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**BARBADOS**

A Bill entitled

An Act to protect persons from discrimination related to employment.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Employment (Prevention of Discrimination) Act, 2020*.

**Interpretation**

2.(1) In this Act

“business” has the meaning assigned to it by section 2(1) of the *Employment Rights Act, 2012* (Act 2012-9);

“complainant” means a person who makes a complaint under this Act;

“contract of employment” has the meaning assigned to it by section 3 of the *Employment Rights Act, 2012* (Act 2012-9);

“detriment” includes humiliation and denigration;

“disability”, in relation to a person, includes a long term physical, mental, intellectual or sensory impairment which in interaction with various barriers may hinder the full and effective participation of the person in society;

“discriminate” has the meaning assigned to it by section 3;

“domestic partnership” means the relationship between 2 persons each at least 18 years of age, who live together on a genuine domestic basis but does not include

(a) the relationship between a married couple;

(b) a relationship where one of the persons provides the other with domestic support or personal care or both for a fee or reward,

and “domestic partner” shall be construed accordingly;



“domestic partnership status” means the state of being

- (a) a domestic partner; or
- (b) the domestic partner or the former domestic partner of a particular individual;

“employee” has the meaning assigned to it by section 2(1) of the *Employment Rights Act, 2012* (Act 2012-9);

“employer” has the meaning assigned to it by section 2(1) of the *Employment Rights Act, 2012* (Act 2012-9);

“employment agency” means a person who, for profit, provides services for the purpose of finding employment for others or for supplying employers with employees;

“family member”, in relation to a person, means the child, spouse, domestic partner, parent, uncle, aunt, grandparent, nephew, niece, grandchild, brother or sister of the person;

“family responsibility” means the responsibility of a person, whether alone or in conjunction with others, for the care, support and welfare of a family member;

“marital status” means the state of being

- (a) single;
- (b) married;
- (c) married but living separate and apart from one’s spouse;
- (d) divorced;
- (e) widowed; or
- (f) the spouse or the former spouse of a particular individual;

“medical condition”, in relation to a person, includes

- (a) the total or partial loss of
  - (i) bodily or mental functions; or
  - (ii) a part of the body;
- (b) the presence in the body of organisms causing, or capable of causing, disease or illness;
- (c) the malfunction, malformation or disfigurement of a part of the body;
- (d) a disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction;
- (e) a disorder, illness or disease that affects the thought processes, perception of reality, emotions or judgment of a person or that results in disturbed behaviour;
- (f) a former medical condition; and
- (g) a medical condition that may develop whether because of a genetic predisposition to the condition or otherwise;

“minor” has the meaning assigned to it by section 2 of the *Minors Act*, Cap. 215;

“physical feature” includes the height, weight, shape and size, and any distinguishing mark or peculiarity, of a person;

“respondent” means a person against whom a complaint is made;

“Tribunal” means the Employment Rights Tribunal established by section 6 of the *Employment Rights Act, 2012* (Act 2012-9).

(2) This Act shall be read together with the *Employment Rights Act, 2012* (Act 2012-9) and words defined in that Act and used in this Act have, unless a contrary intention is expressed in this Act, the same meaning.

(3) Where in applying or administering this Act a conflict arises between this Act and the *Employment Rights Act, 2012* (Act 2012-9) this Act shall prevail and

the *Employment Rights Act* shall be construed with such modifications and adaptations as may be necessary for the purpose of giving effect to this Act.

## PART II

### DISCRIMINATION

#### **Meaning of discrimination**

**3.(1)** For the purposes of this Act, a person discriminates against another person where

- (a) the person, on a ground specified in subsection (2), directly or indirectly, whether intentionally or not, makes a distinction, creates an exclusion or shows a preference, the intent or effect of which is to subject the other person to any disadvantage, restriction or other detriment; or
- (b) the person, directly or indirectly, whether intentionally or not, subjects the other person to any disadvantage, restriction or other detriment in the following circumstances:
  - (i) a ground specified in subsection (2) applies to the other person;
  - (ii) as a consequence of the ground the other person does not comply, or is not able to comply, with a particular requirement of the first-mentioned person;
  - (iii) the nature of the requirement is such that a substantially higher proportion of persons to whom the ground does not apply complies, or is able to comply, with the requirement; and
  - (iv) the requirement is not reasonable in the circumstances.

