

Caribbean Community (CARICOM) Secretariat

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CARICOM MODEL LEGISLATION WITH REGARD TO EQUAL PAY

Explanatory Memorandum:

Long title. This sets out the objects and scope of the legislation which seeks to remove or prevent discrimination (based on sex) in the rates of remuneration for males and females in employment.

The Short title highlights the main objects of the legislation by referring to Equal Pay.

Clause 2 includes definitions of equal pay, equal work and remuneration.

Subsection (2) deals with the circumstances in which a person will be regarded as being employed in an establishment. It is expected that in the context of equal pay legislation, the reference to the business of an employer or, in some cases, the organisation in which or in relation to which work is performed.

Subsection (4) provides that specially favourable treatment accorded to an employee in connection with a child's birth or expected birth or with terms and conditions of employment related to retirement, family or death, will not be regarded as constituting discrimination between male and female employees.

Subsection (5) provides that if the provisions of any law limit the work to be performed by female employees, no account shall be taken of such provisions in determining whether an element of differentiation exists in the rates of remuneration.

Subsections (6) and (7) make provisions for matters to be referred to a referee for the purpose of determining whether any treatment is favourable to a particular employee.

Clause 3 prohibits employers from discriminating between male and female employees by failing to pay equal pay for equal work.

Subsection (2) provides that an employer who contravenes subsection (1) commits an offence and is liable to a fine on conviction.

Subsection (5) provides that a prosecution for an offence shall not be taken until the mediation procedure has been determined or until the point at which restrictions no longer apply.

Clause 4 empowers the court to order an employer to pay arrears of salary where that employer is convicted of an offence of failure to pay equal pay for equal work or where the employer is acquitted by virtue of the special defence set out in **Clause 5(2)**.

Subsection (3) provides that in determining the sum of arrears to be paid, no account shall be taken of any period earlier than six years immediately preceding the date of complaint. In any case, no account will be taken of any period before the enactment of equal pay legislation.

Subsection (4) permits the employee to enforce an order for payment in the same manner as a judgement in favour of that employee.

Clause 5 deals with offences committed by agent. The agent is liable to be proceeded against in the same manner as if the agent were the employer.

Subsection (2) sets out a defence to the employer to prove due diligence in enforcing the Act and that the offence was committed by an agent or other person without the employer's knowledge, consent or connivance. Note, however, that although the employer will not be convicted if the defence succeeds, the court is nevertheless empowered to order payment of arrears by the employer (See **Clause 4(2)**)

Clause 6 contains provisions for prevention of evasion of the Act by a contract of employment which would result in contravention of the Act.

Subsection (1) provides that such a contract is null and void and that Clause 3 applies in place of it.

Subsection (2) defines contract of employment to include collective agreements.

Subsection (3) provides that an employee's acceptance of remuneration in contravention of Clause 3 is not a defence in any action to recover remuneration at a rate provided in the Act nor is it a bar to proceedings under the Act or a defence to prosecution.

Subsection (4) prohibits an employer from dismissing or otherwise discriminating against an employee who-

(a) makes a complaint or gives evidence or otherwise assists in the prosecution of a complaint; or
(b) whose remuneration is, as respects any period before the enactment of equal pay legislation, likely to be regulated by such legislation.

Subsection (5) makes it an offence to contravene **subsection (4)**.

Clause 7 places the burden of proof on the employer in a prosecution for contravention of **Clause 3**.

Clause 8 requires employers to keep certain employment records.

Clause 9 requires the Minister to designate public officers for the purpose of investigating complaints and otherwise securing proper observance of the Act.

Subsection (2) gives the officers powers of entry to employers' premises and enables them to request and inspect wage sheets and other records.

Subsection (3) requires that the designated officer be furnished with a certificate of designation to be produced on request on entry to employers' premises.

Subsection (4) requires employers to cooperate with the designated officer.

Clause 10 provides offences of obstruction and failure to produce wage sheets, etc.

