

S.I. 75 of 2020**THE INTERNATIONAL TRADE ZONE (EMPLOYMENT)
REGULATIONS, 1997***(S.I. 13 of 1997)***International Trade Zone Employment (Coronavirus
Special Leave) (Temporary measures) Order, 2020**

In exercise of the powers conferred by regulation 20(1) of the International Trade Zone (Employment) Regulations, 1997, the Minister for Finance, Trade, Investment and Economic Planning, in consultation with the Authority, hereby makes the following Order —

1. This Order may be cited as the International Trade Zone Employment (Coronavirus Special Leave) (Temporary Measures) Order, 2020. Citation

2. In this Order, unless the context otherwise requires — Interpretation
 - (a) “coronavirus” means the virus known as Wuhan novel coronavirus (2019-nCov) or Covid-19;
 - (b) “essential service” means —
 - (i) a service relating to the generation, supply or distribution of electricity;
 - (ii) any hospital or medical services;
 - (iii) a service relating to the supply or distribution of water;
 - (iv) a service relating to the sewerage service;

- (v) airport and port and marine services including civil aviation, customs, immigration, airline catering and loading, unloading and service of ships or aircrafts;
- (vi) fire and rescue services;
- (vii) a service relating to retail or distribution of pharmaceutical products and medical equipment;
- (viii) wireless, telephone, internet and cable communication services;
- (ix) meteorological service;
- (x) postal services;
- (xi) banking and financial services;
- (xii) service relating to retail, wholesale, distribution and supplies of, food and water;
- (xiii) service of manufacturing of essential commodities;
- (xiv) service of public transportation including inter-island air and sea transportation;
- (xv) waste collection and disposal service;
- (xvi) petroleum and gas retail services;
- (xvii) storage, supply and distribution of petroleum and gas services;
- (xviii) security services;

- (xix) disaster management services;
 - (xx) print, audio and visual media or broadcasting services;
 - (xxi) service of Government treasury; and
 - (xxii) district administration service;
- (c) “isolation”, in relation to a worker, means the process where —
- (i) a worker is isolating himself, from other people as a precautionary measure to prevent the spread of coronavirus, in accordance with the directive of the health authorities or under the relevant law and by reason of the isolation, the worker is unable to attend the work; or
 - (ii) a worker is in quarantine in accordance with the Quarantine Act; or
 - (iii) a worker is segregated or separated from any other person in such a manner as to prevent the spread of, or to undergo treatment for, coronavirus;
- (d) “parent” means the father, mother, or any other, person who has actual custody, charge, or control of a relevant child;
- (e) “relevant child” means a child who —
- (i) is between 3½ months and 4 years old; or
 - (ii) has not attained the age of 15 years and who attends a relevant institution and

- the relevant institution is closed down during the specified period, in pursuance of —
- (A) a directive of the Ministry responsible for education;
 - (B) a directive of the management of a relevant institution; or
 - (C) an order made under any relevant law;
- (f) “relevant institution” means —
- (i) a childminding establishment under the Institute of Early Childhood Development Act, 2014;
 - (ii) an institution providing formal early childhood education under the Education Act; or
 - (iii) an educational institution, under the Education Act;
- (g) “relevant worker” means a person employed in a zone who is —
- (A) a single parent;
 - (B) cohabiting with the other parent of a relevant child or a spouse, who is —
 - (i) employed in an essential service or as a home caregiver;
 - (ii) in isolation;
 - (iii) employed and is not on special leave; or

- (iv) incapable of caring for, and looking after the wellbeing of, a relevant child for any reasonable cause, including on the basis of disability, confinement or absence from Seychelles.
 - (h) “special leave” means paid leave granted to a relevant worker under paragraph 4(1), (3)(a), (8) or (11) or to a worker under paragraph 4(3)(b), (5) or (8) during the specified period or to a worker under paragraph 7;
 - (i) “specified period” means the period starting from 16th March, 2020, to such date as the Minister, may, from time to time, prescribe by notice published in the Gazette;
 - (j) “spouse”, in relation to a parent, means a person cohabiting with a parent by virtue of marriage or concubinage.
- 3.(1) This Order apply to a contract of employment — Application
- (a) of continuous employment; and
 - (b) for a certain period.
- (2) This Order shall not apply to a worker who is out of the jurisdiction during the specified period or any part thereof.
- 4.(1) A relevant worker shall be eligible for special leave. Eligibility and conditions of special leave
- (2) A relevant worker, who is a parent to more than one relevant child and who applies for special leave, shall be deemed to have applied for special leave in respect of all of his or her relevant children.
- (3) Notwithstanding anything to the contrary under the International Trade Zone (Conditions of Employment) Order,

1997 and any Employment regulations made under the International Trade Zone Act, where —

- (a) a relevant worker is on annual leave or compassionate leave during the specified period, that was applied for and approved between 16th March, 2020, and the coming into operation of this Order; or
- (b) an employer has given permission to a worker to be absent from work for any period between 16th March, 2020, and the date of the coming into operation of this Order, the compassionate leave or annual leave of the relevant worker or absence of the worker shall not constitute or be treated as annual leave or compassionate leave, as the case may be.

