

Employment Act (Cap 72)

SOLOMON ISLANDS

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CHAPTER 72

EMPLOYMENT ACT

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CHAPTER 72

EMPLOYMENT

AN ACT TO PROVIDE FOR REDUNDANCY PAYMENTS AND PENSION BENEFITS FOR LONG SERVICE; TO REQUIRE EMPLOYERS TO PROVIDE WRITTEN PARTICULARS OF TERMS OF EMPLOYMENT AND INSURE AGAINST LIABILITY FOR INJURY OR DISEASE SUFFERED BY THEIR EMPLOYEES; TO AMEND THE LABOUR ACT; AND FOR CONNECTED PURPOSES

1 of 1981
3 of 1981
8 of 1982

[Pts I, II & III, Pt IV. (ss. 18 & 19), and
Pt V (ss. 21, 22, 24, 25 & 26 ... 1st June 1981
Pt IV (s. 20) ... 1st October 1981
Pt V (s. 23) ... 1st January 1982]

PART I PRELIMINARY

Short title and interpretation

1.-(1) This Act may be cited as the Employment Act.

(2) Schedule 3 contains a glossary of terms, and in this Act unless the context otherwise requires any expression for which there is an entry in the first column of the Schedule-

(a) has the meaning given against it in the second column; or

(b) is to be construed in accordance with directions given against it in the second column.

PART II REDUNDANCY PAYMENTS

Right to redundancy payment

2.-(1) Where-

(a) an employee is dismissed by his employer, and

(b) the dismissal is because of redundancy, and

(c) the employee has been continuously employed for a period of twenty-six weeks or more ending with the date of his dismissal,

then, subject to the following provisions, the employer shall be liable to pay him a sum calculated in accordance with section 7 (in this Part referred to as a "redundancy payment").

(2) This Part has effect in relation to dismissals occurring on or after the 1st October 1976 as it has effect in relation to dismissals occurring on or after the date on which this Part comes into effect; but no liability to make a redundancy payment shall be taken to arise before the date on which this Part comes into effect.

Exclusion of right to redundancy payment

3.-(1) An employee who is dismissed because of redundancy is not entitled to a redundancy payment if-

(a) on the date of his dismissal he has attained the age of fifty years; or

(b) he is dismissed in circumstances in which his employer is entitled to terminate his contract without notice by reason of the employee's conduct.

(2) An employee who is dismissed because of redundancy is not entitled to a redundancy payment if-

(a) before the ending of his employment under the previous contract, the employer has made him an offer in writing to renew his contract, or to re-engage him under a new contract; and

(b) where the terms and conditions of his employment under the new or renewed contract would differ from the terms and conditions under the previous contract, the offer specifies the differences and is an offer of suitable employment for the employee; and

(c) the renewal or re-engagement would take place not more than four weeks after the ending of his employment under the previous contract; and

(d) the employee unreasonably refuses the offer.

Meaning of dismissal "because of redundancy"

4.- (1) For the purposes of this Act, when an employee is dismissed his dismissal is to be taken to be because of redundancy if it is attributable wholly or mainly to-

(a) the fact that his employer has ceased, or intends to cease-

(i) to carry on the business for the purposes of which the employee was employed by him; or

(ii) to carry on that business in the place where the employee was so employed; or

(b) the fact that the requirements of that business-

(i) for employees to carry out work of a particular kind; or

(ii) for employees to carry out work of a particular kind in the place where he was so employed,

have ceased or diminished or are expected to cease or diminish.

(2) Where an employee has been dismissed by his employer and the question whether he is entitled to a redundancy payment is referred to the Trade Disputes Panel or any court, then for the purposes of the reference, the employee shall be presumed to have been dismissed because of redundancy unless the contrary is proved.

8 of 1982, s.8

Meaning of "dismiss", "dismissal" and "date of dismissal"

5.-(1) Subject to the following provisions, for the purposes of this Act an employee is dismissed by his employer if and only if-

(a) the contract under which he is employed is terminated by the employer (by notice or otherwise); or

(b) the contract under which he is employed is a fixed term contract and the term expires without being renewed under the same contract.

