

Statutory Instrument 6 of 2002.

Labour Relations (Terminal Benefits and Entitlements of Agricultural Employees Affected by Compulsory Acquisition) Regulations, 2002

S.Is 6/2002, 101/2002, 232/2002, 233/2006.

IT is hereby notified that the Minister of Public Service, Labour and Social Welfare, in terms of section 17 of the Labour Relations Act [Chapter 28:01], has made the following regulations:—

1. Title

These regulations may be cited as the Labour Relations (Terminal Benefits and Entitlements of Agricultural Employees Affected by Compulsory Acquisition) Regulations, 2002.

2. Interpretation

In these regulations—

“acquiring authority” has the meaning given to that term by section 2 of the Land Acquisition Act [Chapter 20:10];

“agricultural industry” means the industry in which employers and employees are associated for the commercial production of crops, including forestry, livestock, poultry and fish, and their produce, and includes the complementary processing of agricultural products on the property of the employer where such livestock or crops are produced or on the property of any other agricultural employers;

“Agricultural Industry Agreement” means the Collective Bargaining Agreement for the Agricultural Industry published in Statutory Instrument 323 of 1993, as amended from time to time;

“Committee” means the Agricultural Employees’ Compensation Committee established in terms of section 5;

“employee” means any person employed by, or working for, any employer in the agricultural industry, and receiving or entitled to receive any remuneration in respect of such employment or work;

“employer” means any person who employs or provides work for another person in the agricultural industry and remunerates or expressly or tacitly undertakes to remunerate him, and includes the manager, agent or representative of such person who is in charge or control of the work upon which such other person is employed;

“farm” means any piece of rural land on which employees are employed;

“terminal benefits and entitlements”, in relation to an employee, means the benefits and entitlements specified in paragraphs (a) to (f) of subsection (1) of section 3.

3. Terminal benefits and entitlements of agricultural employees affected by compulsory acquisition

(1) Notwithstanding any other statutory instrument, arrangement or agreement to the contrary, if it becomes necessary for an employer to terminate the employment of any employee because any farm or part of a farm belonging to the employer has been compulsorily acquired for resettlement or other purposes in terms of the Land Acquisition Act [Chapter 20:10], the following amounts shall be payable by the employer to each employee whose employment is so terminated—

- (a) severance pay equivalent to the full wages of the employee for a period of three months as shall be calculated using the wage rate at the time when the employer’s property was evaluated by the Ministry of Lands; and

[Paragraph amended by s.i. 232 of 2006.]

- (b) wages in lieu of notice under the contract of employment or Agricultural Industry Agreement; and

- (c) an amount equivalent to twice the employee’s current monthly wage for each completed year of continuous service with the employer as shall be calculated using the wage rate at the time when the employer’s property was evaluated by the Ministry of Lands; and

[Paragraph amended by s.i. 232 of 2006.]

- (d) an amount of one month’s pay in respect of the relocation of the employee; and

[Paragraph amended by s.i. 232 of 2006.]

- (e) the gratuity on termination of employment payable to the employee in terms of section 23 of the Agricultural Industry Agreement; and

(f) the cash equivalent of any vacation leave accumulated by the employee in the year in which the termination of his employment occurred.

(2) Where an employee is paid otherwise than monthly, the monthly equivalent of his weekly, daily or hourly wage shall be calculated in accordance with section 9 of the Agricultural Industry Agreement.

(3) For the purpose of paragraph (c) of subsection (1), continuous service shall be construed in accordance with the Agricultural Industry Agreement.

4. When employment deemed to have been terminated because of compulsory acquisition

If, at any time after a preliminary notice is served on an employer in terms of paragraph (b) of subsection (1) of section 5 of the Land Acquisition Act [*Chapter 20:10*] the employment of any person on the farm, or part of a farm referred to in that notice is terminated, then it shall be presumed for the purposes of section 3 that such employment was terminated because of such acquisition, unless the contrary is proved by the employer concerned.

