period of 15 days of the day he becomes aware of the act, to prevent or stop the violence.

Additionally, in order to curb any unwanted act of workplace violence or harassment, no employer or his agent shall carry out a search on a worker.

The **penalty** which was previously fixed to a **fine** not exceeding **75,000 rupees** has been increased to **100,000 rupees** and to **imprisonment** for a term not exceeding **5 years** instead of **2 years** under the repealed Employment Rights Act 2008.

(c) Equal remuneration for work of equal value

With a view to ensuring equal opportunities and compliance with the issue of **equal remuneration for work of equal value** to workers in the labour market, section 26(1)(a) of the Workers' Rights Act (WRA) stipulates that: *"Every employer shall ensure that the remuneration of a worker shall not be less favourable than the remuneration of another performing work of equal value"*.

To ensure uniformity and to enhance and improve the standard of living and conditions, especially of the lowest paid workers, the National Wage Consultative Council Act which was enacted in 2016, was entrusted with the objective of recommending, among others, a **national minimum wage**. The National Minimum Wage Regulations 2017 introduced with effect from 01 January 2018 the payment of a national minimum wage of Rs 8,140 per month for all full time employees. The national minimum wage was revised to Rs 9,700 in 2020 and Rs 10,075 in 2021. In line with the payment of the additional remuneration for 2022, the amount has been reviewed to Rs 10,575 a month. The National Minimum Wage applies indiscriminately to all workers whether employed under a standard contract or in precarious employment situations or otherwise.