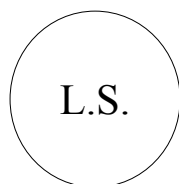


ASCENSION



EMPLOYMENT ORDINANCE, 2022

EMPLOYMENT (GRATUITIES) REGULATIONS, 2022

In exercise of the powers conferred by sections 5(4), 6(2), 11, 13, 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 (Gratuities) 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;
“**Primary Contract**” means a contract of employment which satisfies the mandatory obligations set out in section 6 of the Employment Ordinance, 2022.

Gratuity schemes

3. (1) An employer with one or more employees on a Primary Contract must establish a gratuity scheme, and state in each contract—

- (a) the amount of the gratuity payable (or the basis for calculating the amount);
- (b) the arrangements for payment of the gratuity;
- (c) the currency in which the gratuity is payable; and
- (d) any further requirements the Administrator may require.

(2) As part of establishing a gratuity scheme, the employer must make adequate arrangements to protect—

- (a) the prospective gratuity payments for all active Primary Contracts;
 - (b) the prospective gratuity payments for any Household Contracts, where contractually agreed; and
 - (b) all accrued gratuity payments held in trust;
- from the employer's insolvency, fraud, or any other financial difficulty.

(3) On completion of the relevant contract the employer must pay the employee any gratuity owed—

- (a) into a bank account nominated by the employee; and
- (b) within 28 days.

(4) Where the employee enters into a successive contract with the same employer—

- (a) the employer may, at the employee's request in writing—
 - (i) retain the gratuity at the end of the contract; and
 - (ii) defer the obligation to pay the gratuity until the end of the successive contract;
- (b) the employer must, when deferring the obligation to pay the gratuity—
 - (i) record the date on which the employee's successive period of employment began;
 - (ii) state the amount of gratuity owed over that period; and
 - (iii) hold the accrued gratuity in trust for the employee;and
- (c) the employee's right to all previously accrued gratuity is unaffected by early termination of the final contract.

(5) **(1)** If the employee dies during the term of the contract, the employer must pay any previously accrued gratuity to—

- (a) the employee's next of kin, if known; or
- (b) the employee's estate.

Exemption to requirement to establish a gratuity scheme

4. **(1)** An employer may choose to provide a suitable pension scheme rather than a gratuity scheme.

(2) A pension scheme will only be considered suitable if—

- (a) it is accessible by the contract holder in their territory of return or a territory in which the employee has nominated and has a connection;
- (b) where the employer offers either a gratuity or a pension scheme, that the employer's pension contributions are at least equal to the value of the gratuity payable;
- (c) the employer provides details of the pension scheme to the contract holder; and
- (d) the employer provides statements on an annual basis detailing the contract holder's entitlement.

Failure to pay gratuity

- 5. (1)** Failure by the employer to pay the employee all gratuities owed within 28 days of the end of the contract will—
- (a) be recoverable in civil proceedings as a debt;
 - (b) incur a compensatory payment of two days basic pay per week, or part thereof, in which payment is not made; and
 - (c) incur interest.

Administrator's Powers

- 6. (1)** The Administrator may, in writing, require—
- (a) that an employer provide details of—
 - (i) a suitable gratuity scheme;
 - (ii) adequate arrangements to protect employees gratuities that are held in trust; or
 - (iii) any exemption relied upon to the requirement to provide a gratuity scheme; within 28 days;
 - (b) where the Administrator is not satisfied the employer is complying with these regulations—
 - (i) that the employer takes reasonable steps to comply with these regulations within a timeframe set by the Administrator.
- (2)** If the employer fails to comply with a requirement from the Administrator under this regulation—
- (a) the Administrator may—
 - (i) refer the matter to the Supreme Court to obtain an order requiring the employer disclose any relevant information.
- (3)** This regulation does not apply to the Government.

- 7. (1)** Where an employer commits a criminal offence under the Ordinance in relation to matters prescribed in these Regulations, in addition to any sentence imposed the court may order the employer pay any or all affected employees compensation of—
- (a) an amount equal to all gratuities owed to that employee at the end of their current Primary Contract; and
 - (b) such an amount the court considers appropriate in the circumstances.

Made this 17th day of June 2022.

Philip Rushbrook
Governor of Ascension