



ST. CHRISTOPHER AND NEVIS

CHAPTER 18.45 **EQUAL PAY ACT**

Revised Edition
showing the law as at 31 December 2017

This is a revised edition of the law, prepared by the Law Commission under the authority of the Law Commission Act, Cap. 1.03.

This edition contains a consolidation of the following laws—

EQUAL PAY ACT

Act 23 of 2012 ... in force 1st February, 2015

Page
3

Published in
2019
Consolidated, Revised and Prepared under the Authority of the Law Commission Act,
on behalf of the Government of Saint Christopher and Nevis
by
The Regional Law Revision Centre Inc.,
P.O. Box 1626, 5 Mar Building,
The Valley, AI-2640, Anguilla,
West Indies.

Available for purchase from—

Attorney General's Chambers,
Government Headquarters, P.O. Box 164,
Church Street, Basseterre, St. Kitts,
West Indies

Tel: (869) 465-2521

Ext. 1013

Tel: (869) 465-2127

Fax: (869) 465-5040

Email: attorneygeneral@gov.kn

© Government of Saint Christopher and Nevis
All rights reserved. No part of this publication may be reproduced in any form or by any means
without the written permission of the Government of Saint Christopher and Nevis except as
permitted by the Copyright Act or under the terms of a licence from
the Government of Saint Christopher and Nevis.

CHAPTER 18.45

EQUAL PAY ACT

ARRANGEMENT OF SECTIONS

1. Short title
 2. Interpretation
 3. Equal pay for equal work
 4. Order for payment of arrears of remuneration
 5. Offence of agent
 6. Prevention of evasion
 7. Burden of proof on employer
 8. Records to be kept
 9. Designated officers and power of entry and inspection
 10. Obstructing a designated officer
 11. Regulations
- SCHEDULE: Mediation Procedure

CHAPTER 18.45

EQUAL PAY ACT

AN ACT TO MAKE PROVISION FOR THE REMOVAL AND PREVENTION OF DISCRIMINATION BASED ON THE SEX OF THE EMPLOYEE IN PAID EMPLOYMENT, AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

Short title.

1. This Act may be cited as the Equal Pay Act.

Interpretation.

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

“designated officer” means a Labour Officer designated by the Minister pursuant to the provisions of section 9 of this Act;

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

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

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

“equal work” means work performed for an employer by males and females 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;

“mediator” means a member for the time being of the panel of persons appointed by the Minister to be mediators in accordance with the provisions of the Schedule to this Act;

“Minister” means the Minister responsible for Labour;

“remuneration”, in relation to an employee, means the salary or wages actually and legally payable to that employee and includes—

- (a) time and piece work wages and overtime, bonus and other payments;
- (b) allowances, fees, commissions and any other emolument, including fringe benefits, whether in one sum or several sums and whether paid in money or not.

(2) For the purposes of this Act, a person shall be regarded as employed in an establishment if that person is hired to work in the establishment or, where that

person is employed to work otherwise than in the establishment, if the employment is carried out from the establishment.

(3) A person shall not, for the purposes of this Act, be regarded as employed in Saint Christopher and Nevis if that person's employment is wholly or mainly outside of Saint Christopher and Nevis, except that a person who is employed on an aircraft or motor vessel that is registered in Saint Christopher and Nevis shall not be regarded as being employed outside Saint Christopher and Nevis.

(4) For the purposes of this Act, in so far as official approval is obtained for particular favourable treatment to be given to an employee in connection with the birth or expected birth of a child, the terms and conditions of employment related to retirement, family or death, such treatment shall not be considered to be in contravention of the requirement not to discriminate between male and female employees.

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

(6) If, upon the application of any employer or employee or any organisation recognised by the Minister as representative of employers or employees, the Minister is satisfied that there is need to determine whether or not any treatment mentioned in subsection (4) is favourable to the employees concerned, the Minister shall refer the matter to a mediator for mediation.

(7) Where a matter is referred to a mediator pursuant to the provisions of subsection (6), the mediator—

- (a) shall, if he or she is satisfied that the applicant is affected by or concerned in the matter that was referred to mediation, give an opportunity to the applicant to produce evidence and make representations in the matter in question; and
- (b) may determine the proper procedure to be followed taking into account the extent to which the employees concerned in the matter, or a majority of them, consider the treatment in question to be unfavourable to them.

Equal pay for equal work.

