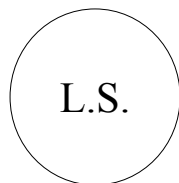


## Legal Notice No. 19 of 2022

## ASCENSION



## EMPLOYMENT ORDINANCE, 2022

## EMPLOYMENT (EMPLOYER'S OBLIGATIONS) REGULATIONS, 2022

In exercise of the powers conferred by sections 5(4), 6, 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 (Employer's Obligations) Regulations, 2022, and come into force on 20th June 2022.

**Interpretation**

2. In these Regulations—

“**Accompanied Status**” means a contractual entitlement to be accompanied by dependants;

“**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;

“**Dentist**” means—

(a) any person appointed to practise dentistry in Ascension under the Dentists Ordinance, 1955;

(b) where no such person has been appointed, the Senior Medical Officer;

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

“**mid-contract journey**” means the transport arrangements to which a worker is entitled during the term of the relevant contract;

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

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

“**relevant contract**” means the Primary Contract giving rise to the relevant obligations;

“**worker**” means—

- (a) an employee;
- (b) a contractor; and
- (c) any accompanying dependants of the employee or contractor.

### **Application**

**3.** If the worker is an employee or contractor with accompanied status, the same provisions apply in respect of—

- (a) the employee or contractor's accompanying dependants;
- (b) any child to which a worker gives birth during the term of the contract and in respect of which the employee has parental responsibility;

as they apply to the employee or contractor.

**4.** The employer's obligations detailed in these regulations apply from the start of the relevant contract until the earlier of when—

- (a) the worker departs Ascension in accordance with the employer's obligation to repatriate;
- (b) the employer's obligation to repatriate the worker ceases to apply; or
- (c) the worker would otherwise depart Ascension, but elects to remain in Ascension in accordance with the Entry Control (Ascension) Ordinance, 2007.

### **Territory of return**

**5.** A worker's territory of return is—

- (a) the country or territory in which the individual was ordinarily resident immediately prior to beginning their initial journey to Ascension; or
- (b) in respect of mid-contract return journeys and repatriation from Ascension, where the individual no longer has the right to enter or remain in the original country or territory, or such other place where the individual has a right to enter and remain, as may be agreed between the worker and the employer.

### **Obligation to provide transport arrangements to and from Ascension**

**6. (1)** An employer who engages an employee or contractor to work mainly in Ascension on a Primary Contract must arrange and pay for the worker's transport arrangements to and from their territory of return—

- (a) at the start of the relevant contract;
- (b) at the end of the relevant contract; and
- (c) where the worker's contract exceeds 15 months, at least once during the term of the relevant contract.

**(2)** The transport arrangements must include—

- (a) transport to the port of departure;
- (b) air or sea travel to Ascension;
- (c) transport from the airhead or pierhead to the worker's accommodation in Ascension;

- (d) the cost of accommodation and reasonable subsistence for any necessary overnight stay during such travel; and
- (e) appropriate travel insurance.

**(3)** Transport arrangements at the start of the contract include—

- (a) all initial journeys to Ascension;
- (b) for each worker; and
- (c) may take place at any point during the term of the relevant contract.

**(4)** The obligation to repatriate—

- (a) must take place no later than the first available departure to the worker's territory of return after—
  - (i) the completion of the notice period as detailed in the terms of the Primary Contract;
  - (ii) the completion of the period of time detailed in regulations 4(1) or 5(2) of the Employment (End of Contract) Regulations, 2022; or
  - (iii) two weeks in all other cases;
- (b) may not take place before—
  - (i) the completion of the notice period as detailed in the terms of the Primary Contract;
  - (ii) the completion of the period of time detailed in regulations 4(1) or 5(2) of the Employment (End of Contract) Regulations, 2022; or
  - (iii) two weeks in all other cases;

unless mutually agreed in writing between the worker and the employer.

**(5)** The obligation to repatriate may lawfully be delayed—

- (a) if the worker is involved in criminal proceedings and is required to remain in the jurisdiction, or where the proceedings are the subject of an ongoing appeal;
- (b) if the worker is considered by a medical professional to be unfit to fly; or
- (c) in exceptional circumstances, with the prior written consent of the Administrator.

**(6)** If, before the first available departure, the worker—

- (a) becomes subject to a new Primary Contract; and
- (b) agrees in writing with the employer;

the employer's obligation to repatriate ceases to apply.

**(7)** If the worker is—

- (a) in Ascension immediately prior to the start of the relevant contract; or
- (b) not in Ascension between the end of the relevant contract and the date on which the obligation to repatriate applies;

the requirement for the employer to provide the corresponding transport arrangements ceases to apply.

