

THE EMPLOYMENT (EQUAL PAY FOR MEN
AND WOMEN) ACT

Act
34 of 1975.

[1st December, 1975.]

1. This Act may be cited as the Employment (Equal Pay for Men and Women) Act. Short
title.

2.—(1) In this Act unless the context otherwise requires— Interpreta-
tion.

“employee” means an individual who has entered into or works, or normally works, under a contract of service or of apprenticeship;

“employer” means a person for whom one or more employees work, or have worked or normally work;

“equal pay” means a rate or a scale of remuneration for work, in which rate or scale there is no element of differentiation between male employees and female employees based on the sex of the employees;

“equal work” means work performed for one employer by male and female employees alike in which—

- (a) the duties, responsibilities or services to be performed are similar or substantially similar in kind, quality and amount;
- (b) the conditions under which such work is to be performed are similar or substantially similar;
- (c) similar or substantially similar qualifications, degrees of skill, effort and responsibility are required; and

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(d) the differences (if any) between the duties of male and female employees are not of practical importance in relation to terms and conditions of employment or do not occur frequently;

“referee” means a member for the time being of the panel of persons appointed by the Minister to be referees in accordance with the Schedule;

Schedule.

“remuneration” means, in relation to any employee, the salary, wages or other compensation, including, where applicable—

(a) time and piece work wages, overtime, bonus and other special payments; and

(b) allowances, fees, commission and all other emoluments, benefits or wage supplements whether payable directly or indirectly and (whether payable in cash or kind),

which that employee is paid or is entitled to in respect of work or services performed by him for an employer.

(2) For the purposes of this Act a person shall be regarded as employed in an establishment if he is employed to work in the establishment or, in the case of a person employed to work otherwise than in the establishment, if his employment is carried out from the establishment.

(3) A person shall not be regarded for the purposes of this Act as employed in Jamaica if his employment is wholly or mainly outside Jamaica; but

(a) employment on aircraft or hovercraft registered in Jamaica shall not be regarded for the purposes of this Act as employment outside Jamaica, unless it is wholly outside Jamaica;

(b) persons employed to work on board a ship registered in Jamaica, unless the employment is wholly outside Jamaica, are to be regarded for the purposes of this Act as employed in an establishment.

(4) In so far as any specially favourable treatment approved as such by a referee is accorded to women in connection with the birth or expected birth of a child or in connection with terms and conditions of employment related to retirement, marriage or death such treatment shall be deemed for the purposes of this Act not to be in contravention of the requirement not to discriminate between male and female employees.

(5) If, on the application of any employer or employee or any organization recognized by the Minister as representative of employers or of employees, the Minister is satisfied that there is need to determine whether or not any treatment under subsection (4) is favourable to the women concerned he shall refer the matter to a referee for decision.

(6) Where a reference is made under subsection (5) the referee—

- (a) shall give full opportunity to all parties appearing to him to be affected by, or concerned with, the matter to present evidence (whether or not such evidence would be admissible in a court of law) and make representations to him; and
- (b) may determine his own procedure and may take into account the extent to which the women concerned in the matter, or a majority of them, consider the treatment to be favourable to them, and the decision of the referee shall, until and unless a further reference is made by the Minister pursuant to subsection (5), be final and conclusive.

3.—(1) From and after the 1st day of January, 1976, no employer shall, by failing to pay equal pay for equal work, discriminate between male and female employees employed by him in the same establishment in Jamaica.

Payment
of equal
pay for
equal
work.

(2) Subject to subsection (4), any employer who contravenes the provisions of this section in respect of any employee shall be guilty of an offence, and shall be liable on summary conviction in a Resident Magistrate's Court in respect of each offence, to a fine not exceeding two hundred dollars or to imprisonment with or without hard labour for a term not exceeding twelve months and to an additional fine not exceeding twenty dollars for each day on which the offence is continued after conviction therefor.

(3) Where an employer is convicted of an offence under this section the Court may, without prejudice to its powers under subsection (2), order him to pay to any employee in relation to whom the offence was committed such sums as appear to the Court to be due to that employee having regard to the provisions of subsection (1), so, however, that in determining any such sum no account shall be taken of any period prior to the 1st January, 1976, or prior to the period of six years immediately preceding the date on which the relevant information or complaint was laid whichever is the later.

(4) No prosecution for an alleged offence under this section shall be undertaken—

- (a) unless in relation thereto the mediation procedure set out in the Schedule has been adopted; and
- (b) until, pursuant to that Schedule, there is no restriction on proceedings for prosecution.

Schedule.

Power of
the Court
re under-
payments.

4.—(1) Evidence may be given of any failure on the part of an employer to pay remuneration to any of his employees in accordance with subsection (1) of section 3 if notice of intention so to do is served on the employer at least seven days before the hearing of any information or complaint for an alleged contravention of that section.

(2) If the employer is convicted of a contravention of section 3 or is acquitted on the ground of the special

defence created by subsection (2) of section 5, the Court may, without prejudice to its powers under subsection (2) of section 3, order him to pay to any such employees such sums as appear to the Court to be due to the employees having regard to the provisions of subsection (1) of section 3, so, however, that in determining any such sum no account shall be taken of any period prior to the 1st January, 1976, or prior to the period of six years immediately preceding the date on which the relevant information or complaint was laid whichever is the later.