(2) If-

(a) an employee's contract of employment is renewed, or he is re-engaged under a new contract of employment, in pursuance of an offer made by his employer before the ending of his employment under the previous contract; and

(b) the renewal or re-engagement takes effect not more than four weeks after the ending of his employment under the previous contract; and

(c) no redundancy payment is made in respect of the ending of that employment,

then, the employee shall not be regarded as having been dismissed by his employer by reason of the ending of his employment under the previous contract.

(3) For the purposes of this Act, where an employee is dismissed, the date of his dismissal-

(a) if his contract of employment is terminated by notice, means the date on which the notice expires; and

(b) if his contract of employment is terminated without notice, means the date on which the termination takes effect; and

(c) if he is employed under a contract for a fixed term and the term expires as mentioned in subsection (1) (b), means the date on which the term expires.

Periods of employment

6.-(1) For the purposes of this Part, Schedule 1 shall have effect to determine-

(a) the length of an employee's period of employment; and

(b) whether that employment has been continuous.

(2) For the purposes of this Part, a person's employment during any period shall be presumed to have been continuous unless the contrary is shown.

Amount of redundancy payment

7.-(1) Subject to subsections (2) and (3), the amount of a redundancy payment to which an employee is entitled in any case is-

where-

"PE" is the number of weeks for in the period of employment; and

"BW" is the basic weekly wage for the employment on the date of the dismissal to which the redundancy payment relates.

(2) In no case shall the amount of the redundancy payment exceed $BW \times 65$.

(3) For the purposes of subsection (1), "PE" does not include any week in the period of employment if the employee is eligible for, or has been paid, long service benefit in respect of that week.

Extension of this Part to special cases

8.-This Part shall apply with the necessary modifications to cases falling within the general purposes of this Part, so that, in proper cases, this Part shall apply to the cases referred to in column 1 of Schedule 2 in the manner specified in column 2.

Claims and payments

9.-(1) An employee is not entitled to a redundancy payment unless, before the end of the period of two years beginning with the relevant date-

8 of 1982, ss. 8 & 9

(a) the payment has been agreed; or

(b) the employee has made a claim for the payment by notice in writing to the employer; or

(c) any question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to the Trade Disputes Panel; or

(d) the employee has presented a complaint to the Trade

Disputes Panel under section 6 of the unfair Dismissal Act that, on the relevant date, he was unfairly dismissed.

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(2) In this section "the relevant date"-

(a) where the dismissal occurred before the date on which this Part comes into effect, means that date; and

(b) in any other case, means the date of dismissal.

(3) Where an employer makes a redundancy payment to an employee (after the date on which this Part comes into effect), he shall give the employee a written statement indicating how the amount of the payment has been calculated.

(4) A person who, without reasonable excuse, fails to comply with subsection (3) shall be guilty of an offence and liable to a fine of \$500.

Redundancy Fund

10.-(1) The Minister may by regulations establish a fund to be called "the Redundancy Fund".

(2) The regulations may provide for payments to be made out of the fund to, or in respect of, any person who is entitled to a redundancy payment but is, for any reason, unable to recover the whole or part of that payment.

(3) The regulations may provide that, for the purpose of raising money towards meeting the expenses of the Fund, the Minister may, from time to time, impose a levy on employers, subject to such limitations and exceptions as may be specified by or under the regulations.

Effect of previous deaths

11.-Where this Part confers a right, or imposes an obligation, on a person who has died before this Part comes into force-

(a) the right or obligation may be enforced by or against the personal representatives of the deceased; and

(b) any act which is authorised or required to be done by the deceased under this Part may or, as the case may be, shall be done instead by his personal representatives.

Effect of previous payments

12.-Where this Part imposes any liability to make a redundancy payment in respect of a period of employment, that liability shall be taken to have been discharged to the extent, if any, that payment has been made in respect of that period in purported compliance with Part II of the Labour (Redundancy Payments and Long Service Benefits) Rules 1978 or the Labour (Redundancy Payments and Long Service Benefits) Rules 1979.

