

ANTIGUA AND BARBUDA



THE ANTIGUA AND BARBUDA LABOUR CODE (AMENDMENT) BILL, 2019

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(Amendment) Bill 2019*

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ARRANGEMENT OF CLAUSES

1. Short title
2. Interpretation
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4. Consequential Amendment
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AN ACT to amend the Antigua and Barbuda Labour Code, Cap. 27 for incidental and connected purposes.

ENACTED by the Parliament of Antigua and Barbuda as follows-

1. Short title

This Act may be cited as the Antigua and Barbuda Labour Code (Amendment) Act, 2019.

2. Interpretation

In this Act, “the Principal Act” means the Antigua and Barbuda Labour Code, Cap. 27.

3. Amendment of Division C

Division C of the Principal Act is amended in section C3 by—

(a) inserting the following definitions in the appropriate order—

“**contract worker**” means a person who is employed on a fixed term contract;

“**fixed term contract**” means an employment contract in which an employer recruits an employee for a limited period of time to perform a specific task.”

(b) repealing the definition of “**temporary employee**” ; and

(c) inserting the following new section immediately after section C7—

“C7A. Contract workers

(1) Subject to subsection (2), a contract worker who is recruited by an employer shall perform his or her duties under a fixed term contract.

(2) A fixed term contract shall not be issued to an employee for a position which is permanent in nature or which is covered by a collective bargaining agreement.

(3) A fixed term contract shall outline in writing—

- (a) the specific tasks and responsibilities of the employee;
- (b) the period of employment;
- (c) the terms and conditions of the employment arrangement; and
- (d) any other information which is relevant to the employment arrangement.

(4) A fixed term contract may be renewed by mutual agreement between the employer and the contract worker.

(5) A contract worker shall be deemed to be a full time employee if that worker’s fixed term contract—

- (a) has been renewed by the employer on two or more occasions after the initial issuance; and
- (b) the total contractual period for which the worker has been employed amounts in aggregate to one year or more.”

(d) by repealing section C40 and substituting it with the following new section—

“C40. Right to severance pay generally

An employee whose terms of employment with an employer and his predecessors has in aggregate exceeded one year is entitled to severance pay upon termination of said employment by the employer for reasons of redundancy or as a result of the sale of assets or shares or other means of disposal of the undertaking to a successor-employer.”

(e) by repealing section C44 and substituting it with the following new section—

“C44. Limitations on severance pay; offer of equivalent employment.

(1) An employee who is entitled to severance pay under section C40 by reason of a sale of the undertaking to a successor-employer may exercise the option to accept severance pay from the predecessor-employer.

(2) An employee who has exercised the option to accept severance pay from the predecessor-employer ceases to be an employee of that undertaking, but may subsequently accept a new offer of employment from the successor-employer.

(3) Notwithstanding subsection (1), an employee who is entitled to severance pay—

- (a) may exercise the option not to accept severance pay from the predecessor-employer; and
- (b) shall continue employment with the successor-employer; and
- (c) shall have all benefits, rights and privileges which are due to that employee preserved; and
- (d) shall in the event of a subsequent entitlement to severance arising, have his tenure of employment for severance purposes be calculated from the date of his original hiring by the first of a series of predecessor-employer and shall have that severance paid by the successor-employer computed on the basis of his full tenure of employment by the successor-employer and all predecessor-employers.”

4. Consequential amendment

The Banking Act, No. 10 of 2015 is amended by repealing section 176(g) and replacing it as follows—

“(g) an employee employed by the transferor financial institution immediately before the date of the transfer may exercise the option subsequently upon the transfer—

- (i) to accept severance from the transferor financial institution in accordance with section C44(1) of the Antigua and Barbuda Labour Code, Cap. 27, and in which case, that employee shall not be considered an employee of the transferee financial institution unless

that employee accepts a new offer of employment from the transferee financial institution as provided for under section C44(2); or

- (ii) not to accept severance from the transferor financial institution under section C44(3) and shall continue as an employee of the transferee financial institution on terms and conditions no less favourable than those on which the employee was so employed immediately before the date of the transfer, save that no director, secretary or auditor of the transferor financial institution shall by virtue only of a Banking Business Vesting Order become a director, secretary or auditor, as the case may be, of the transferee financial institution.”

5. Amendment of Division F

The principal Act is amended in Division F by repealing the First and Second Schedules and substituting the following new Schedules—



FIRST SCHEDULE

Application under section F5 of WORK PERMIT DIVISION of the Antigua & Barbuda Labour Code

APPLICATION FOR WORK PERMIT TO BE EMPLOYED BY AN EMPLOYER

- 1. Name of Applicant (in capital letters):

Surname..... First Name..... Middle Name.....

Gender (male)..... (female)..... (other).....

Contact #.....

Social Security #.....

- 2. Date of Birth.....

- 3. Place of Birth.....

- 4. Nationality.....