Subsection (2) deals with the offences of falsifying wage sheets or other documents and of pretending to be a designated officer with intent to deceive an employer.

Clause 11 permits the designated officer to prosecute offences under the Act.

Clause 12 empowers the Minister to make regulations for giving effect to the Act.

The Schedule sets out the mediation procedure required for dealing with complaints.

A complaint is to be made to the Minister who directs a designated officer to investigate and to attempt to effect a settlement between the persons affected by the breach of Clause 3. The officer is required to report to the Minister within 60 days.

If the officer fails to effect a settlement, the Minister is empowered to refer it to a referee for review.

The referee reviews the matter and reports to the Minister, making recommendations as to an appropriate course of action to be taken.

The Minister is required to give a copy of that report to the persons affected.

The Minister is required to give a copy of that report to the persons affected.

The Minister is empowered to make an order to give effect to the referee's recommendation and in that order may require the employer to pay equal pay to the employees affected. The Minister is also empowered to appoint a panel of referees.

Prosecution of breaches will not commence unless

- (a) the Minister fails to direct an investigation within 15 days after the complaint is made;
- (b) a designated officer fails to effect a settlement between the persons affected or the minister fails to refer the matter to a referee within 30 days after receiving the officer's report;
- (c) the Minister fails to make an order within 30 days after receiving the referee's report;
- (d) where an order is made, the employer fails to comply within 30 days after the date of the order.

Provisions are also made for remuneration of referees and protection of referees from legal action in respect of *bona fide* acts in the performance of their duties.

THE EQUAL PAY ACT

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MODEL LEGISLATION ON EQUAL PAY

AN ACT to make provision for the removal and prevention of discrimination, based on the sex of the employee, in the rates of remuneration for males and females in paid employment, and for matters incidental thereto.

ENACTING CLAUSE

Short title

1. This Act may be cited as the Equal Pay Act.

Interpretation

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

"*appointed day*" means the date of commencement of this Act;

"*employee*" means a person who has entered into or works under a contract of service or of apprenticeship;

"*employer*" means a person who employs one or more employees;

"*equal pay*" means a rate or scale of remuneration for work in which rate or scale there is no element of differentiation between male and female employees based on the sex of the employees;

"*equal work*" means work performed for one employer by male and female employees in which -

- (a) the duties, responsibilities or services to be performed are similar or substantially similar in kind, quality and amount;
- (b) the conditions under which such work is performed are similar or substantially similar;
- (c) similar or substantially similar qualifications, degrees of skill, effort and responsibility are required; and
- (d) the difference (if any) between the duties of male and female employees are not of practical importance in relation to terms and conditions of employment or do not occur frequently;

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"*referee*" means a member for the time being of the panel of persons appointed by the Minister to be referees in accordance with the Schedule;

"*remuneration*" in relation to an employee, means the salary or wages actually and legally payable to that employee and includes -

- (a) time and piece work wages and overtime, bonus and other payments;
- (b) allowances, fees, commission and every other emolument including fringe benefits, whether in one sum or several sums and whether paid in money or not.

(2) For the purposes of this Act, a person shall be regarded as employed in an establishment if that person is employed to work in the establishment or, where that person is employed to work otherwise than in the establishment, if the employment is carried out from the establishment.

(3) A person shall not be regarded for the purposes of this Act as being employed in [country] if that person's employment is wholly or mainly outside of [country] but employment on an aircraft or ship, as the case may be, registered in [country] shall not be regarded for the purposes of this Act as employment outside [country], unless it is wholly outside [country].

(4) In so far as any specially favourable treatment approved as such by a referee is accorded to an employee in connection with -

- (a) the birth or expected birth of a child; or
- (b) terms and conditions of employment related to retirement, family or death, such treatment shall be deemed for the purposes of this Act not to be in contravention of the requirement not to discriminate between male and female employees.

(5) In determining whether there exists an element of differentiation, in the rates of remuneration for male employees and female employees for any class of work, no account shall be taken of any provision in any Act which limits the work which female employees may perform.