**(8)** Where a worker is entitled to a mid-contract journey, the employer must allow—

- (a) Primary Contract employees to take sufficient paid leave, subject to their remaining leave entitlement;
  - (b) contractors to take sufficient unpaid leave, as required; and
  - (c) Household Contract employees to take sufficient paid or unpaid leave;
- to take the journey to which they are entitled.

- (9)** If—
- (a) there are reasonable grounds to believe that—
    - (i) the employer cannot provide a mid-contract journey before the last quarter of the relevant contract; and
    - (ii) the journey cannot be provided for reasons beyond the control of the worker and employer;
  - or
  - (b) it is requested by the worker;
- the employer may pay the worker in lieu of providing a mid-contract journey.

**7.** (1) If a worker is contractually entitled to an allowance to ship personal effects to Ascension, at the end of the relevant contract the employer must provide—

- (a) at least a corresponding allowance to the territory of return, even if it is not the territory from which the worker was transported from at the start of the contract; and
- (b) that the effects are shipped within a reasonable time.

**8.** (1) The port of departure is—

- (a) where direct flights to Ascension operate from the territory of return, the nearest airport to the employee's home from which such flights operate; or
- (b) where no direct flights to Ascension operate from the territory of return, the employee's most convenient airport or seaport within the territory of return.

**(2)** Appropriate travel insurance must include policies covering—

- (a) medical treatment (including for pre-existing medical conditions);
- (b) delay or cancellation;
- (c) baggage lost, stolen or damaged in transit.

### **Failure to provide appropriate transport**

**9.** (1) If an employer fails to provide appropriate transport arrangements for a worker—

- (a) at the start of their relevant contract;
- (b) at the end of their relevant contract; or
- (c) for their mid-contract journey;

the worker may pay for their transport arrangements, and claim reimbursement from the employer of an amount equal to two times the costs incurred.

**(2)** If an employer fails to provide transport arrangements to Ascension at the start of the relevant contract—

- (a) the worker may terminate the contract before departing for Ascension; and
- (b) claim from the employer any damages associated with that breach.

**(3)** If an employer fails to provide transport arrangements from Ascension at the end of the relevant contract—

- (a) the Government may—
  - (i) provide travel arrangements to the worker's territory of return; and
  - (ii) recover the full cost from the employer.

**(4)** If an employer fails to provide or allow a mid-contract return journey for a worker, including failing to provide sufficient leave—

- (a) the individual may claim from the employer compensation of an amount equal to—
  - (i) two times the notional cost of a return journey to the port of departure from which the worker originally travelled to Ascension at the start of the relevant contract; and
  - (ii) in the case of an employee or contractor, an amount equal to two months' basic pay.

**(5)** If an employer has agreed to ship the workers personal effects, and fails to do so—

- (a) at the start of the relevant contract; or
- (b) within a reasonable period of time at the end of the relevant contract;

the worker may pay for their shipping, and claim reimbursement from the employer of an amount equal to two times the costs incurred.

**(6)** Claims by the worker for compensation or reimbursement from the employer under this regulation must—

- (a) be made in writing;
- (b) provide—
  - (i) the basis on which the notional costs were calculated; or
  - (ii) proof of the costs actually incurred; and
- (c) where related to travel, be reasonable with regard to the route and class travelled.

**10. (1)** An employer that receives a claim for compensation or reimbursement must within 56 days of receipt of the claim—

- (a) pay the amount claimed in full; or
- (b) if the claim is disputed, provide written evidence of—
  - (i) why the claim is invalid; or
  - (ii) why the amount claimed is not reasonable.

**(2)** Failure to compensate or reimburse the worker the full amount claimed within 56 days will—

- (a) be recoverable in civil proceedings as a debt; and
- (b) incur interest.

**Obligation to ensure the provision of necessary medical and dental care**

**11. (1)** Employers must ensure the provision of medical and dental care as considered necessary and appropriate for the worker by the Senior Medical Officer or Dentist.

**(2)** In addition to care received in Ascension, necessary and appropriate medical and dental care includes, but is not limited to—

- (a)* medical referrals to a specialist outside of Ascension;
- (b)* travel and accommodation outside of Ascension for the worker to receive the relevant treatment; and
- (c)* where necessary for the welfare of the worker, the cost of the worker being accompanied.

**(3)** An employer must not require a worker to contribute financially to any medical or dental care deemed necessary and appropriate by the Senior Medical Officer or Dentist.

**Failure to ensure the provision of necessary medical or dental care**

**12. (1)** If the employer fails to ensure the provision of necessary medical or dental care—

- (a)* the Government—
  - (i)* must provide the necessary medical or dental care; and
  - (ii)* may recover the full cost from the employer;

or,

- (b)* the worker, or third party on behalf of the worker, who contributes to the cost of any necessary and appropriate medical or dental care—
  - (i)* must be reimbursed in full by the employer.