(2) The grounds referred to in subsection (1) are:

- (a) race;

- (b) origin;
  - (c) political opinion;
  - (d) trade union affiliation;
  - (e) colour;
  - (f) creed;
  - (g) sex;
  - (h) sexual orientation;
  - (i) social status;
  - (j) marital status;
  - (k) domestic partnership status;
  - (l) pregnancy;
  - (m) maternity;
  - (n) family responsibility;
  - (o) medical condition;
  - (p) disability;
  - (q) age;
  - (r) physical feature; and
  - (s) any characteristic which appertains generally or is generally imputed to a person on the basis of any ground referred to in paragraphs (a) to (r).
- (3) For the purposes of this Act,
- (a) where a person acts on several grounds including a ground referred to in subsection (2), the person acts on the ground referred to in subsection (2) if the ground is a substantial reason for the person's action;

- (b) a person shall be taken to have discriminated against another person even though the person acts on the basis of a mistaken assumption; and
  - (c) it is not necessary to show that a ground referred to in subsection (2) applies to the person discriminated against where it is shown that the ground, whether on a mistaken assumption or not, was thought to apply to a relative or associate of the person discriminated against and that fact was a substantial reason for the discrimination.
- (4) For the avoidance of doubt and without prejudice to the generality of subsections (1) and (2)(f), a person discriminates on the ground of creed where the person
- (a) directly or indirectly, whether intentionally or not, subjects another person to any disadvantage, restriction or other detriment because of the other person's appearance or dress and that appearance or dress is required by, or symbolic of, the other person's creed; or
  - (b) requires another person to alter his appearance or dress and that appearance or dress is required by, or symbolic of, the other person's creed.

**Prevention of discrimination in relation to job creation and recruitment**

- 4.(1) An employer shall not discriminate against a person
- (a) in the creation of jobs;
  - (b) in the making of arrangements for determining who should be offered employment;
  - (c) in the advertisement of employment;
  - (d) in determining who should be offered employment; or
  - (e) in the terms or conditions on which employment is offered.

- (2) An employment agency shall not discriminate against a person
- (a) by refusing to provide the person with its services;
  - (b) in the terms or conditions on which it offers to provide the person with its services;
  - (c) in the manner in which it provides the person with its services; or
  - (d) in any other manner in which it facilitates the employment of the person.
- (3) Subsection (2) does not require an employment agency to ensure that an employer complies with this Act.

**Prevention of discrimination in employment**

5. An employer shall not discriminate against an employee
- (a) in the terms or conditions of employment that the employer affords the employee;
  - (b) in the provision of facilities or services related to or connected with employment;
  - (c) by the denial or restriction of access to opportunities for promotion, transfer or training or to any other benefits associated with employment;
  - (d) by disciplinary action or dismissal; or
  - (e) by subjection to any other detriment.

**Prohibition against testing for medical condition**

6. Subject to section 8, an employer shall not require a person to answer questions in relation to, or undergo a test for, a medical condition as a precondition to entering into a contract of employment or as a condition for the continuance of employment.

**Employer to make reasonable adjustment**

7.(1) An employer shall, upon the request of an employee, make such adjustment for the employee as may be reasonable in the circumstances, where

- (a) any ground referred to in section 3(2)(f), (g), (h), (l), (m), (n), (o), (p) and (r) applies in respect of the employee; and
  - (b) the failure to make the adjustment results or would result in the employee, because of the ground, being treated less favourably than a person to whom the ground does not apply would be treated in circumstances that are not materially different.
- (2) For the purpose of subsection (1) “adjustment” includes
- (a) allocating some of the duties of the employee to another person;
  - (b) altering the hours of work of the employee;
  - (c) allowing the employee to be absent during hours of work for the purpose of assessment, rehabilitation or other treatment;
  - (d) providing the employee with alternative employment;
  - (e) assigning the employee to a different place of work;
  - (f) modifying procedures for testing or assessment of the employee;
  - (g) modifying instructions or reference manuals with which the employee is required to comply;
  - (h) acquiring or modifying equipment for the use of the employee;
  - (i) making adjustments to premises to be used by the employee;
  - (j) training the employee or arranging for the employee to be trained;
  - (k) providing a reader or interpreter to the employee; and
  - (l) providing supervision for the employee.

