

EMPLOYMENT BULLETIN

REGULATORY UPDATE: AMENDMENTS TO THE EMPLOYMENT ACT

INTRODUCTION

The President of the Republic of Maldives has ratified the *Sixth Amendment to the Employment Act 2008* (the “**Sixth Amendment**”) on 22nd September 2020.

This Sixth Amendment proposes sweeping changes to several key provisions of Law No. 2/2008 (the “**Employment Act**”), the majority of which came into effect upon ratification of the Sixth Amendment.

A copy of the Sixth Amendment (in Dhivehi language) is available on <https://gazette.gov.mv/>

This bulletin highlights and summarises the salient provisions of the Sixth Amendment.

Authors’ Note: Since publication of our initial bulletin on 14th August 2020, the President’s Office has published the ratified version of the Sixth Amendment with erratum with respect to Section 28 of the Sixth Amendment. Pursuant to this revision, the Section pertaining to Service Charge will come into effect from 1 January 2021 (and the Section pertaining to Sick Leave is effective from the date of ratification of the Sixth Amendment).

AMENDMENTS TO THE EMPLOYMENT ACT

Below is a summary of salient provisions of the Sixth Amendment, amending existing provisions of the Employment Act:

Employment Agreement	<p>This Section introduces an administrative fine on employers who fail to provide employees with copies of their employee agreements:</p> <ul style="list-style-type: none">• In this regard, employers who have not handed over a counter-signed copy of the employment agreement to the employee are required to do the same within 3 (three) months of ratification of the Sixth Amendment.• <u>Where an employment agreement has not been executed/ handed over the employee as per above, the employer will be fined an amount ranging from MVR 2,000 to MVR 20,000.</u>
Probation Period	<p>While the maximum probation period remains unchanged, this Section has been updated to <u>guarantee certain minimum standards for employees during their probation period:</u></p> <ul style="list-style-type: none">• In this regard, employees on probation shall be afforded those rights as stated from Section 32 to Section 57 of the Act (i.e. provisions relating to working hours, leave entitlement and remuneration).
Redundancy	<p>Redundancy has been established in the Sixth Amendment as grounds for termination of employment, as formerly recognised by the appeal courts in the Maldives. While the <u>circumstances of redundancy has been provided</u> in this Section, the procedural guidelines are to be published in due course. The Sixth Amendment sets out the circumstances of redundancy as below:</p> <ul style="list-style-type: none">○ the employer has ceased its business or ceased to provide services; or○ the employer's business has undergone reorganisation/ restructuring; or○ the employer's business is facing adverse financial circumstances.• Employers shall be required to demonstrate that redundancies were carried out in good faith and without targeting certain/ specific employees.• <u>Any redundancies are to be carried out in accordance with guidelines to be published by the Ministry [of Economic Development] within 6 months of ratification of the Sixth Amendment.</u>• Employees who have been made redundant are also entitled to a minimum redundancy package determined by the tenure of their employment:<ul style="list-style-type: none">○ Where an employee has been in employment for less than 1 year: minimum 1 month's notice or payment in-lieu-of.○ Where an employee has been in employment for a period between 1 year and 4 years: minimum 2 months' notice or payment in-lieu-of.

	<ul style="list-style-type: none"> ○ Where an employee has been in employment for more than 4 years: minimum 3 months’ notice or payment in-lieu-of.
<p>Employee Right to Resign</p>	<p>This Section provides <u>employees with the right to serve a ‘notice of breach’ to an employer</u> where the employer’s conduct is in contravention of the Employment Act or the terms of the employment agreement.</p> <ul style="list-style-type: none"> ● In this regard, where the employer fails to remedy such conduct within the period stipulated in that notice, the employee may give the requisite notice (as stipulated under the employment agreement) and resign from employment.
<p>Requirement to Maintain Records on Working Hours</p>	<p>This Section introduces requirements on employers <u>to track and record employee work hours</u>. It is noted that this Section of the Sixth Amendment does not stipulate a minimum period for which such records shall be maintained by the employer.</p> <ul style="list-style-type: none"> ● Pursuant to the Sixth Amendment, employers shall be required to maintain records on employees’: <ul style="list-style-type: none"> ○ working hours (with time); ○ overtime hours; and ○ overtime pay. ● Additionally, the employer is required to submit the above records to Labour Relations Authority (“LRA”) upon request. Where an employer fails to submit these records to the LRA upon request, the is empowered to fine the employer by an amount not exceeding MVR 5,000.
<p>Exempt Employees</p>	<p>While ‘exempted employees’ (as defined in Section 34 of the Act) were previously exempted from all of Chapter 4 provisions of the Employment Act, this has now been amended to exempt ‘exempted employees’ from the following specific Sections of the Act only:</p> <ul style="list-style-type: none"> ○ Section 32 (Working hours); ○ Section 37 (Overtime); and ○ Section 38 (Working on a public holiday). <ul style="list-style-type: none"> ● Therefore, under the Sixth Amendment, all other <u>Chapter 4 Sections of the Employment Act (with the exception of above three Sections) will apply to ‘exempted employees’ as well.</u>
<p>Defining ‘Senior Management Positions’</p>	<ul style="list-style-type: none"> ● The Sixth Amendment amends the definition of the term ‘Employees in Senior Management Positions’ as <u>employees designated/ determined as ‘senior management’</u>