5. Agricultural Employees Compensation Committee

(1) There is hereby established a committee, to be known as the Agricultural Employees' Compensation Committee, which shall consist of the Secretary of the Ministry responsible for Public Service, Labour and Social Welfare or his nominee, who shall be the chairman of the Committee, and the following members appointed by the Minister—

- (a) an additional representative of the Ministry responsible for Public Service, Labour and Social Welfare chosen by the Minister; and
- (b) a person nominated by the Minister responsible for agriculture; and
- (c) a person nominated by the Minister responsible for local government; and
- (d) a person nominated by the employer representatives in the National Employment Council for the Agricultural Industry; and
- (e) a person nominated by the employee representatives in the National Employment Council for the Agricultural Industry.

(2) Each member of the Committee may appoint a person as an alternate member of the Committee, and any such alternate member may act as a member during any period that a substantive member is unable to exercise his functions.

(3) The function of the Committee shall be to determine what terminal benefits and entitlements, if any, are due to any employee of an employer in respect of whom the Committee receives notification of payment of compensation for land compulsorily acquired in terms of section 6.

(4) The Committee shall hold its first meeting on such date and at such place as the Minister may fix, and thereafter the Committee shall meet for the dispatch of business as often as is necessary or expedient and may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that at all meetings of the Committee each member present shall have one vote on each question before the Committee and, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote

(5) The quorum at any meeting of the Committee shall be four members.

(6) With the approval of the other members the chairman may invite any person to attend a meeting of the Committee, where the chairman considers that the person has special knowledge or experience in any matter to be considered by the Committee at that meeting.

(7) A person invited to attend a meeting of the Committee in terms of subsection (6) may take part in the proceedings of the Committee as if he were a member thereof, but shall not have a vote on any question before the Committee.

(8) The Committee shall cause minutes of all proceedings of and decisions taken at all meetings of the Committee to be entered in books kept for the purpose.

(9) The Minister, with the approval of the Public Service Commission, may assign any person employed in his Ministry to act as secretary to the Committee.

[Section substituted by s.i. 101 of 2002.]

6. Terminal benefits and entitlements due may be deducted from compensation payable to employer

(1) The acquiring authority shall, before making to an employer any advance payment of compensation in terms of section 25 of the Land Acquisition Act [*Chapter 20:10*] or any payment of compensation in terms of section 29C of that Act, notify the Committee in writing of that fact.

(2) If, within thirty days of receiving notification in terms of subsection (1), the Committee—

- (a) certifies in writing that the employer has paid the terminal benefits and entitlements of his employees, the acquiring authority shall proceed to pay the compensation to the employer; or
- (b) certifies in writing that the employer has not paid the terminal benefits and entitlements of his employees or any part of them, the acquiring authority shall deduct from the amount of the compensation payable a sum equivalent to the terminal benefits and entitlements or any part of them that is certified by the Committee in terms of subsection (2a) to be due, and pay such amount to the Committee for disbursement to the employees concerned:

Provided that the Committee shall not make any disbursement in terms of this paragraph before affording the employer a reasonable opportunity to make representations in the matter; or

[Paragraph amended by s.i. 101 of 2002.]

- (c) fails to make any certification in terms of paragraph (a), or (b), the acquiring authority shall proceed to pay the compensation to the employer.

(2a) For the purpose of paragraph (b) of subsection (2), the Committee shall make a recommendation to the Minister of the amount of terminal benefits and entitlements, if any, that in its opinion is due to any employee or group of employees in terms of these regulations, and thereupon—

- (a) the Minister may accept the recommendation or refer it back to the Committee for re-evaluation; and
- (b) if the Minister accepts the recommendation or a recommendation made after re-evaluation, the Committee shall certify that the amount is due.

[Subsection inserted by s.i. 101 of 2002.]

(3) For the avoidance of doubt, nothing in this section shall preclude an employer from paying the terminal benefits and entitlements of his employees prior to receiving any advance payment of compensation in terms of section 25 of the Land Acquisition Act [*Chapter 20:10*] or any payment of compensation in terms of section 29C of that Act.

(4) For the avoidance of doubt it is declared that this section shall apply in respect of every employer to whom any payment of compensation referred to in subsection (1) is due, whether a preliminary notice referred to in section 4 was served upon him before or after the date of commencement of these regulations, and whether or not the employment of any of his employees was terminated before or after such date on account of the compulsory acquisition of his farm.

[Subsection inserted by s.i. 232 of 2002.]