## PART III

## EXCEPTIONS

**Genuine occupational qualification**

**8.(1)** A distinction made, exclusion created or preference shown shall not be taken to be discrimination where the reason for the distinction, exclusion or preference is the existence of a genuine occupational qualification.

(2) Notwithstanding section 6, a person may be required to answer questions in relation to, or undergo a test for, a medical condition where the result of the test is necessary to determine whether the person satisfies, or continues to satisfy, a genuine occupational qualification.

(3) For the purposes of this Act, a qualification is a genuine occupational qualification where it is an inherent requirement of a particular position.

(4) Without prejudice to the generality of subsection (3), being of a particular sex shall be taken to be a genuine occupational qualification where

- (a) the job can only be performed by a person who has physical attributes, other than stamina and strength, which only a person of a particular sex possesses;
- (b) it is necessary, in order to preserve decency or privacy, for the job to be performed by a person of a particular sex;
- (c) the nature of the undertaking or establishment within which the job is to be performed requires the job to be held by a person of a particular sex; or
- (d) the job involves providing persons of a particular sex with personal services concerning their welfare, health or education and those services can most effectively be performed by a person of a particular sex.



### **Unjustifiable hardship**

**9.(1)** It is a defence to a complaint in respect of a contravention of section 4, 5 or 7 for a person to show that, in the case of

- (a) section 4 or 5, avoiding the discrimination; or
- (b) section 7, making the adjustment,

would impose an unjustifiable hardship on the person.

(2) For the purpose of subsection (1), in determining whether an unjustifiable hardship would be imposed on a person, all of the relevant circumstances of the particular case shall be taken into account including

- (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
- (b) the financial circumstances of, and the estimated amount of expenditure required to be made by, the person on whom the hardship would be imposed; and
- (c) the availability of financial and other assistance to the person on whom the hardship would be imposed.

### **Measures intended to achieve equality**

**10.(1)** The adoption by an employer of a measure described in subsection (2) shall not be taken to be discrimination.

(2) The measure referred to in subsection (1) is one that is

- (a) designed to promote equality of opportunity for disadvantaged groups;
- (b) a fair and proportionate means of achieving such equality of opportunity; and
- (c) used only for so long as it is necessary for the attainment, in the circumstances, of such equality of opportunity.

**Care of minors**

- 11.** Sections 4 and 5 do not render discrimination unlawful where
- (a) the employment involves the care, instruction or supervision of minors; and
  - (b) the discrimination is reasonably necessary to protect the physical, psychological or emotional well being of such minors.

**Religious bodies**

- 12.** Sections 4 and 5 do not apply to
- (a) the ordination or appointment of priests, ministers of religion or members of a religious order;
  - (b) the training or education of persons seeking ordination or appointment as priests, ministers of religion or members of a religious order;
  - (c) the administration of a body established for religious purposes in accordance with the precepts of that religion; or
  - (d) any other practice of a body established for religious purposes that conforms with the precepts of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

**Educational institutions administered in accordance with particular religious beliefs**

- 13.** Sections 4 and 5 do not render unlawful discrimination in the case of an educational institution where
- (a) the institution is administered in accordance with the precepts of a particular religion; and
  - (b) the discrimination is founded on the precepts of the religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion.

**Religious appearance or dress**

**14.** Sections 4 and 5 do not render unlawful discrimination in the case of religious appearance or dress where

- (a) the discrimination arises as a consequence of a person refusing to reveal his face in circumstances in which the person has been requested to do so for the purpose of verifying the identity of the person, and the request was reasonable in the circumstances;
- (b) by reason of the person's appearance or dress, the person is not, or would not be, able to
  - (i) perform adequately, and without endangering himself or other persons, the work genuinely and reasonably required for the employment or position in question; or
  - (ii) respond adequately to situations of emergency that may reasonably be anticipated in connection with the employment or position in question; or
- (c) the discrimination is for the purposes of enforcing a standard of appearance or dress reasonably required for the employment.

**Charities**

**15.** Sections 4 and 5 do not

- (a) affect a provision in a charitable instrument for conferring benefits wholly or mainly on
  - (i) persons of a particular sex, race, creed, disability, medical condition, age or age group;
  - (ii) persons of a particular marital or domestic partnership status;
  - (iii) pregnant women;
  - (iv) spouses or domestic partners of a particular category;

- (v) persons with family responsibilities or particular family responsibilities; or
- (b) render unlawful an act done to give effect to such a provision.

