ADDITIONAL REMUNERATION (No. 2) ACT 2009

Act No. 22 of 2009

I assent

SIR ANEROOD JUGNAUTH
President of the Republic

22nd December 2009

ARRANGEMENT OF SECTIONS

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An Act

To provide for the payment of additional remuneration to employees of the private sector

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the **Additional Remuneration (No. 2) Act 2009**.

2. Interpretation

In this Act –

“additional remuneration”, in relation to an employee, means the appropriate amount determined in accordance with, or specified in, the second column of the Schedule and corresponding to the basic wage or salary payable to the employee as specified in the first column of the Schedule;

"appointed date" means 1 January 2010;

“authorised officer” means the Permanent Secretary or any public officer authorised by him;

“basic wage or salary” –

(a) means –

(i) in relation to an employee whose basic wage or salary is prescribed, such basic wage or salary, whether or not the employee’s actual wage or salary exceeds the prescribed wage or salary or the employee is remunerated on a piece rate basis or employed on task work;

(ii) in relation to an employee in respect of whom no wage or salary is prescribed or agreed upon in his contract of service, the total amount, by whatever name called, earned by him as from the appointed date;

(iii) in every other case, the basic wage or salary agreed upon in his contract of service, whether or not the employee's actual wage or salary exceeds the agreed wage or salary or the employee is remunerated on a piece rate basis or employed on task work; and

(b) includes any previous additional remuneration granted under any enactment; but

(c) does not include any allowance, commission or other benefit not forming part of an employee's wage or salary but given to him in addition to his wage or salary;

"employee" –

(a) means any person who works or has worked under a contract of service or apprenticeship, whether the contract is express or implied, oral or in writing, and whether the person is paid daily, weekly, monthly or otherwise; but

(b) does not include a public officer;

"Minister" means the Minister to whom responsibility for the subject of labour is assigned;

"Permanent Secretary" means the Permanent Secretary of the Ministry responsible for the subject of labour.

3. Payment of additional remuneration

(1) Subject to subsections (4) and (5) and to section 9, every employer shall, as from the appointed date, pay to every employee in his employment, in addition to the basic wage or salary payable to the employee, the additional remuneration.

(2) Where the wage or salary of an employee is paid partly by one employer and partly by another, each employer shall pay that part of the additional remuneration which bears the same proportion to the additional remuneration as the part of the wage or salary paid by him bears to the total wage or salary.

(3) Where an employer has paid during the period 1 July 2009 to 31 December 2009 an increase in wage or salary otherwise than –

(a) by virtue of the Additional Remuneration Act 2009;

(b) pursuant to an award of the Permanent Arbitration Tribunal, or Employment Relations Tribunal, as the case may be; or

(c) by way of an increment or increase on promotion,

and such increase was specified in writing, or agreed upon by the employee, as being an increase in wage or salary designed specifically to compensate the employee for an increase in the cost of living in respect of the above-mentioned period, there shall be sufficient compliance with subsection (1), in case such increase is less than the additional remuneration specified in subsection (1), if the employer pays the difference.

(4) Subject to subsection (6), where an employee is remunerated on a piece rate basis at rates prescribed in the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983 or as agreed upon, such rates shall, as from the appointed date, be increased in the same proportion as the increase of the payment of the additional remuneration on the basic wage prescribed or agreed upon, as the case may be, of the employee.

(5) Subject to subsection (6), where an employee is remunerated on a piece rate basis at rates prescribed in –

(a) the Cinema Workers (Remuneration Order) Regulations 2005;

(b) the Tea Industry Workers (Remuneration Order) Regulations 1984; or

(c) any other enactment,

such rates shall, as from the appointed date, be increased by 3.5 per cent.

(6) The piece rates prescribed in the enactments specified in subsections (4) and (5) shall include any previous additional remuneration granted by law.

(7) Where civil or criminal proceedings are instituted against an employer under this Act in relation to an employee first employed by him on or after the appointed date, it shall be a defence for the employer to prove that the wage or salary paid to the employee is not less favourable than all the pecuniary payments made to any other employee of the same grade.

4. Employees paid otherwise than on a monthly basis

Where an employee is remunerated otherwise than on a monthly basis, it shall be deemed, for the purpose of determining the appropriate additional remuneration, that a month, a fortnight or a week shall consist of such number of days as are prescribed in any other enactment or agreed upon in relation to that employee.

5. Powers of authorised officers

Notwithstanding any other enactment, an authorised officer may, for the purpose of ensuring compliance with this Act –

(a) enter any work premises or office of an employer;

(b) inspect any book or record kept by an employer in relation to his employees;

(c) request an employer to furnish him with any information or document which he may require;

(d) prosecute a person who commits an offence under this Act; and

(e) enter any action on behalf of an employee.

6. Jurisdiction

Notwithstanding any other enactment –

(a) in the Island of Mauritius, the Industrial Court;

(b) in Rodrigues, the Magistrate for Rodrigues;

(c) in the other islands under the jurisdiction of the State of Mauritius, the Magistrate visiting those islands,

shall have exclusive jurisdiction to hear and determine any civil or criminal proceedings under this Act.

7. Offences

Any person who –

(a) contravenes section 3 or any subsidiary enactment made under this Act;

(b) obstructs an authorised officer in the exercise of his powers under section 5;

(c) fails to comply with a request under section 5(c) or, in complying with the request, furnishes any information or document which he knows or should have known to be false or misleading in a material particular,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

8. Regulations

The Minister may make such regulations as he thinks fit for the purposes of this Act.

9. Application of Act

This Act shall cease to apply in relation to any employee who is governed by an enactment where the enactment is amended after the commencement of this Act to provide specifically for the increase referred to in section 3, except where the actual wage or salary earned by an employee immediately before the appointed date exceeds the wage or salary prescribed for him under any enactment.

10. Saving

This Act shall be in addition to, and not in derogation from, any other enactment.

11. Commencement

This Act shall come into operation on the appointed date.

Passed by the National Assembly on the eighteenth day of December two thousand and nine.

Ram Ranjit Dowlutta
Clerk of the National Assembly

SCHEDULE

[Section 2]

Basic wage or salary	**Additional remuneration per month**
Up to Rs 4,000 per month	3.5 per cent rounded up to the next rupee
Above Rs 4,000 and up to Rs 12,000 per month	3.5 per cent rounded up to the next rupee
Above Rs 12,000 per month	Rs 420