(4) Where paragraph (3) is applicable, the period of such leave or absence, as the case may be, shall not be deducted from the annual leave or compassionate leave of the relevant worker and he or she shall be entitled to his or her wages during the relevant period.

(5) Subject to paragraph 4(13), where a public body or the undertaking or business of an employer has ceased to operate in whole or in part during the specified period and the employer permits a worker, other than a relevant worker, to be absent from work, the worker shall be deemed to be on special leave during the worker's absence provided that during such absence —

- (a) the worker shall be at the disposal of the employer to perform any work remotely from the home of the worker or from such other place; and
- (b) the employer may at any time request the worker to resume work at the work place or at such other place provided by the employer.

(6) Inconsidering an application for special leave an employer shall, *inter alia* take into account the following —

- (a) the fact that the worker is a single parent;
- (b) the fact that the worker is a parent of a relevant child and his or her spouse is employed in an essential service or as a home care giver; or
- (c) the fact that the spouse of the worker or the parent of a relevant child is in isolation or incapable of caring for, and looking after the well being of, the relevant child for any reasonable cause, including on the basis of disability, confinement or absence from Seychelles.

(7) Notwithstanding the eligibility of a relevant worker to apply for special leave under subparagraph (1), special leave cannot be granted to multiple workers in essential sections concurrently, if absence of the workers shall affect the operations of the business of the employer.

(8) Notwithstanding subparagraph (7) the employer shall not refuse special leave to a worker or relevant worker unless there is a valid reason for doing so and this can be proved by the employer when called upon by the Authority.

(9) Where an order restricting, controlling or prohibiting the movement of persons outdoors in the whole or any part of Seychelles is in force under any written law during the specified period a worker shall be deemed to be on special leave.

(10) Sub paragraph (9) shall not apply to a worker who works and resides in an area of Seychelles that is excluded from the order referred to in sub paragraph (9).

(11) Notwithstanding anything to the contrary under the International Trade Zone (Conditions of Employment) Order, 1997 and any Employment regulations made under the International Trade Zone Act, subject to sub paragraph (12), any annual leave or compassionate leave taken by a relevant worker during the period from the coming into operation of this order to the expiration of the specified period shall constitute special leave and the period of such leave shall not be deducted from the annual leave or compassionate leave of the relevant worker and he or she shall be entitled to his or her wages during the relevant period.

(12) A relevant worker who is a parent of a relevant child shall not be entitled to special leave under sub paragraph (1) at the same time with his or her spouse, or the other parent of the relevant child.

(13) Notwithstanding anything to the contrary in sub paragraph (5), an employer may with the consent of a worker grant annual leave to the worker during the specified period.

Application
for special
leave

5.(1) An application for special leave shall be made by a relevant worker under Paragraph 4(1) in accordance with the form for special leave application under the Schedule.

(2) Where on the coming into operation of this Order, a worker or relevant worker is on annual leave or compassionate leave or is absent from work under paragraph 4(3)(a) or (5), the employer may require the worker or relevant worker to submit an application to confirm the eligibility of the worker or relevant worker for special leave under regulation 4(1), (3) or (5).

(3) Where —

- (a) an employer is in receipt of an application for special leave; or
- (b) a relevant worker of an employer is absent from work during the specified period,

the employer may request the employer of, the other parent of the relevant child, or the spouse of the relevant worker, for information relating to eligibility of, or grant of special leave to, that other parent or the spouse.

(4) An employer who receives a request for information from an employer under sub paragraph (3) shall provide the information to the requestor as soon as practicable.

(5) Where a worker is absent from work from 16th March, 2020, and is not eligible for special leave, an employer may request the worker to resume work on such date that the employer shall direct the worker in writing or by electronic correspondence to do so.

(6) Subject to paragraph 6(1), a worker who has been requested to resume work under sub paragraph (5) shall promptly comply with the request of his or her employer.

6.(1) A worker aggrieved by a decision of an employer refusing an application for special leave or requesting the worker to resume work under paragraph 4(5) or the Union on behalf of the worker, may within 7 days of service of the decision of the employer on the worker, lodge a grievance with the Authority under this Order.

Appeal against
refusal of
special leave

(2) A grievance lodged with the Authority against the decision of an employer refusing an application for special leave shall not be construed as a suspension of the decision of the employer unless otherwise directed by the Authority.

(3) In dealing with the grievance, the Authority shall invite oral or written representation of the worker and the employer, keep a record of the grievance and file any evidence or documents produced or any written submissions made.

(4) Where the Authority hears representation of the worker or the employer, the Authority shall have the power to—

- (a) summon any person to appear before it;
- (b) examine a witness or any person appearing before it;
- (c) require any person to produce any document which the Authority considers relevant.

(5) The Authority may consult the Employment Council on any grievance before making a determination.

(6) Upon concluding the grievance, the Authority shall, make a written determination to —

- (a) confirm the decision of the employer;
- (b) vary the decision of the employer;
- (c) reverse or set aside the decision of the employer; or
- (d) order that the employer grants the worker special leave during the specified period or any part of the specified period.