	<p><u>by the employer, amongst those who hold senior positions in the operation of the employer's business.</u></p> <ul style="list-style-type: none">• The requirements and criteria for determination of 'senior management positions' are to be published by the Ministry [of Economic Development] within 6 months of ratification of the Sixth Amendment.
Right to Leave Work Site After Work Hours	<ul style="list-style-type: none">• This new provision states that employers <u>shall not compel employees to remain at their work site, island or vessel upon completion of their working hours.</u> Employers shall also not restrict an employee from leaving the work site upon completion of working hours, and shall not deny access to the work site upon returning to commence working hours.• Additionally, where an employee requires means of transport to leave the work site as per above, the employer shall permit access for such transport.
Sick Leave	<ul style="list-style-type: none">• Employees continue to be entitled to a minimum of 30 days' paid leave as sick leave.• Employers are not required to provide sick leave unless the employee submits a medical certificate issued by a licensed medical practitioner on the first day back at work, specifying the nature of the employee's illness and the recommended duration of sick leave.• However, notwithstanding the above, the <u>employee shall be entitled to claim sick leave for a period not exceeding 2 consecutive days, without requirement to submit a medical certificate for 15 days out of those 30 days of sick leave</u> an employee is entitled to above.
Service Charge	<p>These provisions of the Sixth Amendment are set to be effective from <u>1st January 2021</u> only. The Sixth Amendment now elaborates the service charge ("SC") regime in greater detail.</p> <ul style="list-style-type: none">• We note that one of the main revisions to Section 52 was the introduction of the <u>mandatory service charge of 10% to be levied on services provided by tourism sector</u> employers.• Businesses operating in other sectors have a discretion to charge a service charge. The law does not however specify any criteria to be applied by other businesses in this regard.• The provision related to distribution is more or less the same. In this regard, the Sixth Amendment states that the distribution of SC shall be equal among all employees. It further states that there cannot be any differentiation between any employee in the distribution of the SC and that all SC payments received for the last month are required to be paid before the end of the current month.• "All Employees" are defined in Section 52 to include "employees who are directly and indirectly involved in the provision of the services".

	<ul style="list-style-type: none"> • There was no change to the rules that 1% of SC collections can be deducted as an administrative fee by the employer. • The other major revision was the requirement on employers to <u>maintain records of all service charge collections, number of employees who were paid service charge, and amounts entitled by each employee.</u> • The employer is further required to <u>submit these records to the LRA and the Maldives Inland Revenue Authority on a semi-annual basis</u> in accordance with regulations to be issued by LRA. • Moreover, it is noted that employers are required to disclose this information to the LRA upon their request. We note that contravention to these requirements attract a fine of up to MVR 50,000. • LRA has the powers to impose a fine of up to MVR 100,000 on tourism sector employers if the LRA finds that they are not compliant with the mandatory requirements to collect service charge on their services or who fail to carry out distributions equally.
<p>Payment of Salaries to Foreign Employees</p>	<ul style="list-style-type: none"> • This provision was deleted. Thus, it will no longer be mandatory to pay salaries of foreign employees to their local bank account.
<p>Expatriate Employment</p>	<ul style="list-style-type: none"> • The Section provides clarification and elaborates on the rules applicable to foreign employment in the Maldives. • In this regard, it is noted that the Minister has the power to issue regulations to regulate the issuance of foreign employment quota and work permits. The Sixth Amendment requires the regulation to stipulate the conditions and procedures on issuance of quota. A new annual quota fee of MVR 2000 will be payable to a government entity as directed by the Minister [of Economic Development]. • We also note that work permit fees have been revised upwards to MVR 350 per month.
<p>Expatriate Labour Country Limit</p>	<ul style="list-style-type: none"> • This new provision stipulates that the maximum number of expatriate employees permissible from a single country (at any given time) is 100,000 nationals. • A grace period of 3 years will be granted under the Sixth Amendment to bring affairs in to order in the event the maximum number of expatriates from a single country exceed the limit stipulated in the Sixth Amendment.
<p>Training Maldivians and Priority to Maldivians</p>	<ul style="list-style-type: none"> • The Sixth Amendment places emphasis on granting more training and other opportunities to Maldivians. In this regard, it stipulates that: <ul style="list-style-type: none"> ○ <u>Where the number of employees in a workplace exceed 50, the person in charge of human resources shall be a Maldivian employee.</u> ○ <u>Where the number of employees in a workplace exceed 50, 60% of the senior management team (“SMT”) should be Maldivian.</u> Regulation to be issued by the Ministry [of Economic Development] to determine SMT.

	<ul style="list-style-type: none">○ <u>The above provisions are set to be effective no later than 5 years from the date of enactment of the Sixth Amendment.</u>• Employers are required to submit information once a year to LRA as stipulated in regulations to be issued by the LRA to allow LRA to monitor the status of achieving the above referred milestones.• LRA has powers to impose fines of up to MVR 100,000 in the event of non-compliance with provisions related to appointment of a Maldivian human resource head and minimum requirements regarding SMT composition.
Accommodation Standards	<ul style="list-style-type: none">• This Section <u>requires regulations to be issued within 30 days from the enactment of the Sixth Amendment stipulating the Accommodation Standards.</u> A grace period of 6 months (from ratification of the Sixth Amendment) will be granted to employers to be compliant with the standards.
Minimum Wage and Minimum Wage Advisory Board	<ul style="list-style-type: none">• This provision was amended to state that the Minister [of Economic Development] is empowered to determine a “minimum wage” for employees working in the Maldives in accordance with the Act.• This section further goes on to establish the Minimum Wage Advisory Board (“MWAB”) and requires MWAB to be constituted within 30 days from the date of the enactment of the Sixth Amendment. The Section however stipulates that the <u>minimum wage order issued by the Minister should be implemented before the end of 2021.</u> We also note that the Section exempts expatriate employees from the application of the minimum wage order for a period of 2 years.

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