### **Sport**

**16.(1)** Sections 4 and 5 do not render unlawful the exclusion of persons from participation in a competitive sporting activity on the ground of sex in the following circumstances:

- (a) where the sporting activity is one in which the strength, stamina or physique of the competitor is relevant to the outcome of the competition;
- (b) where the exclusion is genuinely intended to facilitate or increase the participation of persons, or a category of persons, of a particular sex in the sporting activity and
  - (i) it is unlikely that those persons will participate, or that there will be an increase in participation by those persons, in the sporting activity if the exclusion is not made (having regard to all of the circumstances of the persons or category of persons); and
  - (ii) there are reasonable opportunities for excluded persons to participate in the sporting activity in another competition;
- (c) where
  - (i) the exclusion is reasonably required to enable participants in the sporting activity to advance to competitions at a level higher than that in which the exclusion is to occur (being a requirement that is due to the structure of, or restrictions in, the higher level competitions); and
  - (ii) there are reasonable opportunities for excluded persons to participate in the sporting activity in another competition; or

- (d) in such other circumstances as may be prescribed by the Minister by Order.
- (2) Sections 4 and 5 do not render unlawful the exclusion of a person who has a disability from participation in a sporting activity where
  - (a) the activity requires physical or intellectual attributes that the person does not possess; or
  - (b) in the case of a sporting activity conducted wholly or mainly for persons who have a particular disability, the person's disability is not of that kind.
- (3) Sections 4 and 5 do not render unlawful the exclusion of persons of particular age groups from participation in a competitive sporting activity.
- (4) Sections 4 and 5 do not render unlawful the exclusion of persons from participation in a competitive sporting activity on the ground of physical feature where the sporting activity is one in which the strength, stamina or physique of the competitor is relevant to the outcome of the competition.

**Visual and performing arts**

- 17.(1)** Sections 4 and 5 do not render unlawful discrimination in relation to visual and performing arts on the ground of age, race, sex or colour where the discrimination is reasonable or necessary for reasons of authenticity or credibility.
- (2) Sections 4 and 5 do not render unlawful discrimination in relation to visual and performing arts on the ground of physical feature.
- (3) For the purpose of this section “visual and performing arts” includes modelling.

**Employment other than in connection with a business**

- 18.** This Act does not apply where the employment is not connected with a business of the employer.

**Insurance**

**19.** Sections 4 and 5 do not render unlawful discrimination on the ground of sex, age or medical condition in respect of the terms on which medical insurance or any other form of insurance is offered or may be obtained as a term or condition of employment where the discrimination is

- (a) based on actuarial or statistical data from a source on which it is reasonable to rely; and
- (b) reasonable having regard to that data.

**Exception regarding identity of family member in certain cases**

**20.** Sections 4 and 5 do not render unlawful discrimination on the ground of the identity of a family member where the discrimination is, having regard to all the circumstances of the particular case, reasonably necessary to preserve confidentiality, avoid conflicts of interest or nepotism or protect the health or safety of persons.

**Exception regarding pregnancy**

**21.** Sections 4 and 5 do not render unlawful the granting to women of rights or privileges in connection with pregnancy or childbirth, whether pursuant to an enactment or otherwise.

**Acts done in compliance with court order or pursuant to enactment**

**22.** An act done

- (a) in compliance with an order of a court; or
- (b) pursuant to any enactment,

shall not be taken to be discrimination.

## PART IV

## ENFORCEMENT

**Complaint of discrimination in relation to job creation and recruitment**

**23.** A person who alleges that he has been discriminated against in contravention of section 4 may, within 3 months of the date of the occurrence of the discrimination, make a written complaint to the Tribunal.

**Complaint of discrimination by fellow employee**

**24.(1)** An employee who alleges that he has been discriminated against by another employee may, within 3 months of the date of the occurrence of the discrimination, make a written complaint to the employer.