3. (1) An employer shall not discriminate between male and female employees employed by the employer's establishment by failing to pay equal pay for equal work.

(2) Subject to the provisions of subsection (5), any employer who contravenes the provisions of subsection (1) in respect of any employee commits an offence and shall be liable, on summary conviction, to a fine not exceeding five thousand dollars, and in 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) 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 the employee who was discriminated against such sums as may appear to the court to be owing to the employee having regard to the provisions of subsection (1).

(4) In determining any sum to be paid pursuant to the provisions of subsection (3), no account shall be taken of any period occurring more than six years before the

date on which the relevant information or complaint was laid and in any event no account shall be taken of any period prior to the coming into force of this Act.

(5) No prosecution for an alleged offence under this section shall be brought unless the mediation procedure set out in the Schedule to this Act has been adopted in relation to that offence, and until, pursuant to the provisions of the Schedule, there is no restriction for prosecution.

Order for payment of arrears of remuneration.

4. (1) Evidence may be given of any failure on the part of an employer to pay remuneration to any employee in accordance with the provisions of section 3(1) if notice of intention to give such evidence 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 an employer is convicted of an offence pursuant to the provisions 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 such arrears of remuneration as appear to the court to be due to the employee, having regard to the provisions of section 3(1).

(3) In determining any sum to be paid pursuant to the provisions of subsection (2), 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 prior to the coming into force of this Act.

(4) An order made pursuant to the provisions of subsection (2) for the payment of any arrears of remuneration to any person may be enforced against the employer in like manner as a judgment in favour of that person 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.

Offence of agent.

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

(2) Where an employer who is charged with an offence under this Act proves, to the satisfaction of the court—

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

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

(3) Where the immediate employer of any employee is also in the employment of some other person and that employee is employed on the other person's premises, that other person shall, for the purposes of this Act relating to the enforcement of

section 3(1), be deemed to be an employer of the employee jointly with the immediate employer.

Prevention of evasion.

6. (1) Any provision of a contract of employment, whether express or implied, which would result in a contravention of section 3(1) shall be void, and in such case the provisions of section 3(1) shall apply.

(2) In subsection (1), “contract of employment” includes collective agreement.

(3) 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.

(4) An employer shall not dismiss or otherwise discriminate against any employee by reason that the employee has made a complaint or given evidence or assisted in any way in relation to the initiation of a complaint under this Act or by reason that the employee is entitled to arrears of remuneration.

(5) Any person who contravenes the provisions of subsection (4) commits an offence and is liable, on summary conviction, to a fine not exceeding twenty-five hundred dollars or to imprisonment for a term not exceeding three months.

Burden of proof on employer.

7. In any prosecution of a person for an offence under 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) An employer who employs both male and female shall—

(a) keep such records as the Minister may, by Order, require to be kept for any purpose connected with this Act; and

(b) keep such records of remuneration as are necessary to show that this Act is being complied with in respect of persons employed by that employer.

(2) An 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 twenty-five hundred dollars, and in case of a continuing offence, to a fine of one hundred dollars for each day in which the offence is continued after conviction.

Designated officers and power of entry and inspection.

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

(2) Any officer who is designated pursuant to the provisions of subsection (1) may, at any reasonable time, enter the premises of any employer who employs both men and women for the purpose of—

- (a) requiring an employer to produce wage sheets, records of remuneration or occupation, or any other record required to be kept pursuant to the provisions of section 8; and
- (b) inspecting and examining the wage sheets and records, and may copy any material from them.

(3) A designated officer shall be given appropriate certificate of designation, and the officer shall, on entering any premises pursuant to the provisions of subsection (2), produce the certificate to the employer or other person in charge of the premises if the employer or other person request for the production of such certificate.

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

Obstructing a designated officer.

10. (1) Any person who—

- (a) obstructs, hinders or prevents a designated officer from entering the premises pursuant to the provisions of section 9;
- (b) fails or refuses to produce any wage sheet and record required to be produced in accordance with the provisions of section 9(2), being a wage sheet or record which was made or should have been made within a period of the preceding six years,

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

(2) Any person who—

- (a) makes or causes to be made or allows to be made any wage sheet, record or 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 record to any designated officer acting in exercise of the powers given to him or her by this Act, knowing the same to be false;
- (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 twenty- five hundred dollars or to imprisonment for a term not exceeding three months or both.