5. Passport #.....
 Place of Issue.....
 Date of Issue.....
 Expiry Date.....
6. Address in Antigua & Barbuda.....
7. Last Address if Applicant has lived outside the State within the past two (2) years.....
8. Status Single () Married () Divorced () Separated () Widow or Widower ()
9. Are you related to any Citizen of Antigua & Barbuda..... yes () no ()
 If yes, state relation.....
10. Date of arrival or expected date of arrival.....
11. Name and address of proposed employer.....
12. Occupation which applicant has held for last two (2) years.....
13. Position in which applicant seeks to be employed.....
14. Qualifications, training and experience in this occupation.....
15. How did applicant become aware of the position mentioned at #13.....
16. Proposed period for which work permit is desired.
 From To
17. Will any other family member be accompanying or joining the applicant in Antigua & Barbuda? Yes () No ()
 If yes state:

Name	Date of Birth	Place of Birth	Nationality	Relation

18. Have you or any of your dependants ever been debarred from entering any country or deported from any country.
 If yes, give particulars and dates.....

I hereby declare that the above information is true and correct

.....
Signature of Applicant

.....
Date

SECOND SCHEDULE

(TO BE COMPLETED BY EMPLOYER ONLY)

1. Name of Employer.....
2. Name of Business.....
3. Business address and contact number:
.....
4. Nature of Business.....
5. Is Business registered as a Company, Partnership or Sole Proprietorship under the Companies Act? Yes () No ()
6. Please state date of Registration.....
7. State:
 - (i) Total Number of employees employed.....
 - (ii) Number of employees employed in each category below:

Managerial	Professional	Technical	Other

- (iii) Total Number of employees who are citizens of Antigua & Barbuda

- (iv) Number of persons employed in each category at (ii) above who are citizens of Antigua & Barbuda.....
 - (v) Number of non-nationals employed in each category at (ii) above.....
8. Steps taken to fill the positions referred to at #7 (ii)
- (a) Advertisement
 - (i) Local.....
 - (ii) Abroad.....
 - (iii) Name of paper/magazine/periodical of Agency
.....
(attach a copy of the Advertisement)
 - (b) Was vacancy advertised with the Labour Department? Yes () No ()
 - (c) Other sources.....
9. What programme has employer instituted for training citizens of Antigua & Barbuda? Give details of programme with dates and other relevant information
.....
.....
.....
10. State description of post to be filled by applicant referred to in First Schedule #13. (Attach a copy of detailed job description).
11. Proposed period for which work permit is desired-
From..... To.....
12. Do you owe any statutory contributions in Antigua & Barbuda? (in the case of application for renewal)
- (a) If yes, state amount and arrangements being made for payment
.....
 - (b) If no, give the number and date of the last receipt for payment
.....

I hereby declare that the above information is true and correct.

.....
Signature of Employer Business Stamp or Seal Date

For Official Use:

Tick the appropriate box:

New () Renewal () Change of Employer ()

Date received

Comments.....
.....
.....
.....
.....
.....

Name of processing Officer.....

Passed the House of Representatives Passed the Senate
this the day of 2019. this day of 2019

Speaker

President

Clerk to the House of Representatives

Clerk to the Senate

EXPLANATORY MEMORANDUM

This Bill seeks to amend the Antigua and Barbuda labour Code, referred to as the Principal Act to take into account the changes that have taken place in the employment landscape over the years.

The main areas which this amendment focusses on involves the manner in which contract workers on fixed term contracts have been dealt with by their employers in Antigua and Barbuda , and the issue of severance as it relates to an employee who is working in an organization in which there is a change in the employer.

In Clause 3, the Interpretation section of Division C is amended by the insertion of two new definitions: “contract worker” and “fixed term contract”. A new section has also been inserted in Division C which outlines the terms and conditions of a contract worker. The directives captured in this amendment incorporates provisions on fixed term contracts from the Termination of Employment Convention, 1982 (No. 158) and the Termination of Employment Recommendations (No. 166). Antigua and Barbuda is a signatory to both Conventions.

Article 3(2) outlines several legal rules which were designed to prevent abuse by employers of contract workers on fixed term contracts. In these legal rules only certain types of work due to their temporary nature are effected on the basis of a fixed term contract. Article 3(2) also dictates that fixed term contracts, when renewed on one or more occasions, shall be deemed to be contracts of employment of indeterminate duration. These legal provisions are now captured in the proposed amendment under clause 3.

Clause 3 also amends Division C by repealing and replacing section C40. The proposed amendment now stipulates that an employee is entitled to severance pay not only as a result of redundancy but also as a result of the business being sold or otherwise disposed of to a successor-employer. Additionally, under the proposed amendment of section C44, an employee is given the option to accept severance to which he or she is legally entitled, from a predecessor-employer if a successor-employer takes over as the new employer. If however, the employee does not want to accept severance payment from his or her previous employer, then he or she has that option, provided that he or she is being retained by the new employer.

Clause 5 consequentially amends section of 176 of the Banking Act as it relates to transfers of banking business and the rights of employees employed in such institutions after the transfer of a banking business to a transferee financial institution.

Clause 5 repeals and replaces the First and Second Schedules under Division F with a more detailed application form which seeks to obtain more relevant information from an applicant as it concerns obtaining a work permit.

Hon. Steadroy Benjamin

Minister responsible for Labour