(6) If, on the application of any employer or employee or any organisation recognised by the Minister as representative of employers or of employees, the Minister is satisfied that there is need to determine whether or not any treatment mentioned in subsection (4) is favourable to the employees concerned, the Minister shall refer the matter to a referee for decision.

(7) Where a reference is made under subsection (6), the referee -

- (a) shall give full opportunity to parties appearing to the referee to be affected by, or concerned with, the matter to present evidence and make representations to the referee; and
- (b) may determine the procedure to be followed and may take into account the extent to which the employees concerned in the matter, or a majority of them, consider the treatment to be favourable to them.

Payment of equal pay for equal work

3. (1) From and after the appointed day no employer shall, by failing to pay equal pay for equal work, discriminate between male and female employees employed by the employer's establishment.

(2) Subject to subsection (5), any employer who contravenes subsection (1) in respect of any employee shall be guilty of an offence and shall be liable on conviction to a fine not exceeding [] dollars, and in the case of a continuing offence, to a fine not exceeding [] dollars for each day on which the offence is continued after conviction.

(3) Where an employer is convicted of an offence under this section, the court may, without prejudice to its powers under subsection (2), order the employer to pay to any employee in relation to whom the offence was committed, such sums as appear to the court to be due to that employee having regard to the provisions of subsection (1).

(4) In determining any sum under subsection (3), no account shall be taken of any period before the period of [six] years immediately preceding the date on which the relevant information or complaint was laid and in any event no account shall be taken of any period before the appointed day.

(5) No prosecution for an alleged offence under this section shall be undertaken -

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- (a) unless in relation thereto the mediation procedure set out in the Schedule has been adopted; and
- (b) until, pursuant to that Schedule, there is no restriction on proceedings for prosecution.

Power of Court under payments

4. (1) Evidence may be given of any failure on the part of an employer to pay remuneration to any employee of that employer in accordance with section 3(1) if notice of intention to give such evidence is served on the employer at least seven days before the hearing of any information or complaint for an alleged contravention of that section.

(2) If the employer is convicted of a contravention of section 3 or is acquitted on the ground of the special defence created by section 5(2), the court may, without prejudice to its powers under section 3(2), order the employer to pay to the employee concerned such sums (hereinafter referred to as arrears of remuneration) as appear to the court to be due to the employee having regard to the provisions of section 3(1).

(3) In determining any sum referred to in subsection (2), no account shall be taken of any period before the period of six years immediately preceding the date on which the relevant information or complaint was laid and in any event no account shall be taken of any period before the appointed day.

(4) An order under subsection (2) for the payment of any arrears of remuneration to any person may be enforced by that person against the employer in like manner as a judgment in favour of that person and, until the sum is paid, the order shall not be in derogation of any right of that person to recover remuneration by any other proceedings.

Offence of agent

5. (1) Where an offence for which an employer is by virtue of this Act liable to a penalty, has in fact been committed by some agent of that employer or by some other person, that agent or other person shall be liable to be proceeded against for the offence in the same manner as if the agent or other person were the employer, either together with, or after the conviction of the employer and shall be liable on conviction to the same punishment as that to which the employer is liable.

(2) Where an employer who is charged with an offence against this Act proves to the satisfaction of the court that -

- (a) the employer has used due diligence to enforce the execution of this Act; and
- (b) the offence was in fact committed by the agent of the employer or by some other person without the employer's knowledge, consent or connivance,

then in the event of the conviction of that agent or other person for the offence, the employer shall not be convicted of the offence; without prejudice, however, to the power of the court to make an order under section 4(2).

(3) Where the immediate employer of any employee is also in the employment of some other person and that

employee is employed on the other person's premises, that other person shall, for the purposes of the provisions of this Act relating to the enforcement of section 3(1), be deemed to be an employer of the employee jointly with the immediate employer.

