

I assent.

(L.S.)

GEORGE ABELA  
President

26th October, 2012

**ACT No. XVI of 2012**

*An Act to amend the Employment and Industrial Relations Act,  
Cap. 452.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same as follows:-

**1.** The short title of this Act is the Employment and Industrial Relations (Amendment) Act, 2012, and this Act shall be read and construed as one with the Employment and Industrial Relations Act, hereinafter referred to as "the principal Act".

Short title.

Cap. 452.

**2.** Sub-article (1) of article 2 of the principal Act shall be amended as follows:

Amendment of  
article 2 of the  
principal Act

(a) the definition of "contract of service" and "contract of employment" shall substituted by the following:

" "contract of service" and "contract of employment" means an agreement, (other than service as a member of a disciplined force) whether oral or in writing, in any form, whereby a person binds himself to render service to or to do work for an employer, in return for wages, and, in so far as conditions of employment are concerned, includes an agreement of apprenticeship:

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Provided that unless otherwise specifically referred to in another law, in this Act or in any regulations made under this Act, irrespective of the declared nature of the relationship, whenever the employer exercises effective direction, control and choice over the nature of the work or the tasks being or to be performed by a person for the employer, that relationship shall be considered to be one of a contract of service and the person carrying out the work shall be deemed to be an employee of the employer;"

(b) in the definition of "employees' representative", the word "Director" shall be substituted by the word "employer";

(c) immediately after the definition of "sectoral regulation order", there shall be added the following new definition:

" "self-employed persons" means all persons pursuing a gainful activity on their own account;"

(d) in the definition of "whole-time employee"-

(i) the term "conditions of employment:" shall be substituted by the term "conditions of employment;", and

(ii) the proviso thereof shall be deleted.

Amendment of article 8 of the principal Act.

**3.** Sub-article (2) of article 8 of the principal Act shall be deleted and article 8(1) shall be renumbered as article 8.

Amendment of article 23 of the principal Act.

**4.** Article 23 of the principal Act shall be substituted by the following new article:

"Payment of bonus.

**23.** Every employer shall pay, or cause to be paid, to each of his whole-time employees such statutory bonuses in the amount as may either be established by legal notice issued by the Minister of Finance by virtue of this article or as the Government may announce in the General Estimates of any particular year:

Provided that such statutory bonuses shall be paid between the 15<sup>th</sup> and the 30<sup>th</sup> day of the month of June and between the 15<sup>th</sup> and 23<sup>rd</sup> day of the month of December of each year and shall be in the form of a sum of money which, in either case, shall not be less than one-half of that which the Government shall have announced in the general estimates of any particular year as payable by the Government to each of its employees during that year:

Provided further that the employer shall also pay, or cause to be paid, to each of his whole-time employees any income supplements in the amount and at the times as may be established by legal notice issued by the Minister of Finance by virtue of this article:

Provided further that, where any person has been in whole-time employment with any particular employer for a period of less than a year, such employee shall be entitled to receive from his employer, or from any of his employers, a proportionate amount of the bonus or income supplement and for the purposes of this article, the pro rata calculation shall be made on the basis of the annual hours worked:

Provided finally that this article shall also apply to apprentices in a manner as may be specified in any applicable scheme under the Employment and Training Services Act."

Cap. 343.

**5.** The first proviso of article 33 of the principal Act shall be amended as follows:

Amendment of article 33 of the principal Act.

(a) the words "in employment after the date of termination" shall be substituted by the words "in employment in the same category after the date of termination";

(b) the words "re-employed by the employer" shall be substituted by the words "re-employed in the same category by the employer"; and

(c) the words "under this Act." shall be substituted by the words "under this Act:" and immediately thereafter there shall be added the following new proviso:

"Provided further that notwithstanding any agreement to the contrary, a contract of service for an indefinite term shall not be changed into a fixed term

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contract of service where no substantial change has been effected as to the work of the employee or to his category and any agreement to this effect shall be null and void and the employment contract shall, for all intents and purposes of law, be considered to have remained an indefinite one."

Amendment of article 36 of the principal Act.

**6.** In paragraph (e) of sub-article (5) of article 36 of the principal Act, the words "year of service up to a" shall be substituted by the words "year of service or part thereof up to a".

Addition of new article 47A.

**7.** Immediately after article 47 of the principal Act, there shall be added the following new article:

"Attorney General's right of appeal. Cap. 9.

47A. Notwithstanding the provisions of the Criminal Code, the Attorney General shall always have a right of appeal to the Court of Criminal Appeal from any judgment given by the Court of Magistrates in respect of criminal proceedings according to the provisions of this Act."

Amendment of article 48 of the principal Act.

**8.** Sub-articles (1) and (2) of article 48 of the principal Act shall be substituted by the following:

"(1) The Prime Minister shall have power to prescribe by regulations the applicability of any article or sub-article of Title I and of Title II of this Act to service with the government and to members of a disciplined force.

(2) The Minister shall have power to make regulations for the purpose of carrying out and giving effect to any of the provisions of this Act on any matter related to employment relations and industrial relations."

Amendment of article 64 of the principal Act.

**9.** In paragraph (g) of sub-article (6) of article 64 of the principal Act, the words "responsible for transport" shall be deleted.

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Passed by the House of Representatives at Sitting No. 511 of the 22nd October, 2012.

MICHAEL FREND  
*Speaker*

RAYMOND SCICLUNA  
*Clerk to the House of Representatives*