

Severance Payments

Cap. 355A.

SEVERANCE PAYMENTS (PENSIONS) REGULATIONS, 1972

S.I.
1972/178.

Made by the Minister under section 11 of the Severance Payments Act. Cap. 355A.

1. These Regulations may be cited as the Severance Payments (Pensions) Regulations, 1972.

2. For the purposes of these regulations—

- “ Board ” means the National Insurance Board established by the National Insurance and Social Security Act; 1976/254.
Cap. 47.
- “ pension ” has the meaning assigned to it by regulation 3;
- “ pensioned employee ” means an employee who has a right or claim to a pension of a kind referred to in regulation 4;
- “ week ” means a week ending with Saturday.

3. (1) Subject to paragraphs (2) and (3), for the purposes of these regulations “ pension ” means a periodical payment or a lump sum by way of a pension, gratuity or superannuation allowance as respects which the Board is satisfied that—

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- (a) it is to be paid in accordance with any scheme or arrangement having for its object or one of its objects to make provision in respect of persons serving in particular employments for providing them with retirement benefits; and
- (b) except in the case of such a lump sum which had been paid to the employee, the benefits under the scheme or arrangement are secured by—
 - (i) an irrevocable trust which is subject to the laws of Barbados, or
 - (ii) a contract of assurance or an annuity contract which is made with an insurance company registered under the Insurance Act; and Cap. 310.
- (c) the scheme or arrangement is established by an enact-

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ment or other instrument having the force of law in any part of the Commonwealth outside Barbados; and

- (d) the provisions made to enable benefits to be paid (taking into account any additional resources which could and would be provided by the employer or any person connected with the employer, to meet any deficiency) are adequate to ensure payment in full of the benefits.

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(2) If in any case the Board is satisfied that benefits under the scheme or arrangement are wholly or mainly provided for the benefit of persons not resident in Barbados, he may, subject to such conditions as he thinks proper, waive—

- (a) the requirement contained in sub-paragraph (b) (i) of paragraph (1) in respect of a scheme or arrangement the benefits under which are secured by an irrevocable trust; or
- (b) the requirement of sub-paragraph (b) (ii) of paragraph (1) in the case of a scheme or arrangement the benefits under which are secured by a contract of assurance or an annuity contract.

(3) For the purposes of these regulations, “pension” does not include—

- (a) a payment to an employee which consists solely of a return of his own contributions, with or without interest;
- (b) that part of a payment to an employee which is attributable solely to additional voluntary contributions by that employee made in accordance with the scheme or arrangement;
- (c) a periodical payment or lump sum in so far as that payment or lump sum represents such compensation as is mentioned in section 11 (2) of the Act.

4. (1) These regulations apply in any case where an employee who is entitled, or but for these Regulations would be entitled, to a severance payment from an employer, has a right or claim to a pension for himself which—

- (a) is to be paid by reference to the employee’s last period of continuous employment with that employer;
- (b) (i) if it is a lump sum, is to be paid, or

(ii) if it is a periodical payment, is to begin to accrue, the time when the employee leaves the employment with that employer or within 90 weeks thereafter; and

(c) in so far as it consists of periodical payments, satisfies the conditions specified in paragraph (2).

(2) The conditions referred to in sub-paragraph (c) of paragraph (1) are that the Board is satisfied that the pension is payable for life and is not capable of being terminated or suspended except for—

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(a) the operation of any provision for the termination or suspension of the pension—

(i) upon the commutation thereof, or

(ii) upon assignment, charge or other alienation (whether by operation of law or otherwise) or any attempt thereat, or

(iii) in case of mental disorder or inability to act (if there is provision enabling the pension in either of these circumstances to be paid or applied at discretion for the maintenance or support of the pensioner's spouse or of other persons dependent on him);

(b) the operation of any provision for the suspension of the pension—

(i) during imprisonment or detention in legal custody,

(ii) upon resumption of employment with the employer.

5. (1) The employer of a pensioned employee may, by notice in writing given to that employee, claim to—

(a) exclude the right of the employee to; or

(b) reduce the amount of,

the severance payment to which the employee would otherwise be entitled under the Act in accordance with, or to the extent permitted by, the First Schedule; and in such a case the employee is not entitled to a severance payment, or, as the case may be, is entitled only to the reduced amount thereof.

(2) The notice referred to in paragraph (1) shall contain a statement—

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- (a) explaining how—
- (i) the right of the pensioned employee to the severance payment has been excluded; or
 - (ii) the amount of the severance payment has been reduced,
- because of the pension, as the case may be; and
- (b) specifying the amount of any severance payment so reduced.
- (3) This regulation is without prejudice to section 38 of the Act.