PART III
LONG SERVICE BENEFIT

Right to long service benefit

13.-(1) In any case where-

(a) an employer is or was liable under section 13 of the Solomon Islands National Provident Fund Act (payment of contributions into National Provident Fund) to make a contribution in respect of an employee for any period beginning with 1st October 1976; and

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(b) on that date, the employee had been continuously employed by the employer for a period of one year or more,

then, subject to the following provisions, the employer shall be liable to pay the employee a sum calculated in accordance with section 14 (in this Act referred to as "long service benefit").

(2) References in this Part to an employer and his employees are references to a person who was, on 1st October 1976, an employer for the purposes of the Solomon Islands National Provident Fund Act and to his employees for those purposes on that date.

(3) The following provisions of Part II, that is—

section 6 and Schedule 1

section 11 and 12

shall have effect for the purposes of this Part as they have effect for the purposes of that Part and as if-

(a) any reference to a redundancy payment were a reference to long service benefit; and

(b) the reference in section 12 to Part II of the rules there mentioned were a reference to Part III of those rules.

Amount of long service benefit

14.-(1) Subject to subsection (2), the amount of long service benefit to which an employee is entitled in any case is-

$$\text{PE} \times 1/29 \times \text{BW}$$

where-

"PE" is the number of weeks in the period of employment had been employed (whether continuously or not) by the employer on 1st October 1976; and

"BW" is the basic weekly wage for the employment on 1st October 1976.

(2) Any week in relation to which the employer has contributed in respect of the employee towards any scheme the purposes of which include the provision of benefits for the employee after the ending of his employment shall be left out of account in calculating PE.

(3) If the employee has completed five or more years of qualifying service (as defined in the Pensions Rules) and is or will be eligible for a pension or gratuity under the Pensions Act, then, any week of qualifying service shall be left out of account in calculating PE.

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Claims and payments

15.-(1) An employee is not entitled to payment of long service benefit unless, on or before 31st December 1982 -

- (a) the payment has been agreed; or
- (b) the employee has made a claim for the payment by notice in writing to the employer; or
- (c) any question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to the Commissioner of Labour.

(2) Where an employer makes a payment of long service benefit to an employee (after the date on which this Part comes into effect) he shall give the employee a written statement indicating how the amount of the payment has been calculated.

(3) A person who, without reasonable excuse, fails to comply with subsection (2) shall be guilty of an offence and liable to a fine of \$500.

Reference of questions to Commissioner of Labour and appeals

8 of 1982, s. 8(2)

16.-(1) Any question arising under this Part as to the right of any person to long service benefit, or as to the amount of the benefit, shall be referred to and determined by the Commissioner of Labour.

(2) An appeal shall lie to the High Court on any question of law arising from any decision of, or

arising in any proceedings before, the Commissioner of Labour under subsection (1).

Enforcement of right to long service benefit payment

8 of 1982, s.8 (2)

17.-Where -

(a) the Commissioner of Labour has determined that an employer is liable to make long service benefit of a specified amount to an employee; and

(b) the benefit has not been made,

the benefit may be recovered as a debt and, accordingly, any Magistrate's Court (irrespective of the financial limits on its jurisdiction) may on a complaint by or on behalf of the employee or the Commissioner of Labour, order the payment of that sum.

PART IV CONTRACTS OF EMPLOYMENT AND EMPLOYERS' LIABILITY INSURANCE

Written particulars of terms of employment

18.-(1) It shall be the duty of every employer who has one or more employees-

(a) to ensure that, in the case of each employee, the relevant particulars of the terms of his employment are recorded in writing; and

(b) either to provide the employee with a copy of the document in which the particulars are recorded or to inform him in writing of the place (being a place that is reasonably accessible to the employee) where that document may be inspected by him.

(2) In subsection (1), "the relevant particulars", in relation to any employment, means particulars of any terms relating to the following matters -

(a) the names of the employer and employee;

(b) the date on which the employment began,

(c) the remuneration, and when it is payable;

(d) the hours of work;

(e) holidays, holiday pay and passages;

(f) provision about incapacity to work because of sickness or injury, including any provision for sick pay;

(g) the length of notice required for termination of the contract of employment;

- (h) disciplinary procedures;
- (i) housing and housing allowance; and
- (j) any other matter specified for the purposes of this subsection by the Minister by notice in the Gazette.