(7) A determination of the Authority under this Order shall be given within 7 days or such longer period as may be specified after the date of filing of the grievance.

(8) A determination of the Authority made under this Order shall not be invalidated on the ground that it was not given within the period specified in sub paragraph (7).

(9) The Authority may revoke the determination given under sub paragraph (7) within a period of 7 days after the date of the determination and make a new determination if the Authority is satisfied that the relevant facts in existence at the time when the determination was made, were not made known to the Authority and that it is just and equitable.

(10) The Authority may hear the relevant worker and the employer before making a determination under sub paragraph (9).

(11) Where an employer or a relevant worker is dissatisfied with the determination of the Authority, the employer or relevant worker may make an appeal to the Minister.

(12) Where an appeal is made under sub paragraph (11), the appeal shall not operate as a suspension of the determination of the Authority unless otherwise directed by the Minister.

(13) Upon receiving an appeal under this Order, the Minister may consult with the Employment Council before giving a decision.

(14) A decision of the Minister under this Order shall be given within 7 days or such longer period as may be specified after the date of the lodgment of the appeal.

(15) Where an employer or a relevant worker is dissatisfied with the decision of the Minister under sub paragraph (14), the employer or relevant worker may make an application to the Supreme Court to review the decision of the Minister.

(16) Where an application for review is made under subparagraph (15), the application shall not operate as a suspension of the decision of the Minister, unless otherwise directed by the Supreme Court.

7. Notwithstanding anything to the contrary under the International Trade Zone (Conditions of Employment) Order, 1997 and any Employment regulations made under the International Trade Zone Act, where a worker is in isolation, the period that the worker is in isolation shall constitute special leave and the period of such leave shall not be deducted from

Special leave
during
isolation

the annual leave, compassionate leave, or sick leave of the worker and the worker shall be entitled to his or her wages during the period of his or her isolation.

Clarity

8. For the avoidance of doubt, special leave or absence from work by a worker under this Order shall not constitute or be interpreted as unauthorized absence from work or a break in the length of service of the worker for the calculation of compensation and shall not affect the eligibility of workers benefiting from the thirteen month pay.

Consequential amendment to S.I. 13 of 1997

9. Schedule 2 of the International Trade Zone (Employment) Regulations, 1997 is amended —

(a) by inserting in Part I, after subparagraph (f) the following sub paragraph —

“(g) willfully or intentionally apply for special leave under the International Trade Zone Employment (Coronavirus Special Leave) (Temporary Measures) Order, 2020, in circumstances where the worker is not eligible for special leave.”

(b) by inserting in Part II after subparagraph (p) the following subparagraph —

“(q) knowingly makes false statements in an application for special leave under the International Trade Zone Employment (Coronavirus Special Leave) (Temporary Measures) Order, 2020.”

SCHEDULE**FORM FOR SPECIAL LEAVE APPLICATION**

Application for special leave under International Trade Zone Employment
(Coronavirus Special Leave) (Temporary measures) Order, 2020 for
working parents

<p>1. Worker's details</p> <p>Employer:</p> <p>Full Name:</p> <p>National Identity Number or Passport number:</p> <p>Post title:</p> <p>Department/ Division/ Section/Unit:</p> <p>Home address:</p> <p>Contact telephone number:</p> <p>Email address:</p> <p>Type of contract <input type="checkbox"/> periodic contract <input type="checkbox"/> continuous contract <input type="checkbox"/></p>
<p>2. Employer details</p> <p>Name of Employer:</p> <p>Home address:</p> <p>Contact telephone number:</p> <p>Email address:</p>

3. Details of relevant children (applicable for below 15 years of age)

Name: Surname:

National Identity Number or Passport number: Age:

Home address:

Institution's / child-minder's name: Institution level:

Name: Surname:

National Identity Number or Passport number: Age:

Home address:

Institution's / child-minder's name: Institution level:

Name: Surname:

National Identity Number or Passport number: Age:

Home address:

Institution's / child-minder's name: Institution level:

If more, fill in a separate page.

4. Spouse details (if applicable)

Full Name:

National Identity Number or Passport number:

Home address:

Employing organization..... Contact telephone number:.....

Post title:

Relationship with child:.....

5. Other parent (if applicable)

Full Name:

National Identity Number or Passport number:

Home address:

Employing organization..... Contact telephone number:.....

Post title:

Relationship with child:.....

6. Request for special leave

Date of special leave (dd/mm yy): From to

I hereby declare that the information provided is true and correct. I also understand that any false declaration shall result in disciplinary action against me.

Signature:..... Date:.....

7. FOR EMPLOYEE

Full Name Head of Department/ Division/ Section.....

Post title:.....

Request approved Request and approved

If refused, grounds for:

 Essential section Other parent on leave

Signature:..... Date:.....

MADE this 3rd day of June, 2020.

**MAURICE LOUSTAU-LALANNE
MINISTER OF FINANCE, TRADE
INVESTMENT AND ECONOMIC PLANNING**
