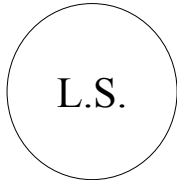


ASCENSION



EMPLOYMENT ORDINANCE, 2022

EMPLOYMENT (END OF CONTRACT) REGULATIONS, 2022

In exercise of the powers conferred by sections 5(4), 6(2), 7, 10, 12, and 17 of the Employment Ordinance, 2022, the Governor makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Employment (End of Contract) Regulations, 2022, and come into force on 20th June 2022.

Interpretation

2. In these Regulations—

“**basic pay**” means an employee’s basic rate of pay as provided for in the contract of employment, and where the employee is a casual worker the amount will be based on the employee’s average wages over the preceding three months, or for whatever period the employee was employed if fewer than three months;

“**Household Contract**” means a contract of employment which does not satisfy the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;

“**lay advocate**” means a person appointed as a lay advocate under the Lay Advocates (Ascension) Ordinance, 2007;

“**obligation to repatriate**” means the employer’s statutory requirement to provide transport arrangements to the territory of return at the end of the contract;

“**Primary Contract**” means a contract of employment which satisfies the mandatory obligations set out in section 6 of the Employment Ordinance, 2022;

“**small employer**” means an employer that employs the equivalent of fewer than nine full-time employees, but does not include any employer that is liable to pay the business levy under the Business Levy Ordinance, 2012.

Maximum permitted contract length

3. (1) A Primary Contract must not have a duration of over 30 months, except—
- (a) with prior written permission from the Governor; or
 - (b) where by mutual agreement between all parties to the contract, the contract will notionally extend to include the dates between—
 - (i) the end of the Primary Contract; and
 - (ii) the date of the obligation to repatriate is satisfied or ceases to apply.
- (2) A Primary Contract which exceeds 30 months will—
- (a) be unenforceable against the employee; and
 - (b) require the employer to continue to comply with the mandatory obligations of the contract for the stated duration of the contract.
- (3) A Household Contract may not extend beyond the date the employee is permitted to remain in Ascension under the Entry Control (Ascension) Ordinance, 2007.

Notice Periods

4. (1) If a Primary Contract employee is dismissed without notice, or is paid in lieu of notice, the employee and any accompanying dependants may remain in Ascension, and the employer’s obligation to repatriate will not arise, until—
- (a) the first available departure to their territory of return after a period equal to the employee’s notice period from—
 - (i) the date on which the employer provides notice to the employee; or
 - (ii) if the employer fails to provide notice before the expiry of the contract or at all, the date that the Primary Contract expires;
 - or
 - (b) a date the employee and any accompanying dependants may mutually agree with the employer.
- (2) If an employee is dismissed without sufficient notice, or pay in lieu of notice, the employee may bring a claim against the employer for—
- (a) an amount equal to two times the difference between—
 - (i) the amount the employer paid the employee in lieu of notice; and
 - (ii) the amount in basic pay that the employee would otherwise have received during their notice period; and
 - (b) any unpaid holiday pay to which the employee is entitled.
- (3) Where an employee remains in Ascension under this regulation, for the purposes of the Entry Control (Ascension) Ordinance, 2007—
- (a) any entry visa issued to the employee or contractor and to any accompanying dependants before the expiry of the employee’s contract will remain valid;
 - (b) where an employee or accompanying dependant was exempt from the need to obtain an entry visa, they will be deemed to have been granted an entry visa from the expiry of their contract until the end of the relevant period.

- (4) The provisions of this section—
- (a) do not apply in cases of summary dismissal of an employee for gross misconduct as defined in the employer's conduct and discipline policy;
 - (b) do not affect the exercise of any powers under the Entry Control (Ascension) Ordinance, 2007.

Offering new contracts to existing employees

5. (1) Employers must have a policy concerning the offering of new contracts to existing Primary Contract employee which must provide that—

- (a) the employer consider—
 - (i) the employee's performance over the duration of the current contract;
 - (ii) the employee's continued capacity to fulfil the requirements of the role;
 - (iii) the employee's disciplinary record over the duration of the current contract;
 - (iv) the employee's continued fitness to work;
 - (v) the continued need for the employee's current role;
- (b) where an employee is to be offered a new contract, the offer must not be made earlier than either—
 - (i) six months before the end of the contract; or
 - (ii) three quarters of the way through the contract;whichever is sooner; and
- (c) where an employee is not to be offered a new contract, the employer must—
 - (i) notify the employee by a written decision before the first day of the employee's notice period; and
 - (ii) on request, give the employee further details of their assessment of each of the requirements within this regulation within 28 days.