Regulations.

11. (1) The Minister may generally make regulations to give effect to the provisions of this Act, and without prejudice to the generality of the foregoing, the Minister may, in particular, make regulations—

- (a) that may require any person to give to the Minister such information as the Minister may require to enable him or her to review the operation of this Act;
- (b) to amend or repeal the Schedule to this Act;
- (c) to provide for any matter required by this Act to be prescribed.

(2) Any regulations made pursuant to the provisions of this subsection (1)(b) shall be subject to affirmative resolution of the National Assembly.

SCHEDULE

(Section 3(5))

MEDIATION PROCEDURE

Complaints.

1. A person who claims to be aggrieved by reason of an alleged contravention of the provisions of section 3, or any person acting on behalf of that person, may make a complaint to the Labour Commissioner.

Reference to a designated officer for settlement.

2. Where, pursuant to a complaint made under paragraph 1, or pursuant to any other information which may be brought to the attention of the Labour Commissioner, the Labour Commissioner is of the opinion that a contravention of section 3 may have occurred, the Commissioner shall direct a designated officer to investigate the alleged contravention and attempt to effect a settlement between the persons affected by, or concerned with, the alleged contravention.

Report of designated officer.

3. A designated officer shall, within sixty days of receiving a direction under paragraph 2, report to the Labour Commissioner on the results of the investigation and on the officer's progress in attempting to effect a settlement between the persons affected by, or concerned with, the alleged contravention.

Referral of matter to mediator.

4. Where a designated officer fails to effect a settlement between the persons affected by, or concerned with, the alleged contravention the Labour Commissioner may refer the matter to a mediator for review.

Mediation.

5. A mediator—

- (a) shall give full opportunity to all persons affected by, or concerned with, the alleged contravention to present evidence and make representations to the mediator; and
- (b) may, subject to sub-paragraph (a), determine the procedure to be followed and the evidence to be received and accepted, whether or not that evidence would be admissible in a court of law.

Report of mediator.

6. The mediator shall submit a report to the Minister, which report shall contain recommendations as to the course the Minister should take with respect to the alleged contravention.

Publication of report.

7. The Minister shall supply a copy of the report of the mediator to each of the persons affected by, or concerned with, the alleged contravention, and if the Minister

deems it advisable, may cause the report to be published in such manner as the Minister thinks fit.

Order of the Minister.

8. (1) Upon receipt of the report of the mediator the Minister may make such order as he or she deems necessary to carry into effect the recommendation of the mediator.

(2) Notwithstanding the provisions of subparagraph (1), the Minister may order—

- (a) the employer concerned in the alleged contravention to pay equal pay to employees affected by the contravention;
- (b) the employer to pay to an employee a sum of money to make up any difference between the rate of pay paid to the 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
- (c) both courses of action referred to in (a) and (b) together with such other order he or she deems necessary.

(3) An order made under paragraph (2)(b) shall not take into account any difference in the rate of pay before the coming into force of this Act or before a period of six years preceding the date of the report of the mediator, whichever is the later.

Panel of mediators.

9. For the purposes of this Act, the Minister may appoint a panel of such number of persons as the Minister thinks fit, and may make such rules as the Minister thinks fit for the distribution of business between such mediators.

Restriction on prosecution.

10. Where a person makes a complaint in accordance with the provisions of paragraph 1 in respect of an alleged contravention of section 3 the person shall not commence, or give evidence or assist in any way, any proceeding to prosecute any person for the alleged contravention unless—

- (a) the Labour Commissioner fails, within fifteen days after the complaint is made, to direct a designated officer to investigate the alleged contravention;
- (b) a designated officer fails to effect a settlement between the persons affected by, or concerned with, the alleged contravention and the Labour Commissioner fails to refer the matter to a mediator within a period of thirty days after receiving the report of the designated officer;
- (c) after a matter has been referred to a mediator, the Minister fails within a period of thirty days of receiving the mediator's report to make an order as required by paragraph 8;
- (d) an order is made under paragraph 8 and the employer fails to comply with the order within a period of thirty days after the date of the order.

Remuneration of mediator.

11. There shall be paid to the mediator such remuneration as may be prescribed by the Minister.

Protection of mediator.

12. No action, suit, prosecution or other proceedings shall be brought or instituted personally against a mediator in respect of any act done *bona fide* in the performance of the mediator's duties under this Act.
