

SAINT VINCENT AND THE GRENADINES

The Equal Pay Act

ACT NO. 3 OF 1994

14th March, 1994

ACT to make provision for the removal and prevention of discrimination, based on the sex of the employee, in the rates of remuneration for males and females in paid employment, and for matters incidental thereto.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows: —

Short title and commencement.

1. This Act may be cited as the Equal Pay Act, 1994 and shall come into operation on such day as the Governor-General may by Proclamation appoint.

Interpretation.

2. (1) In this Act, unless the context otherwise requires -

“appointed day” means the date of commencement of this Act;

“Commissioner” means the Labour Commissioner;

“employee” means a person who has entered into or works under a contract of service or of apprenticeship;

“employer” means a person who employs one or more employees;

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

“equal work” means work performed for one employer by male and female employees 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 performed are similar or substantially similar;

(c) similar or substantially similar qualifications, degrees of skill, effort and

responsibility are required; and

(d) the difference (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;

“Minister” means the Minister responsible for labour;

“referee” means a member for the time being of the panel of persons appointed by the Minister to be referees in accordance with paragraph 9 of the Schedule;

“remuneration” in relation to an employee, includes

- (a) the salary or wages actually and legally payable to that employee;
- (b) the time and piece work wages and overtime, bonus and other payments;
- (c) the allowances, fees, commission and every other emolument including fringe benefits, whether in one sum or several sums and whether paid in money or not.

2. (2) For the purposes of this Act -

- (a) a person shall be regarded as employed in an establishment if that person works there, or where that person works elsewhere, if the employment is carried out from that establishment;
- (b) a person shall not be regarded as being employed in Saint Vincent and the Grenadines if that person’s employment is wholly or mainly outside the State;
- (c) a person employed on an aircraft or ship, which is registered in the State shall be regarded as employed within Saint Vincent, unless such aircraft or ship operates wholly outside of the State;
- (d) in so far as any specially favourable treatment approved as such by a referee is accorded to an employee in connection with —
 - (i) the birth or expected birth of a child; or
 - (ii) terms and conditions of employment related to retirement, family or death,

such treatment shall be deemed for the purposes of this Act not to be a discrimination between male and female employees;

(e) in determining whether an element of differentiation exists in the rates of remuneration for male employees and female employees for any class of work, no account shall be taken of any provision in any Act which limits the work which female employees may perform.

2. (3) 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 mentioned in subsection 2(d) is favourable to the employees concerned the Minister shall refer the matter to the Labour Commissioner for decision.

2. (4) Where a reference is made under subsection (3) the procedure laid down in paragraphs 5 and 6 of the **Schedule** shall apply.

Payment of equal pay for equal work.

3. (1) From and after the appointed day no employer shall, by failing to pay equal pay for equal work, discriminate between male and female employees employed by the employer's establishment.

3. (2) Subject to subsection (5) , any employer who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two thousand dollars, and in the case of a continuing offence, to a fine not exceeding one hundred dollars for each day on which the offence is continued after conviction.

3. (3) Where an employer is convicted of an offence under this section the Court may, without prejudice to its powers under subsection (2), order the employer 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)

3. (4) In determining any sum under subsection (3) , no account shall be taken of any period before the period of six years immediately preceding the date on which the relevant information or complaint was laid and in any event no account shall be taken of any period before the appointed day.

3. (5) 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 paragraph 10 of the Schedule, there is~ no restriction on proceedings for prosecution.

Power of Court to order payment of arrears.

4. (1) Evidence may be given of any failure on the part of an employer to pay remuneration to any employee in accordance with section 3(1) if notice of intention to

give such evidence is served on the employer at least three days before the hearing of any information or complaint for an alleged contravention of that section.

4. (2) If the employer is convicted of a contravention of section 3 or is acquitted on the ground of the special defence created by section 5(2), the Court may, without prejudice to its powers under section 3. (2), order the employer to pay to the employee concerned such sums (hereinafter referred to as arrears of remuneration) as appear to the Court to be due having regard to the provisions of section 3(3).

4. (3) An order under subsection (2) may be enforced by the employee concerned against the employer in like manner as a judgment of the Court and, until the sum is paid, the order shall not be derogation of any right of that person to recover remuneration by any other proceedings.

Offence by Agent.

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 is liable to be proceeded against for the offence in the same manner and to the same extent whether jointly with the employer or severally and is liable on conviction to the same penalty as that to which the employer is liable.

5. (2) Where an employer who is charged with an offence against this Act proves to the satisfaction of the Court that -

- (a) due diligence was used to enforce the execution of this Act; and
- (b) the offence was in fact committed by an agent or by some other person without the employer's knowledge, consent and connivance,

then in the event of the conviction of that agent or other person for the offence, the employer shall not also be convicted but without prejudice to the power of the Court to make an order under section 4(2).

Prevention of evasion

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

6. (2) In subsection (1) "contract of employment" includes collective agreement.

6. (3) The acceptance by an employee of remuneration where section 3 is contravened 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.

6. (4) No employer shall dismiss or discriminate against an employee by reason only that that employee has made a complaint or given evidence or assisted in any way in relation to the initiation or prosecution of a complaint or other proceeding under this Act or because that employee's remuneration is, as respects any period before the appointed day, likely to be regulated by this Act.