(3) Section 62 of the Interpretation and General Provisions Act (parliamentary procedure) shall not apply to a notice under subsection (2) (j).

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(4) The duty referred to in subsection (1) arises-

- (a) on entering into a contract of employment;
- (b) on the making of any alteration in any terms of the employment relating to the matters specified in subsection (2); and
- (c) in the case of a contract of employment that is in force on the date on which this section comes into effect, on that date.

(5) A person who fails to comply with the duty referred to in subsection (1) before the end of the period of one month beginning with the date on which the duty arises shall be guilty of an offence and liable to a fine of \$1,000, or six months imprisonment, or both.

(6) In any case where-

- (a) at the time the contract is entered into, the employee is in Solomon Islands, and
- (b) the employment is to be wholly or partly outside Solomon Islands,

a person who fails to comply with the duty referred to in sub-section (1) -

- (i) before the beginning of the period of fourteen days that ends with the date on which the employee, in accordance with the contract, leaves Solomon Islands, and
- (ii) without the written authority of the Commissioner of Labour given for the purposes of this subsection,

shall be guilty of an offence and liable to a fine of \$1,000, or six months imprisonment, or both.

(7) In this section "employee" does not include-

- (a) a person employed under a contract of apprenticeship;

(b) a person whose contract of employment normally involves employment for less than twenty-three hours per week; and

(c) a person employed as a domestic servant in a private household;

unless, in any of those cases, subsection (6) applies.

Contracts employing manual workers, etc., abroad

19.-(1) In the case of a contract of employment-

(a) to which section 18(6) applies,

(b) which is a contract of employment for manual work or as a seaman, and

(c) where the employee is a citizen,

the employer shall, before the date on which the employee (in accordance with the contract) leaves Solomon Islands, deposit with the Commissioner of Labour a sum of money which, in the opinion of the Commissioner, is sufficient to cover the expense of the employee returning to Solomon Islands on the termination of his contract.

(2) A sum deposited under this section -

(a) shall be credited to a deposit account maintained for the purposes of this section; and

(b) may be returned to the employer (together with accrued interest) if the Commissioner of Labour is satisfied that the employer can no longer reasonably be expected to bear the expense of the employee returning to Solomon Islands.

(3) A person who fails to comply with subsection (1) shall be guilty of an offence and liable to a fine of \$1,000, or six months imprisonment, or both.

Employers, liability insurance

20.-(1) Every employer carrying on any business in Solomon Islands shall insure, and maintain insurance, against liability for bodily injury or disease -

(a) sustained by his employees; and

(b) arising out of and in the course of their employment in Solomon Islands in that business,

whether the liability arises by statute or at common law.

(2) The amount for which an employer is required by this section to insure and maintain insurance-

(a) in respect of claims arising out of one occurrence, shall be \$120,000;

(b) in respect of claims relating to any one employee arising out of any one occurrence shall be \$12,000;

or (in either case) such larger sum as may be specified by the Minister by regulations under this section.

(3) The Minister may by regulations provide-

(a) that insurance under a policy of insurance which is subject to any conditions or exceptions prohibited by the regulations shall not constitute compliance with sub-section (1);

(b) for employers to produce to any person authorised in that behalf by the Minister any certificate of insurance relating to insurance against liabilities mentioned in sub-section (1); and

(c) that insurance is not required by this section to be effected by an employer in such cases as may be specified by the regulations or by such class of employer as may be so specified.

(4) A person who, on any day, is required to be insured in accordance with this section and is not so insured shall be guilty of an offence and liable to a fine of \$100.

PART V GENERAL

Notice of redundancy, etc.

21.-(1) An employer who at any time after the end of the period of twenty-eight days that begins with the date on which this section comes into force intends to dismiss an employee because of redundancy shall give notice of his intention to the Commissioner of Labour before the beginning of the period of twenty-eight days that ends with the date of dismissal.

(2) An employer who, at any time before this section comes into force or within the period of twenty-eight days that begins with the date on which it comes into force, dismisses an employee because of redundancy, shall give notice of the dismissal to the Commissioner of Labour before the expiry of that period.

(3) An employer who is liable to pay his employee long service benefit shall give notice of that fact to the Commissioner of Labour before the expiry of the period of twenty-eight days that begins with the date on which this section comes into force.