**(2)** Claims for recovery or reimbursement from the employer must—

- (a)* be made in writing; and
- (b)* provide—
  - (i)* details of the treatment received; and
  - (ii)* proof of the costs incurred.

**(3)** An employer who receives a claim for reimbursement must within 28 days of receipt of the claim—

- (a)* pay the amount claimed in full; or
- (b)* if the claim is disputed, provide written evidence of—
  - (i)* why the claim is invalid; or
  - (ii)* the amount claimed as being inaccurate.

**(4)** Failure to reimburse the worker the full amount claimed within 28 days will—

- (a)* be recoverable in civil proceedings as a debt; and
- (b)* incur interest.

**Pre-employment medical assessments**

**13.** (1) Employers must—  
(a) arrange a pre-employment medical assessment for every prospective worker; and  
(b) pay for the assessment in full;  
before entering into a contact with the worker.

(2) If—  
(a) the worker has a pre-existing medical condition; and  
(b) the employer considers it appropriate to determine whether the condition can be adequately cared for in Ascension;  
the employer must share the pre-medical assessment with the Senior Medical Officer.

**Obligation to provide suitable accommodation and utilities**

**14.** (1) Employers must—  
(a) provide suitable accommodation for each worker; and  
(b) allocate accommodation to the worker before the start of the relevant contract.

(2) To be considered suitable, the accommodation must—  
(a) be safe, secure and in a good state of repair;  
(b) include a supply of electricity and water;  
(c) include access to waste water services;  
(d) provide adequate ventilation;  
(e) if the accommodation is shared, afford sufficient privacy to the individual;  
(f) include access to toilet and washing facilities, including hot water;  
(g) if a worker shares accommodation or toilet and washing facilities with persons other than those in Ascension on the same Primary Contract, be shared only with members of the same sex, where possible;  
(h) include a washing machine and drying area, communal laundry facilities, or a laundry service provided by the employer; and  
(i) where no catered messing facilities are available to the worker, include adequate self-catering facilities to enable the storage, preparation and consumption of food.

(3) The employer must provide the worker with—  
(a) a reasonable periodic allowance of electricity and water;  
(b) a reasonable payment in lieu of an allowance of electricity and water; or  
(c) electricity and water at no cost to the worker.

(4) If the worker is a Primary Contract employee, the relevant contract must—  
(a) identify the accommodation allocated; and  
(b) provide details of the employee's utility allowance.

- (5) The employer must have in place a suitable mechanism for the—
- (a) reporting of complaints regarding the suitability of the accommodation by the worker;
  - (b) reporting faults in the accommodation; and
  - (c) repairing of faults in a timely manner.

**Failure to provide suitable accommodation**

15. (1) If the employer fails to provide—
- (a) a suitable mechanism for reporting or repairing faults;
  - (b) a response to a request from a worker for a repair in a timely manner; or
  - (c) a response to a complaint with which the worker is dissatisfied;
- the worker may raise a complaint in writing with the Administrator.

(2) If the Administrator considers the accommodation to be unsuitable, the Government may—

- (a) (i) take steps to make the accommodation suitable; or  
(ii) provide suitable accommodation for the worker;  
and
- (b) charge the employer at a commercial rate for doing so.

(3) If the employer fails to provide adequate facilities for self-catered accommodation, the worker may—

- (a) purchase appropriate facilities for their accommodation; and
- (b) claim reimbursement of reasonable costs from the employer, including shipping costs.

(4) Any payment for utilities not made by the employer in accordance with the relevant contract will—

- (a) be recoverable in civil proceedings as a debt by the worker; and
- (b) incur interest.

**Obligation to provide food and messing facilities**

16. (1) Employers must provide—
- (a) catered messing facilities;
  - (b) a reasonable periodic food stipend; or
  - (c) some other arrangement of like effect;
- for a worker while they are in Ascension.

**Failure to provide food and messing facilities**

17. (1) If an employer who has agreed to provide a worker with catered messing facilities fails to do so—

- (a) the Government may—



- (i) take steps to ensure all workers are provided with food; and
    - (ii) charge the employer at a commercial rate for doing so;
  - or
  - (b) if no alternative provision of food is available to the worker, any reasonable amount the worker pays on food will—
    - (i) be recoverable in civil proceedings as a debt by the worker; and
    - (ii) incur interest.
- (2) Any payment for a food stipend not made by the employer in accordance with the relevant contract will—
- (a) be recoverable in civil proceedings as a debt by the worker at the rate of two times the agreed amount; and
  - (b) incur interest.

### **Crown Application**

- 18.** The following provisions do not apply to the Government—
- (a) regulation 9(3);
  - (b) regulation 12(1)(a)
  - (c) regulation 13(2);
  - (d) regulation 15(2); and
  - (e) regulation 17(1)(a).

Made this 17<sup>th</sup> day of June 2022.

Philip Rushbrook  
Governor of Ascension