- (2) An employer shall, upon receipt of a complaint under subsection (1),
  - (a) inform the employee against whom the complaint is made, of the substance of the complaint in writing; and
  - (b) investigate the complaint.
- (3) Where after conducting an investigation an employer finds that
  - (a) an employee has been discriminated against, the employer shall take such disciplinary action as is appropriate against the employee against whom the complaint is made; or
  - (b) discrimination has not been committed, the employer shall in writing notify the complainant and the employee against whom the complaint is made of his decision and the reason for it.
- (4) Where discrimination continues after a complaint is made to, or action is taken by, an employer under this section, an employee may, within 3 months of the date of the occurrence of the event that constitutes a continuation of the discrimination, make a written complaint to the Tribunal.

(5) Where an employee is aggrieved by the decision or action of an employer under this section, the employee may, within 3 months of the date of notification of the decision or the taking of the action, make a written complaint to the Tribunal.

**Complaint of discrimination by employer**

25. An employee who alleges that he has been discriminated against by his employer in contravention of section 5 may, within 3 months of the date of the occurrence of the discrimination, make a written complaint to the Tribunal.

**Complaint in relation to questions on or testing for medical conditions**

26. A person who alleges that he has been required to answer questions in relation to, or to undergo a test for, a medical condition as a precondition to entering into a contract of employment or as a condition for the continuance of employment in contravention of section 6 may, within 3 months of the date on which the person was required to answer the questions or was informed of the requirement for the test, make a written complaint to the Tribunal.

**Complaint in relation to failure to make reasonable adjustment**

27.(1) An employee who alleges that an employer has contravened section 7 in relation to him may, within 3 months of the date on which the matter complained of arose, make a written complaint to the Tribunal.

(2) A matter shall not be taken to have arisen for the purposes of making a complaint under subsection (1) unless an employee allows an employer, having regard to the particular circumstances, a reasonable period within which to make an adjustment under section 7.

**Complaints by representative organisations and group complaints**

28.(1) A complaint may be made by another person or by a trade union or another representative group on behalf of a person.



(2) Where a group of persons, having the same or substantially the same interests, has a complaint, one complaint may be made in a representative capacity.

**Tribunal may extend time for making complaint**

**29.** Notwithstanding sections 23 to 27, where the Tribunal is satisfied that it was not reasonably practicable for a complaint to be presented within a period prescribed in those sections, the Tribunal may hear and determine the complaint where the complaint is presented within such further period as the Tribunal considers reasonable in the circumstances.

**Complaint to Tribunal to be made through Chief Labour Officer**

**30.(1)** A complaint to be made to the Tribunal under this Act shall be made through the Chief Labour Officer.

(2) A complaint shall be taken to have been made to the Tribunal on the date that it is presented to the Chief Labour Officer.

**Action by Chief Labour Officer and Tribunal upon receipt of a complaint**

**31.** Sections 43 and 44 of the *Employment Rights Act, 2012* (Act 2012-9) apply, with such modifications and adaptations as may be necessary, to a complaint under this Act in the same manner as those sections apply to a complaint under that Act.

**Determination of complaint by Tribunal**

**32.** Where the Tribunal finds that a complaint under this Act is well founded, the Tribunal

- (a) shall make a declaration to that effect;
- (b) may order the respondent to
  - (i) pay compensation to the complainant;

- (ii) make such adjustment for the complainant as may be reasonable in the circumstances;
  - (iii) make available to the complainant, specific opportunities and privileges unfairly denied to the complainant;
  - (iv) implement such policies or measures as the Tribunal may order to eliminate discrimination or terminate any policies or measures that facilitate discrimination;
  - (v) undertake counselling or training designed to eliminate discrimination;
  - (vi) provide to the Tribunal such reports as the Tribunal may require regarding the implementation by the respondent of the order of the Tribunal; and
- (c) may, where the complaint involved the dismissal of the employee, proceed with the case under Part VI of the *Employment Rights Act, 2012* (Act 2012-9) as if the case were a case in which the Tribunal had found that a complaint of unfair dismissal was well founded.

**Functions of Chief Labour Officer generally in relation to administration and enforcement of Act**

**33.** Sections 5 and 45 of the *Employment Rights Act, 2012* (Act 2012-9) apply to the administration and enforcement of this Act, with such modifications and adaptations as may be necessary, as those sections apply to that Act.