Prevention of evasion

6. (1) Any provision of a contract of employment of evasion express or implied, made in, or which would result in, contravention of section 3(1), shall be null and void and in lieu thereof the provisions of section 3 shall be deemed to apply.

(2) In subsection (1), "contract of employment" includes collective agreement.

(3) The acceptance by an employee of remuneration in contravention of section 3 shall not be -

- (a) a defence to any action by that employee to recover remuneration at a different rate as provided for in this Act;
- (b) a bar to any proceedings under this Act; or
- (c) a defence to any prosecution under this Act.

(4) No employer shall dismiss or otherwise discriminate against any employee because that employee has made a complaint or given evidence or assisted in any way in relation to the initiation of a complaint or other proceeding under this Act or because that employee's remuneration is, as respects any period before the appointed day, is likely to be regulated by this Act.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] months.

Burden of proof

7. In any prosecution of a person for a contravention of section 3, the burden of proving that equal pay has been paid for equal work shall be on the employer.

Records to be kept

8. (1) Every employer who employs both men and women shall -

- (a) keep such records as the Minister may, by notice published in the Gazette, require to be kept for any purpose connected with the provisions of this Act; and
- (b) keep such records of remuneration as are necessary to show that the provisions of this Act are being complied with in respect of persons employed by that employer.

(2) Any employer who fails to keep any record as required by subsection (1) shall be liable on summary conviction in respect of each offence, to a fine not exceeding [] dollars and to an additional fine not exceeding [] dollars for each day in which the offence is continued after conviction.

Assignment of officers and power of entry and inspection

9. (1) The Minister shall designate such officers as the Minister may think necessary for the purpose of investigating any complaints and otherwise securing the proper observance of the provisions of this Act.

(2) Any officer designated pursuant to subsection (1) (hereinafter) referred to as a designated officer) may at any reasonable time, enter the premises of any employer who employs both men and women and may -

- (a) require the production of wage sheets, records of remuneration or occupation, or any other record required to be kept pursuant to section 8; and
- (b) inspect and examine such wage sheets and records and copy any material therefrom.

(3) A designated officer shall be furnished with a certificate of designation and on entering any premises pursuant to subsection (2), the officer shall, if required to do so, produce the certificate to the employer or other person in charge of the premises.

(4) Any employer or other person in charge of any premises entered by an officer pursuant to subsection (2), shall give the designated officer all reasonable assistance and furnish the officer with such records or information as the officer may reasonably require.

Offences of obstruction, etc.

10. (1) Any person who -

- (a) obstructs, hinders or prevents any designated officer from entering premises pursuant to section 9(2); or

(b) fails or refuses to produce any wage sheet and record required to be produced in accordance with section 9(2), being a wage sheet or record which was made or should have been made within the preceding six years, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] months.

(2) Any person who -

(a) makes or causes to be made or knowingly allows to be made any wage sheet, record of remuneration or occupation which is false in any material particular or produces or causes to be produced or knowingly allows to be produced any wage sheet or other record to any officer acting in exercise of the powers given to that officer by this Act, knowing the same to be false; or

(b) not being a designated officer, with intent to deceive any employer or employee, pretends to be such officer, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding [] dollars or to imprisonment for a term not exceeding [] months or to both such fine and imprisonment.

Designated officer may institute proceedings

11. (1) Proceedings against any person for an offence against or for the recovery of any penalties under this Act or any regulations made thereunder, may be instituted by any designated officer assigned pursuant to subsection (1) who is authorised in that behalf by the special or general directions of the Minister and any such officer may prosecute such offence.

(2) In any action or other legal proceedings brought against any designated officer in respect of any act done in pursuance or execution or intended execution of this Act, the plaintiff shall not recover unless the plaintiff alleges in the pleadings and proves at the trial that such act was done either maliciously or without reasonable and probable cause.