(4) An employer who, without reasonable excuse, fails to comply with this section shall be guilty of an offence and liable to a fine of \$500.

Excluded employment

22.-Nothing in Parts II or III or sections 21 or 23 confers any right or imposes any obligation in

respect of a person for any period in which he was employed for a fixed term (whether or not the term might be renewed), unless he is a citizen of Solomon Islands.

Government employment

23.-(1) Part II shall have effect (with the necessary modifications of the terms used) in relation to employment by a department of the Government or any other employment by or on behalf of the Crown and to persons in such employment as it has effect in relation to other employment and to employees.

(2) In the case of a person who-

(a) does not qualify for long section 13(1), but

(b) held a pensionable office (within the meaning of the Pensions Act) for a period of one year or more ending on 1st October 1976,

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Part III shall have effect as if he does so qualify and as if he and the Government were employee and employer for the purposes of that Part.

(3) Where a payment of long service benefit falls to be made to a person who -

(a) on 1st October 1976, was employed by a department of the Government or otherwise by or on behalf of the Crown, and

(b) on the date of payment, is still so employed or is an employee for the purposes of the Solomon Islands National Provident Fund Act,

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the payment shall be either in cash commuted, or made into the fund and credited to the account of that person, and the National Provident Fund Act shall have effect as if the payment were a contribution made in respect of him during the financial year in which the payment is made.

(4) In subsection (3), "financial year" and "fund" have the same meanings as in the National Provident Fund Act.

Regulation

24.-(1) The Minister may by regulations make administrative and procedural provisions for the purpose of carrying into effect Parts II to IV of this Act.

(2) Where regulations are to be made under this section or sections 10 or 20, the following provisions (and not [section 62](#) of the [Interpretation and General Provisions Act](#)) shall have effect-

- (a) a copy of the regulations shall be laid before Parliament; and
- (b) the copy shall be laid before the regulations come into effect; and
- (c) if, within the period of twenty days beginning with the day on which the copy is laid, Parliament resolves that the regulations be annulled, the regulations shall cease to have effect as from the date of the resolution, but without prejudice to the validity of anything previously done under them or to the making of new regulations.

(3) In reckoning any period of twenty days for the purposes of subsection (2) (c), no account shall be taken of any time during which Parliament is prorogued or dissolved or is adjourned for more than four days.

Supplementary provision

25.-(1) Any provision in any agreement (whether or not it is a contract of employment) shall be void in so far as it purports to exclude or limit the operation of any provision of [Parts II](#) and III.

(2) It is hereby declared that the rights conferred by [Parts II](#) and III on employees are in addition to any existing rights.

SCHEDULE 1

[Section 6](#)

PERIODS OF EMPLOYMENT

1. The employee's period of employment is to be calculated in weeks.
2. Any week which does not count under paragraphs 5 to 7 breaks the continuity of the period of employment.
3. The provisions of this Schedule apply to periods before 1st October 1976 as they apply to later periods.
4. The provisions of this Schedule relate only to employment by one employer.
5. (1) Any week in which the employee is employed-
 - (a) for more than half of the normal weekly working hours of the business concerned (that is, working hours excluding overtime); or
 - (b) for twenty-three hours or more,

shall count in calculating a period of employment.

(2) Any week in which the employee's relations with the employer are governed by a contract of employment which normally involves employment for the hours referred to in sub-paragraph (1) shall count in calculating a period of employment.

6. Any week in which the employee is, for the whole or part of the week-

(a) incapable of work in consequence of sickness or injury; or

(b) absent from work because his employer is temporarily unable to provide work for him; or

(c) absent from work in circumstances in which, by arrangement or custom, he is regarded as continuing in the employment of his employer; or

(d) absent from work wholly or partly because of pregnancy or confinement,

shall count as a period of employment.

7. If an employee returns to work at the end of a period of absence from work taken in accordance with section 42 of the Labour Act (maternity leave), every week of that period shall count as a period of employment.

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8. (1) A week does not count in calculating an employee's period of employment if he takes part in a strike (within the meaning of the Trade Disputes Act) in that week; but such a week does not break the continuity of his period of employment unless the strike has been declared unlawful under Part III of the Trade Disputes Act 1976.