PART V

MISCELLANEOUS

**Register of complaints**

- 34.(1)** The Chief Labour Officer shall cause to be kept a register of all complaints made under this Act.
- (2) The Chief Labour Officer shall cause to be recorded in the register
- (a) the name and address of the person who made the complaint;
  - (b) the ground of discrimination alleged and a brief statement of the facts giving rise to the complaint; and
  - (c) such other information as may be appropriate.
- (3) The register shall be maintained in a confidential manner.

**Policy against discrimination**

- 35.(1)** An employer shall
- (a) have a clear, written policy against discrimination within the workplace which
    - (i) must contain the terms set out in the *First Schedule*; and
    - (ii) may contain any term that is consistent with this Act; and
  - (b) present a copy of the policy to each employee within 6 months of the commencement of this Act or upon the commencement of employment by the employee.
- (2) An employer may consult with employees and their representatives in relation to the establishment of the policy.

(3) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$5 000 or to imprisonment for 6 months or both.

(4) The Minister may by Order amend the *First Schedule*.

### **Confidentiality**

**36.(1)** An employer who keeps or handles the medical records of an employee shall

- (a) ensure that the records are kept and handled confidentially; and
- (b) not divulge the contents of the records to any person except
  - (i) with the consent of the employee and in accordance with the terms of that consent;
  - (ii) in accordance with an order of the Tribunal or a court; or
  - (iii) in accordance with an enactment.

(2) An employer who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$10 000 or to imprisonment for one year or both.

### **Prohibition of victimization of employees**

**37.(1)** No employer shall carry out any action which adversely affects the opportunities and terms and conditions of service of an employee who has

- (a) made a complaint under this Act;
- (b) given testimony with respect to any investigation conducted or hearing held under this Act in connection with a complaint; or
- (c) otherwise participated in an investigation, procedure or hearing under this Act.

- (2) No person shall subject or threaten to subject another person to any detriment on the ground that the other person has
- (a) made or proposes to make a complaint under this Act;
  - (b) furnished or proposes to furnish any information or any documents to a person exercising or performing any function under this Act; or
  - (c) attended or proposes to attend a hearing under this Act in which he has a direct interest or to appear at the hearing as a witness.
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on summary conviction to a fine of \$20 000 or to imprisonment for 2 years or both.

**Regulations**

- 38.** The Minister may make Regulations for giving effect to this Act.

**Consequential amendments**

- 39.** The enactment set out in the first column of the *Second Schedule* is amended to the extent specified opposite thereto in the second column.

**Commencement**

- 40.** This Act comes into operation on a date to be fixed by Proclamation.

**FIRST SCHEDULE***(Section 35)***CONTENT OF POLICY STATEMENT AGAINST DISCRIMINATION**

The policy statement against discrimination referred to in section 35 must contain the following provisions:

- (a) a definition of discrimination that is substantially the same as the definition in section 3;
- (b) a statement to the effect that every employee is entitled to employment free of discrimination;
- (c) a statement to the effect that the employer will make every reasonable effort to ensure that no employee is subjected to discrimination;
- (d) a statement to the effect that the employer will take such disciplinary measures as the employer deems appropriate against any person under the employer's direction who subjects an employee to discrimination;
- (e) a statement explaining how complaints of discrimination may be brought to the attention of the employer;
- (f) a statement to the effect that the employer will not disclose the name of a complainant or respondent or the circumstances related to a complaint to any person except where disclosure is necessary for the purposes of investigating the complaint or taking disciplinary measures in relation thereto; and
- (g) a statement informing employees of the provisions in this Act which give them a right to make a complaint where discrimination is committed against them and the relevant authority to whom the complaint may be made.