Regulations

12. (1) The Minister may make regulations generally for giving effect to this Act and, without prejudice to the generality of the foregoing, such regulations may provide for -

(a) the furnishing or such information as the Minister may from time to time require to enable the Minister to review the operation of this Act;

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(b) the amendment, repeal or replacement of the Schedule;

(c) any matter required by this Act to be prescribed.

(2) Any regulations made pursuant to paragraph (b) of subsection (1) shall be subject to affirmative resolution.

SCHEDULE (Section 3(5))

Mediation Procedure

Complaints

1. Any person claiming to be aggrieved because of an alleged breach of section 3, or any person acting on behalf of that person, may make a complaint to the Minister.

Reference to an assigned officer for settlement

2. Where, pursuant to a complaint under paragraph 1 or pursuant to any other information coming to the attention of the Minister, the Minister is of the opinion that a breach of section 3 may have occurred, the Minister may direct a designated officer to investigate the alleged breach and to attempt to effect a settlement between the persons affected by, or concerned with, the alleged breach.

Report of assigned officer

3. A designated officer shall, within sixty days of receiving a direction under paragraph 2, report to the Minister as to the results of the investigation and to the officer's success in attempting to effect a settlement between the persons affected by, or concerned with, the alleged breach.

Reference to referee if no settlement reached

4. Where a designated officer fails to effect a settlement between persons affected by, or concerned with, the alleged breach the Minister may refer the matter for review by a referee.

Procedure of referee

5. A referee-

(1) > shall give full opportunity to all parties affected by, or concerned with, the alleged breach to present evidence and make representations to the referee; and

(2) may determine the procedure to be followed and, subject to sub-paragraph (a), the evidence to be received and accepted, whether or not that evidence would be admissible in a court of law

Report of referee

6. The referee shall submit a report to the Minister and recommend to the Minister the course that the referee thinks should be taken with respect to the alleged breach.

Publication of report

7. The Minister shall furnish a copy of the report and recommendation of the referee to each of the persons affected by, or concerned with, the alleged breach and if the Minister deems it advisable, may publish the report and recommendation in such manner as the Minister thinks fit.

Order of Minister

8. (1) Upon receipt of the report and recommendation of the referee, the Minister may make such order as the Minister deems necessary to carry into effect the recommendation of the referee and without prejudice to the generality of the foregoing may -

(a) order the employer concerned in the alleged breach to pay equal pay to employees affected thereby; or

(b) order the employer to pay to any employee of the employer a sum of money to make up any difference between the rate of pay paid to that employee and the rate paid to any other employee performing similar or substantially similar kind or quality of work during the period for which a difference existed in the respective rates of pay,

or order both those things together with such other order he deems necessary.

(2) An order under sub-paragraphs (1)(b) shall not take account of any difference in the rate of pay before the appointed any or before the period of six years immediately preceding the date of the report of the referee, whichever is the later.

Panel of referees

9. For the purposes of this Act, the Minister may appoint a panel of such number of persons as the Minister thinks fit to be referees and may make such rules as the Minister thinks fit for the distribution of business between such referees.

Restriction on prosecution

10. Where a person makes a complaint under paragraph 1 in respect of an alleged breach of section 3 that person shall not commence, or give evidence or assist in any way, any proceeding to prosecute any person for the alleged breach unless -

(a) the Minister fails within fifteen days after the complaint is made, to direct a designated officer to investigate the alleged breach;

(b) designated officer fails to effect a settlement between the persons affected by, or concerned with, the alleged breach and the Minister fails to refer the matter to a referee within thirty days after receiving the report of the designated officer;

(c) after reference has been made to a referee, the Minister fails within thirty days after receiving the referee's report, to make an order under paragraph 8;

(d) an order is made under paragraph 8 and the employer fails to comply with that order within thirty days after the date thereof.

Remuneration of referee

11. There shall be paid to the referee such remuneration (whether by way of salary or travelling or other

allowances) as the Minister may determine.

Protection of referee

12. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any referee in respect of any act done *bona fide* in the performance of the referee's duties under this Act.

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