

ELIGIBILITY TO PORTABLE RETIREMENT GRATUITY FUND

1. **Object of the Portable Retirement Gratuity Act (section 89):**
 - (a) To provide for the payment of a Gratuity to a worker on his retirement.
 - (b) To provide for the payment of a Gratuity to the legal heirs of a worker who dies before retirement:
 - (c) To provide for the payment of a Gratuity to a self-employed who has contributed to the Fund
 - (d) To provide for the payment of a Gratuity to the legal heirs of a self-employed who has contributed to the Fund before his death

2. Eligibility to join the Portable Retirement Gratuity Fund depends therefore on the definition of ‘worker’ and ‘self-employed’ under the Act

A. Person must be a worker or self-employed

(a) Meaning of Worker as defined in Section 2, Section 87 and Section 90:

(i) A person who has an agreement or a contract of apprenticeship to provide casual work, manual labour, clerical work or otherwise and however remunerated. It includes:

- A full time worker
- A part-time worker
- A former worker, where appropriate (????)
- A share worker (a person who is remunerated partly or wholly from the profits or gross earnings of the enterprise for which he works provided that he does not own the main equipment, material and premises used in the enterprise.

- An atypical worker (one who performs work other than under a standard agreement) (see Section 17)
- **a worker who is more than 50 years of age and is not covered by a private pension scheme???**

(b) Meaning of self-employed (Section 87)

A self-employed is a person who works for his own account and does not employ any worker.

3. Persons excluded from the Portable retirement Gratuity Fund:

- A person under a contract of apprenticeship with the Mauritius Institute of Training and Development
- A job contractor
- A person taking part in a training scheme set up by Government or under a public-private initiative
- A public officer or a local government officer
- A worker whose retirement benefits are payable:
 - Under the Statutory Bodies Pension Funds Act
 - In accordance with a private pension scheme
- A migrant worker
- A non-citizen; and
- A worker who draws a monthly **basic wage or salary of more than Rs. 200,000** (for the definition of 'basic wage or salary' see Section 2)

4. When is the Gratuity payable?

Section 98

- (a) When worker voluntarily retires on or after attaining the age of 60 or in the case of a self-employed, on request by him on or after attaining the age of 60;
- (b) when the worker retires before attaining the age of 60, in accordance with any other relevant enactment or any agreement;
- (c) when the worker retires at the request of his employer on or after attaining the retirement age; or
- (d) when the worker retires before attaining the age of 60, on grounds of permanent incapacity, duly certified by a Government medical practitioner, to perform his work; or
- (e) when the worker retires on grounds of incapacity to perform **his normal work** arising from injury sustained at work
- (f) to the legal heirs of a worker or the legal heirs of a worker or self-employed at the death of the worker or the self-employed.

5. **Payment of Contributions - Section 94**

(Future services)

The Employer to pay contribution to the Fund as may be prescribed. What are the prescribed rates?

Same provision for the self-employed.

Contributions are payable to MRA on the 20th of the month in respect of which they are due. MRA remits the contributions to Ministry of Social Security to be credited to Individual Account of each worker.

6. Payment of Contributions for Past Services

- (a) The Employer must pay contributions in respect of the past service of a worker in his employment on the commencement of the Act. 'Past service' is defined as the period of the day of employment to date preceding commencement of the Act. This is intended to cover the past services of the worker with the employer.

Why call it 'contributions' and not 'gratuity'?

- (b) Contributions for past services can be paid:
- (i) To the MRA in the case of a worker whose employment is terminated;
 - (ii) To the worker when he retires on attaining appropriate retirement age;
 - (iii) To the legal heirs of the worker where the worker dies
- (c) The Employer has an option to pay contributions for past services in advance to MRA.
- (d) Contributions are computed on the basis of last monthly salary drawn by the worker:
- (i) At the commencement of the Act
 - (ii) At the time worker's employment is terminated or when worker retires or when he dies.
- (e) Contribution for past services are payable within one month of event giving rise to payment.

7. **Joint liability of employer and job contractor**

Employer is jointly and severally liable with job contractor to pay contributions to PRGF in respect of services of workers employed by job contractor

Question: who is this 'Employer'????

Compare with Article 1798 Civil Code (Contrat d'entreprise)

Article 1798.

Les maçons, charpentiers et autres ouvriers qui ont été employés à la construction d'un bâtiment ou d'autres ouvrages faits à l'entreprise, n'ont d'action contre celui pour lequel les ouvrages ont été faits, que jusqu'à concurrence de ce dont il se trouve débiteur envers l'entrepreneur, au moment où leur action est intentée.

8. GRATUITY ON RETIREMENT AND DEATH

An employer shall pay a gratuity to a worker who has been in his employment for not less than 12 months where the worker –

- (a) voluntarily retires on or after attaining the age of 60;
- (b) retires before attaining the age of 60, in accordance with any other relevant enactment or any agreement;
- (c) retires at the request of the employer on or after attaining the retirement age; or
- (d) retires before attaining the age of 60, on grounds of permanent incapacity, duly certified by a Government medical practitioner, to perform his work; or
- (e) retires on grounds of incapacity to perform his normal work arising from injury sustained at work and where such incapacity is duly certified by a Government medical practitioner.

Here 'worker' means:

- a worker whose retirement benefits are payable under a private pension scheme
- a worker drawing a monthly salary of more than Rs. 200,000
- a migrant worker or a non-citizen

MATTER FOR DISCUSSION UNDER SECTION 109 WRA

Under the 2 regimes

Is Section 109(1)(c) which provides for the situation where the worker retires at the request of his employer on or after attaining retirement age (65) of universal application?

Having regard to the amendment which was made to the Employment Rights Act in 2013:

(1B) Notwithstanding any agreement or any provision to the contrary in any other enactment, an employer shall not require a worker to retire before the retirement age.

And the fact that the same provision has not been reproduced in WRA. For example, is a worker of the sugar industry compelled to retire at the age of 60 if so requested by his employer.

Section 32 of Sugar Industry Pension Fund Act 1955

2) Where an employee reaches the age of 60, his employer may require him to retire from his service and the employee shall receive the benefit of a pension, gratuity or

Francis Hardy