## SECOND SCHEDULE

*(Section 39)*

## CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
Enactment	Amendments
<i>Employment Rights Act, 2012</i> (Act 2012-9).	<ol style="list-style-type: none"> <li>1. In section 2, delete the definitions of "disability", "family member" and "spouse".</li> <li>2. Delete section 7(2) and substitute the following:           <ol style="list-style-type: none"> <li>"(2) The jurisdiction of the Tribunal is to determine complaints made to it under this Act or under any other enactment that provides for enforcement by the Tribunal, and subject to section 48, to make awards and other decisions in relation to those complaints in accordance with its powers."</li> </ol> </li> <li>3. In section 11, insert after the word "harassment", the words "or a contravention of the <i>Employment (Prevention of Discrimination) Act, 2020</i> (Act 2020- )".</li> <li>4. In section 30(1)           <ol style="list-style-type: none"> <li>(a) in paragraph (c)               <ol style="list-style-type: none"> <li>(i) delete sub-paragraph (vii);</li> <li>(ii) in sub-paragraph (ix), insert after the semicolon, the word "or"; and</li> <li>(iii) delete sub-paragraphs (x) and (xi); and</li> </ol> </li> <li>(b) insert after paragraph (c), the following:               <ol style="list-style-type: none"> <li>"(d) the reason for the dismissal constitutes a contravention of the <i>Employment (Prevention of Discrimination) Act, 2020</i> (Act 2020- )".</li> </ol> </li> </ol> </li> </ol>

Read three times and passed the House of Assembly this  
day of \_\_\_\_\_, 2020.

**Speaker**

Read three times and passed the Senate this \_\_\_\_\_ day of  
, 2020.

**President**



## **EMPLOYMENT (PREVENTION OF DISCRIMINATION) BILL, 2020**

### **EXPLANATORY MEMORANDUM**

The Bill would protect persons from discrimination related to employment.

#### **PART I - PRELIMINARY**

- Clause 1:** provides the short title.
- Clause 2:** provides definitions for certain terms used in the Bill.

#### **PART II - DISCRIMINATION**

- Clause 3:** explains the concept of discrimination.
- Clause 4:** prohibits discrimination in relation to job creation and recruitment.
- Clause 5:** prohibits discrimination in relation to employment, including in terms of promotion, transfer and training.
- Clause 6:** prevents employers from testing an employee or potential employee for a medical condition unless the issue relates to a genuine occupational qualification of the job
- Clause 7:** requires an employer to make reasonable adjustment for employees in relation to certain issues including disability and family responsibility.

#### **PART III - EXCEPTIONS**

- Clause 8:** explains the concept of a genuine occupational qualification.

- Clause 9:** relieves an employer from making certain adjustments for an employee where to do so would cause unjustifiable hardship.
- Clauses 10 to 22:** provides certain exceptions to the rules against discrimination. These include measures to achieve equality, for the care of minors, by religious bodies, educational institutions administered in accordance with religious beliefs and charities, in the area of sports and visual and performing arts, where employment is not connected with an employer's business, for the purpose of insurance and measures to comply with court orders and other laws.

#### PART IV - ENFORCEMENT

- Clause 23:** provides for a person to make a complaint to the Employment Rights Tribunal where he is discriminated against in respect of the creation of jobs or recruitment.
- Clause 24:** requires an employee to first complain to his employer where a fellow employee discriminates against him and, where the discrimination continues, to complain to the Tribunal.
- Clause 25:** provides for an employer to complain to the Tribunal where his employer discriminates against him.
- Clause 26:** permits the making of a complaint where a person is required to be tested for a medical condition as a condition of employment or continued employment.
- Clause 27:** allows for an employee to also complain where an employer fails to make reasonable adjustment for him.
- Clause 28:** provides for complaints by employee representatives and group complaints.

- Clause 29:** empowers the Tribunal to extend the time for making a complaint in appropriate cases.
- Clause 30:** requires that a complaint to the Tribunal be made through the Chief Labour Officer.
- Clause 31:** explains the role of the Chief Labour Officer and the Tribunal upon receipt of a complaint.
- Clause 32:** provides for the determination of complaints by the Tribunal and the remedies that may be awarded.
- Clause 33:** sets out the functions of the Chief Labour Officer.

#### PART V - MISCELLANEOUS

- Clause 34:** requires the Chief Labour Officer to keep a register of complaints.
- Clause 35:** requires an employer to establish and distribute a policy statement against discrimination. The mandatory terms of the statement are set out in the First Schedule.
- Clause 36:** imposes a duty of confidentiality on an employer who handles the medical records of his employees.
- Clause 37:** proscribes, among other things, victimization of employees who make complaints.
- Clause 38:** empowers the Minister to make regulations.
- Clause 39:** requires the making of consequential amendments to the *Employment Rights Act, 2012* (Act 2012-9). The amendments are set out in the Second Schedule.

Employment (Prevention of  
Discrimination) Bill, 2020

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***Clause 40:*** provides for the commencement of the legislation upon Proclamation.