



BARBADOS

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7th August, 2020

Act 2020-26

EMPLOYMENT (PREVENTION OF DISCRIMINATION) ACT, 2020-26

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BARBADOS

I assent
S. MASON
Governor-General
7th August, 2020.

2020-26

An Act to protect persons from discrimination related to employment.

[Commencement: by Proclamation]

ENACTED by the Parliament of Barbados as follows:

“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;

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) 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.

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.

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.

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;

- (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.

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.

(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;

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.

(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.

SECOND SCHEDULE

(Section 39)

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
Enactment	Amendments
<i>Employment Rights Act, 2012</i> (Act 2012-9).	1. In section 2, delete the definitions of "disability", "family member" and "spouse". 2. Delete section 7(2) and substitute the following: "(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." 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-)". 4. In section 30(1) (a) in paragraph (c) (i) delete sub-paragraph (vii); (ii) in sub-paragraph (ix), insert after the semicolon, the word "or"; and (iii) delete sub-paragraphs (x) and (xi); and (b) insert after paragraph (c), the following: "(d) the reason for the dismissal constitutes a contravention of the <i>Employment (Prevention of Discrimination) Act, 2020</i> (Act 2020-)."