(3) An order under subsection (2) for the payment of any sum to any person on account of arrears of remuneration may be enforced by that person against the employer in like manner as a judgment in favour of that person under the Judicature (Resident Magistrates) Act and, until the sum is paid, the order shall not be in derogation of any right of that person to recover remuneration by any other proceedings.

5.—(1) Where an offence for which an employer is by virtue of this Act liable to a penalty has in fact been committed by some agent of that employer or by some other person, that agent or other person shall be liable to be proceeded against for the offence in the same manner as if he were the employer, either together with, or before or after the conviction of the employer and shall be liable on conviction to the same punishment as that to which the employer is liable. Offence of agent.

(2) Where an employer who is charged with an offence against this Act proves to the satisfaction of the Court that he has used due diligence to enforce the execution of this Act, and that the offence was in fact committed by his agent or some other person without his knowledge, consent or connivance, he shall, in the event of the conviction of that agent or other person for the offence, not be convicted of the offence; without prejudice, however, to

the power of the Court to make an order under subsection (2) of section 4.

(3) Where the immediate employer of any employee is himself in the employment of some other person and that employee is employed on the premises of that other person, that other person shall, for the purposes of the provisions of this Act relating to the enforcement of subsection (1) of section 3, be deemed to be an employer of the employee jointly with the immediate employer.

Prevention
of evasion.

6.—(1) Any provision of any contract of employment express or implied made in, or which would result in, contravention of subsection (1) of section 3, shall be null and void and in lieu thereof the provisions of subsection (1) of section 3 shall be deemed to apply.

(2) The acceptance by an employee of remuneration in contravention of the provisions of section 3 shall not be—

- (a) a defence to any action by that employee to recover remuneration at a different rate as provided for in this Act;
- (b) a bar to any proceedings under this Act; or
- (c) a defence to any prosecution under this Act.

(3) No employer shall dismiss or otherwise discriminate against any person because that person has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act or because that person's remuneration as an employee is, or as respects any period prior to the 1st day of January, 1976, is likely to be, regulated by this Act.

(4) Any person who contravenes subsection (3) shall be guilty of an offence and liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding

three hundred dollars or to imprisonment with or without hard labour for a term not exceeding six months.

7. In any prosecution of a person for a contravention of section 3, it shall lie on that person to prove that he has paid equal pay for equal work in accordance with this Act. Burden of proof.

8.—(1) Every employer who has both men and women in his employment shall— Records to be kept.

- (a) keep such records as the Minister may by notice published in the *Gazette*, require to be kept for any purpose connected with the provisions of this Act; and
- (b) keep such records of remuneration as are necessary to show that the provisions of this Act are being complied with in respect of persons in his employment.

(2) Where any employer fails to keep any record in accordance with subsection (1), he shall be liable on summary conviction in a Resident Magistrate's Court in respect of each offence, to a fine not exceeding two hundred dollars and to an additional fine not exceeding twenty dollars for each day on which the offence is continued after conviction thereof.

9.—(1) The Minister may assign such officers as he may think necessary for the purpose of investigating any complaints and otherwise securing the proper observance of the provisions of this Act. Assignment of officers and power of entry and inspection.

(2) Any officer assigned pursuant to subsection (1) may at any reasonable time, enter the premises of any employer who has both men and women in his employment and may require the production of wage sheets, records of remuneration or occupation, or any other record required by the Minister to be kept pursuant to section 8, and to

inspect and examine the same and to copy any material therefrom.

(3) Any officer assigned pursuant to subsection (1) shall be furnished with a certificate of assignment and on entering any premises pursuant to subsection (2) he shall, if required to do so, produce the certificate to the employer or other person in charge of the premises.

(4) Any employer or other person in charge of any premises entered by any officer pursuant to subsection (2) shall give the officer all reasonable assistance in their power and furnish him with such records or information as he may reasonably require; and any person who obstruct, hinders or prevents any such officer from entering as aforesaid, or fails or refuses to produce any wage sheet or record required to be produced in accordance with subsection (2), being a wage sheet or record which was made or should have been made within the preceding six years, shall be guilty of an offence under this Act, and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding five hundred dollars or to imprisonment with or without hard labour for a term not exceeding six months.

(5) Any person who—

- (a) makes or causes to be made or knowingly allows to be made any wage sheet, record of remuneration, or occupation record which is false in any material particular or produces or causes to be produced or knowingly allows to be produced any wage sheet or other record to any officer acting in exercise of the powers given him by this Act knowing the same to be false; or
- (b) not being an officer assigned pursuant to subsection (1), with intent to deceive any employer or employee, holds himself out or pretends to be such officer,

shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding one thousand dollars or to imprisonment with or without hard labour for a term not exceeding twelve months or to both such fine and imprisonment.