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(2) If in the case of any week-

(a) the week does not count in calculating a period of employment under this Part, and

(b) the employee is absent from work in that week because of a lock-out, the continuity of his period of employment is not broken by that week.

SCHEDULE 2

Section 8

SPECIAL CASES

Case 1: Termination of Contract by Employee

The employee terminates his contract of employment (with or without notice) in circumstances in which, by reason of the employer's conduct, the employee is entitled to terminate it without notice.

This Part applies as if the contract had been terminated by the employer; so that if either of the facts in section 4(1) exist, the employee may be eligible for a redundancy payment.

Case 2: Change in ownership of business

There is a change in the ownership of the business, or part of the business, for the purposes of which the employee is employed-

(i) the new owner, with the agreement of the employee, renews his contract of employment or re-engages him so that (but for the change in ownership) section 5 (2) would apply.

(i) This Part applies as if his employment had not been terminated. The employee's period of employment at the time of the renewal or re-engagement counts as a period of employment with the new owner, and the change does not break the continuity of his period of employment.

(ii) the new owner makes an offer to the employee which would satisfy section 3(2) if it had been made by the previous owner and the employee unreasonably refuses the offer.

(ii) the employee is not entitled to a redundancy payment.

Case 3: Transfer of business by Act

The employee's contract of employment is modified by or under an Act of Parliament so as to substitute a new employer for the previous employer.

This Part applies as if the period of employment at the time of the modification counted as a period of employment with the new employer, and the change does not break the continuity of the period of employment.

Case 4: Contract terminated by operation of law

The employee's contract of employment is terminated by operation of law, either because of an act done on the part of the employer, or because of an event affecting the employer

This Part applies as if the employment had terminated the contract.

(such as his death).

(i) If,-

(a) his contract of employment is not renewed, or he is not re-engaged, so as to satisfy section 5(2) (or that section is modified by case 2); and

(b) the circumstances in which it is not renewed or he is not re-engaged are wholly or partly attributable to the existence of one of the facts in section 4(1).

(ii) If the contract is terminated by the death of the employer.

(i) This Part applies as if he had been dismissed because of redundancy.

(ii) Case 2 shall not apply and, instead, this Part shall apply as if the deceased and his personal representatives were one and the same person, but subject to the following modifications-

(a) in sections 3(2) (a) and 5(2) (a) leave out "before the ending of his employment under the previous contract" and

(b) in sections 3(2) (c) and 5(2) (b) for "four weeks" substitute "eight weeks".

Case 5: Re-engagement after an interval

The employee is re-engaged or his contract is renewed under section 5(2) with effect from a date after the ending of his employment under the previous contract.

The period of the interval shall count as a period of employment

Case 6: Re-engagement by an associated employer

The employee is dismissed by his employer but his contract is renewed or he is re-engaged by an associated employer or he is offered renewal or re-engagement by the associated employer.

This Part (and in particular sections 3 and 5) applies as if the employer and the associated employer were one and the same person.

Case 7: Domestic service

The employee is employed as a domestic servant in a private household.

This Part (except case 2) shall apply as if the household were a business and the maintenance of the household were the carrying on of that business by the employer.

SCHEDULE 3

Section 1

GLOSSARY

Associated employer	Two employers are to be treated as associated if one is a company of which the other (directly or indirectly) has control, or if both are companies of which a third person (directly or indirectly) has control.
"Because of redundancy"	See section 4.
Business	Includes a trade or profession and includes any activity carried on by a body of persons, whether corporate or unincorporate.
Contract of employment.....	Means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing.
Commissioner of Labour.....	See the Labour Act.
"Dismiss", "dismissal" and "date of dismissal"	See section 5.
Employee	Except in Part III, means an individual who has entered into or works under (or, where the employment has ceased, worked under) a contract of employment.
Employer	Except in Part III, in relation to an employee, means the person by whom the employee is (or, in a case where the employment has ceased, was) employed.
Employment.....	Except in Part III, means employment under a contract of employment.
Renewal	Includes extension
Year	A period of fifty-two weeks.

(No Subsidiary Legislation)