6. (1) This regulation applies to an employee whose remuneration is by virtue of any enactment payable to him by a person other than his employer.

(2) For the purposes of the operation, in relation to employees to whom this regulation applies, of the provisions of these regulations specified in the first column of the Second Schedule, a reference to the employer which is specified in the second column of that Schedule shall be construed as a reference to the person responsible for paying the remuneration.

FIRST SCHEDULE

(Regulation 5 (1))

EXCLUSION OF OR REDUCTION IN THE AMOUNT OF A SEVERANCE PAYMENT BECAUSE OF A PENSION

1. (1) An employer of a pensioned employee may exclude the right of that employee to a severance payment to which he would otherwise be entitled under the Act because of his employment, with the employer, if the pension to which the employee has a right or claim by reference to that employment amounts in the annual value thereof to at least $\frac{1}{3}$ of the employer's annual pay and is one as respects which—

- (a) in so far as it consists of periodical payments, the employee has a right or claim for the payments to begin to accrue; and
- (b) in so far as it consists of a lump sum, the employee has a right or claim for it to be paid,

immediately the employee ceases to be employed by the employer.

(2) An employer of a pensioned employee may reduce by an amount not exceeding the appropriate proportion, the amount of the severance payment to which that employee would otherwise be entitled under the Act because of his employment with the employer, if the pension to which the employee has a right or claim by reference to that employment is one as respects which—

- (a) in so far as it consists of periodical payments, the employee has a right or claim for the payments to begin to accrue; and
- (b) in so far as it consists of a lump sum, the employee has a right or claim for it to be paid,

immediately the employee ceases to be employed by the employer.

2. (1) Subject to sub-paragraph (2), in a case in which paragraph 1 does not apply but in which a pensioned employee has a right or claim to a pension as respects which—

- (a) in so far as it consists of periodical payments, the employee has a right or claim for the payments to begin to accrue; and
- (b) in so far as it consists of a lump sum, the employee has a right or claim for it to be paid,

at some time, not exceeding 90 weeks, later than the time when the employee ceases to be employed by the employer, an employer of that employee may reduce the amount of the severance payment by an amount not exceeding the appropriate proportion.

(2) There shall be added to the reduced payment ascertained under sub-paragraph (1) the weekly value of the pension for each week that is to elapse between the cessation of the employee's employment with the employer and the time when the employee has a right or claim for the pension to begin to accrue, or, as the case may be, to be paid; but the total payment due to the employee under this paragraph shall not exceed the amount of the severance payment to which he would otherwise be entitled under the Act apart from these regulations.

3. For the purposes of this Schedule—

“ appropriate proportion ” means the proportion which the annual value of the pension to the employee bears to 1/3 of the employee's annual pay;

“ annual pay ” means the amount of a week's basic pay of the employee calculated in accordance with paragraph 6 of the First Schedule to the Act multiplied by 52, any fraction of a dollar in the product being disregarded;

“ annual value of the pension ” means—

- (a) in the case of a pension to which the employee has a right or claim which consists of periodical payments—
 - (i) where the pension is payable at intervals of 7 days, the amount of the first payment multiplied by 52, any fraction

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- of a dollar in the product being disregarded if the pension consists wholly of periodical payments;
- (ii) where the pension is payable at other than intervals of 7 days, the amount which would accrue during the 12 months beginning with the day on which the pension begins to accrue and assuming that the value of the pension does not change, any fraction of a dollar being disregarded if the pension consists wholly of periodical payments;
- (b) in the case of a pension to which the employee has a right or claim which consists of a lump sum, 1/10 of the amount of the lump sum, any fraction of a dollar being disregarded if the pension consists solely of a lump sum;
- (c) in the case of a pension to which the employee has a right or claim which consists partly of periodical payments and partly of a lump sum, the total annual value ascertained in accordance with sub-paragraphs (a) and (b), any fraction of a dollar in that total being disregarded;
- “ weekly value of the pension ” means the amount, not exceeding 1/3 of one week’s basic pay of the employee calculated in accordance with paragraph 6 of the First Schedule to the Act, obtained by dividing the annual value of the pension by 52.

SECOND SCHEDULE

(Regulation 6 (2))

| <i>Provisions</i> | <i>References</i> |
|---|-------------------------------------|
| Regulation 3 (1) and 5 (1) ... | the references to “ employer ” |
| Regulation 4 (1), and paragraphs 1 (1) and (2) and 2 of the First Schedule | the first reference to “ employer ” |