6. (5) Any person who contravenes subsection (4) commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months.

Burden of proof

7. In any prosecution of a person for a contravention of section 3, the burden of proving that equal pay has been paid for equal work shall be on the employer.

Records to be kept

8. (1) Every employer who employs both men and women shall -

- (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 employed by that employer.

8. (2) Any employer who fails to keep any record as required by subsection (1) commits an offence and is liable on summary conviction in respect of each offence, to a fine not exceeding five thousand dollars and to an additional fine not exceeding fifty dollars for each day on which the offence is continued after conviction.

Assignment of officers and power of entry and inspection.

9. (1) The Minister shall designate such officers and officers as he think necessary for the purpose of investigating any complaints and otherwise securing and inspection the proper observance of the provisions of this Act.

9. (2) Any officer designated pursuant- to subsection (1) (hereinafter referred to as a designated officer) may at any reasonable time, enter the premises of any employer who employs both men and women and may -

- (a) require the production of wage sheets, records of remuneration or occupation, or any other record required to be kept pursuant to section 8; and

(b) inspect and examine such wage sheets and records and copy any material therefrom.

9. (3) A designated officer shall be furnished with a certificate of designation and on entering any premises pursuant to subsection (2) the officer shall, if required to do so, produce the certificate to the employer or other person in charge of the premises.

9. (4) Any employer or other person in charge of any premises entered by an officer pursuant to subsection (2), shall give the designated officer all reasonable assistance and furnish him with such records or information as he may reasonably require.

Offences of obstruction, etc.

10. (1) Any person who -

(a) obstructs, hinders or prevents any designated officer from entering premises pursuant to section 9(2); or

(b) fails or refuses to produce any wage sheet or record required to be produced in accordance with section 9(2), being a wage sheet or record which was made or should have been made within the preceding six years: Provided that six years does not include any period prior to the commencement of this Act

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding three months.

10. (2) Any person who -

(a) makes or causes to be made or knowingly allows to be made any wage sheet, record of remuneration or occupation 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 records to any officer acting in exercise of the powers vested in him by this Act, knowing the same to be false; or

(b) not being a designated officer, with intent to deceive any employer or employee, pretends to be such officer,

commits an offence and is liable on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Designated officer may institute proceedings.

11. (1) 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 the Director of Public prosecutions or, by any designated officer assigned

pursuant to section 9(1) who is authorized in that behalf by the special or general directions of the Minister and any such officer may prosecute such offence.

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

Regulations

12. The Governor-General may make regulations generally for giving effect to this Act and, without prejudice to the generality of the foregoing, such regulations may provide for -

- (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.

SCHEDULE

(sections 2(4), 3(5))

Mediation Procedure

Complaints

1. Any person or any other person acting on behalf of a person claiming to be aggrieved because of an alleged breach of section 3, may make a complaint to the Commissioner.

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 Commissioner, the Commissioner is of the opinion that a breach of section 3 may have occurred he may direct a designated officer to investigate the alleged breach and to attempt to effect a settlement between the persons affected or concerned.

Report of assigned officer.

3. The designated officer shall, within sixty days of receiving a direction under paragraph 2, report to the Commissioner as to the results of the investigation and as to the success in attempting to effect a settlement between the persons affected or concerned pursuant to paragraph 2.

Reference to referee if no settlement is reached.

4. Where the Commissioner fails to effect a settlement between persons affected by, or concerned with, the alleged breach the Minister may refer the matter for review by a referee.

Procedure by referee.

5. A referee -

(a) shall give full opportunity to all parties affected by, or concerned with, the alleged breach to present evidence and make representations to him; and

(b) may determine the procedure to be followed and, subject to subparagraph (a), the evidence to be received and accepted, whether or not that evidence would be admissible in a court of law.

Report of referee.

6. The referee shall submit a report to the Labour Commissioner and recommend to him the course that he thinks should be taken with respect to the alleged breach.

Publication of report.

7. The Labour Commissioner shall furnish a copy of the report and recommendation of the referee to each of the persons affected by, or concerned with, the alleged breach and shall refer the report and recommendation to the Minister.

Order of Minister

8. (1) The Minister on the recommendation of the Commissioner may make such order as he thinks 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 concerned a sum of money to make up any difference between the rate of pay paid to that employee and the rate paid to any other employee performing similar or substantially similar kind or quality of work during the period for which a difference existed in the respective rates of pay,

or make both those orders together with such other order as he may think necessary.

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

Panel of referees

9. For the purposes of this Act the Minister may

- (a) appoint a panel of such number of persons to be referees; and
- (b) make such rules for the distribution of business between such referees,

as he thinks fit.

Restriction on prosecution.

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

- (a) the Commissioner fails within thirty days after the complaint is made, to direct the designated officer to investigate the alleged breach;
- (b) the Commissioner fails to effect a settlement between the persons affected by, or concerned with, the alleged breach and fails to refer the matter to the Minister within thirty days after failure to effect a settlement;
- (c) after reference has been made to a referee, the Labour Commissioner fails within thirty days after receiving the referee's reports to refer the matter to the Minister to make an order under paragraph 8;
- (d) an order is made under paragraph 8 and the employer fails to comply with that order within thirty days after the date thereof.

Remuneration of referee

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

Protection of referee

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

Passed in the House of Assembly this 13th day January, 1994.