(2) If an employer does not provide the employee with a written decision, the employee and any accompanying dependants may remain in Ascension, and the employer's obligation to repatriate will not arise, until—

- (a) the first available departure to their territory of return after a period equal to the employee's notice period from—
 - (i) the date on which the employer provides the written decision to the employee; or
 - (ii) if the employer fails to provide a written decision before the expiry of the contract, the date that the Primary Contract expires;
- or
- (b) a date the employee and any accompanying dependant may mutually agree with the employer.

(3) Where an employer fails to provide—

- (a) a written decision before the end of the Primary Contract; or
- (b) further details of their assessment of each of the requirements in the policy regarding the offering of new contracts within 28 days of request;

the employee may bring a claim for damages against the employer of an amount equivalent to one month's basic pay per year of successive employment with that employer.

(4) Where an employee remains in Ascension under this regulation, for the purposes of the Entry Control (Ascension) Ordinance, 2007—

- (a) any entry visa issued to the employee or contractor and to any accompanying dependants before the expiry of the employee’s contract will remain valid;
- (b) where an employee or accompanying dependant was exempt from the need to obtain an entry visa, they will be deemed to have been granted an entry visa from the expiry of their contract until the end of the relevant period.

(5) The requirements of this regulation do not—

- (a) affect the exercise of any powers under the Entry Control (Ascension) Ordinance, 2007;
- (b) apply to an employer that qualifies as a small employer; or
- (c) grant an employee an entitlement to a new contract.

Termination of a Primary Contract

6. (1) Employers must have in place policies concerning an employee’s ability to perform the duties of their Primary Contract, including—

- (a) capability and performance management;
- (b) conduct and discipline;
- (c) requirements and assessments of fitness to work;
- (d) the reporting, investigation, and resolution of grievances; and
- (e) circumstances in which—
 - (i) poor performance;
 - (ii) misconduct;
 - (iii) inability to physically perform the role; or
 - (iv) any other matter;may lead to the Primary Contract being terminated;

which forms part of the statement of the particulars of the Primary Contract.

(2) Employer’s policies concerning the Primary Contract must establish—

- (a) the grounds on which a Primary Contract can be terminated;
- (b) the procedure to be followed prior to any termination, including—
 - (i) any requirement to give written or verbal warnings;
 - (ii) the right to be accompanied to meetings, interviews or hearings by a person of the employee’s choice (including a lay advocate); and
 - (iii) the right to be given sufficient notice of any meeting, interview or hearing to be able to prepare for it and to make arrangements to be accompanied; and
- (c) in the event of the termination of the Primary Contract—
 - (i) the right to be given reasons in writing, including a reference to the relevant policy;
 - (ii) the right to appeal the decision through the employer’s internal appeal system; and
 - (iii) the employees right to appeal the decision externally.

(3) The requirements of this section do not apply to an employer in respect of any period during which the employer qualifies as a small employer.

7. (1) A person who has their Primary Contract terminated not in accordance with a policy which applies to them—

- (a) will be considered unlawfully dismissed;
- (b) be considered subject to a breach of contract; and
- (c) may bring a claim for damages against the employer.

(2) A decision to terminate a person's Primary Contract will not be unlawful if the employer can show the decision was—

- (a) made in accordance with a relevant policy that applied to that person;
- (b) related to a relevant policy that applied to that person;
- (c) made following a fair process; and
- (d) based on evidence the employer considered to be reliable.

(3) When considering a claim of unlawful dismissal, the court may not consider—

- (a) the merits of the employer's policy; or
- (b) whether the employer acted reasonably in dismissing the employee, unless—
 - (i) the procedure followed by the employer was unfair;
 - (ii) the facts relied upon were plainly wrong; or
 - (iii) the employer acted in a legally irrational way.

Made this 17th day of June 2022.

Philip Rushbrook
Governor of Ascension