(6) Proceedings against any person for an offence against or for the recovery of any penalties under this Act or any regulations made thereunder, may be instituted by any officer assigned pursuant to subsection (1) who is authorized in that behalf by the special or general directions of the Minister and any such officer may prosecute or conduct such proceedings.

(7) In any action or other legal proceedings brought against any officer aforesaid in respect of any act done in pursuance or execution or intended execution of this Act, the plaintiff shall not recover unless he alleges in his pleading and proves at the trial that such act was done either maliciously or without reasonable and probable cause.

10.—(1) The Minister may make regulations generally for giving effect to this Act and, without prejudice to the generality of the foregoing, such regulations may provide for—

Regulations.

- (a) the furnishing of such information as the Minister may from time to time require to enable him to review the operation of this Act;
- (b) the amendment, repeal or replacement of the Schedule;
- (c) any matter required by this Act to be prescribed.

(2) Any regulations made pursuant to paragraph (b) of subsection (1) shall be subject to affirmative resolution.

SCHEDULE

(Section 3(4))

Mediation Procedure

- Complaints. 1. Any person claiming to be aggrieved because of an alleged breach of section 3, or any person acting on behalf of that person, may make a complaint to the Minister.
- Reference to assigned officer for settlement. 2. Where, pursuant to a complaint under paragraph 1 or pursuant to any other information coming to the attention of the Minister, the Minister is of opinion that a breach of section 3 may have occurred, he may instruct an assigned officer to investigate the alleged breach and to attempt to effect a settlement between the persons affected by, or concerned with, the alleged breach.
- Report of assigned officer. 3. An assigned officer shall, within sixty days of receiving instructions under paragraph 2, report to the Minister as to the finding of his investigation and to his success in attempting to effect a settlement between the persons affected by, or concerned with, the alleged breach.
- Reference to referee if no settlement reached. Procedure of referee. 4. Where an assigned officer fails to effect a settlement between the persons affected by, or concerned with, the alleged breach the Minister may refer the matter for review by a referee.
5. A referee—
- (a) shall give full opportunity to all parties affected by, or concerned with, the alleged breach in respect of which the reference was made under paragraph 4, to present evidence and make representation to him; and
 - (b) may determine his own procedure and may, subject to subparagraph (a), receive and accept such evidence as in his discretion he sees fit, whether the evidence would be admissible in a court of law or not.
- Report of referee. 6. The referee shall report his findings to the Minister and recommend to the Minister the course that the referee thinks should be taken with respect to the alleged breach.
- Publication of report. 7. The Minister shall furnish a copy of the report and recommendation of the referee submitted to him under paragraph 6 to each of the person affected by, or concerned with, the alleged breach of section 3 and, if he deems it advisable, may publish the report and recommendation in such manner as he sees fit.
- Order of Minister. 8. (1) Upon receiving a report and recommendation of a referee the Minister may make such order as he deems necessary to carry into effect the recommendation of the referee and, without prejudice to the generality of the foregoing, may—
- (a) order the employer concerned in the alleged breach to pay equal pay to employees affected thereby; or

- (b) order the employer to pay to any employee of the employer a sum of money to make up any difference between the rate of pay paid to that employee and the rate of pay paid to any other employee performing similar or substantially similar kind or quality of work during such period as a difference in the respective rates of pay existed,

or order both those things together with such other order as he deems necessary.

(2) An order under (b) of sub-paragraph (1) shall not take account of any difference in rate of pay prior to the 1st January, 1976, or prior to the period of six years immediately preceding the date of the report of the referee, whichever is the later.

9. Where the Minister makes an order under paragraph 8 directed to an employer in respect of an alleged breach of section 3 by that employer if the employer complies with the order he is not guilty of the alleged breach. Defence for employer.

10. (1) For the purposes of this Act the Minister may appoint a panel of such number of persons as he thinks fit to be referees and may make such rules as he thinks fit for the distribution of business between such referees. Panel of referees.

(2) The office of referee shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.

11. Where a person makes a complaint under paragraph 1 in respect of an alleged breach of section 3 he shall not commence, or give evidence or assist in any way, any proceeding to prosecute any person for the alleged breach unless— Restriction on prosecution.

- (a) the Minister fails to instruct, within fifteen days after the complaint is made, an assigned officer to investigate the alleged breach; or
- (b) the Minister instructs an assigned officer to investigate an alleged breach, and the assigned officer fails to effect a settlement and the Minister fails to refer the matter to a referee within thirty days after receiving the report of the assigned officer; or
- (c) after reference has been made to a referee, the Minister fails, within thirty days after receiving the report of the referee, to make an order under paragraph 8 in respect of the alleged breach; or
- (d) the Minister makes an order under paragraph 8 in respect of the alleged breach, and the employer fails, within thirty days after the date of the order, to comply with the order.

12. There shall be paid to the referee such remuneration (whether by way of salary or travelling or other allowances) as the Minister may determine. Remuneration of referee.

Protection
of referee.

13. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any referee in respect of any act done *bona fide* in the performance of his duties under this Act.

Assigned
officer.

14. In this Schedule "assigned officer" means an officer assigned by the Minister pursuant to section 9.