

# BILL NO. 12 OF 2020

## A BILL

FOR AN ACT TO AMEND THE EMPLOYMENT RELATIONS ACT 2007

ENACTED by the Parliament of the Republic of Fiji—

*Short title and commencement*

- 1.—(1) This Act may be cited as the Employment Relations (Amendment) Act 2020.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.
- (3) In this Act, the Employment Relations Act 2007 is referred to as the “Principal Act”.

*Section 24 amended*

2. Section 24 of the Principal Act is amended by—
  - (a) renumbering section 24 as section 24(1);
  - (b) in subsection (1)—
    - (i) in the chapeau after “must”, inserting “, unless the worker has broken his or her contract of service or the contract is frustrated or its performance prevented by an act of God”;

- (ii) in paragraph (a), deleting “unless the worker has broken his or her contract of service or the contract is frustrated or its performance prevented by an act of God,”; and
  - (iii) in paragraph (b) after “work to the worker”, deleting “the employer”; and
- (c) after subsection (1), inserting the following new subsection—
- “(2) In this section, “act of God” includes a pandemic declared by the World Health Organization.”.

*Part 20A inserted*

3. The Principal Act is amended after section 245 by inserting the following new Part—

**PART 20A—COVID-19 RESPONSE MEASURES***Object of this Part*

245A. The object of this Part is to provide for response measures in relation to leave entitlements during the COVID-19 period.

*Interpretation*

245B. In this Part, unless the context otherwise requires—

“COVID-19” means the coronavirus disease as named by the World Health Organization on 11 February 2020;

“COVID-19 period” means the period commencing on and from the operative date and ending on a date that the Minister shall prescribe by notice in the Gazette after undertaking consultations with the ministry responsible for health and stakeholders in key economic sectors including the Office of the Prime Minister, the ministries responsible for finance, public enterprises, commerce, trade, tourism and transport and the Reserve Bank of Fiji; and

“operative date” means the date of commencement of the Employment Relations (Amendment) Act 2020.

*Family care leave*

245C. Notwithstanding section 68A, a worker is entitled to paid family care leave for not less than 2 working days within the COVID-19 period for a year of service.

*Paternity leave*

245D.—(1) Notwithstanding section 101A, a man whose partner is entitled to maternity leave under Part 11, or would be entitled to maternity leave under Part 11 if she were employed, is entitled to paternity leave and to abstain from work for not less than 2 working days within the COVID-19 period for a year of service.

(2) The entitlement under this section is only applicable if the man complies with the requirements set out in section 101A.

*Transitional*

245E.—(1) In relation to family care leave, and for the avoidance of doubt—

- (a) a worker who has utilised one working day of paid family care leave under section 68A in a year of service commencing before the operative date and ending within the COVID-19 period is only entitled to one working day of paid family care leave for the remainder of such year of service;
- (b) a worker who has utilised 2 or more working days of paid family care leave under section 68A in a year of service commencing before the operative date and ending within the COVID-19 period is not entitled to paid family care leave for the remainder of such year of service;
- (c) a worker who has utilised more than 2 working days of paid family care leave under section 68A in a year of service commencing before the operative date and ending within the COVID-19 period—
  - (i) must not be made to reimburse his or her employer for the use of such leave; and
  - (ii) subject to the reductions to leave entitlements under this Part, does not lose his or her entitlement to any other type of leave guaranteed under this Act or his or her employment contract;
- (d) if a worker has utilised, in a year of service commencing before the operative date and ending after the COVID-19 period—
  - (i) 2 or more working days of paid family care leave under section 68A before the operative date, he or she is not entitled to paid family care leave for the COVID-19 period;
  - (ii) up to 3 working days of paid family care leave before the operative date, he or she is entitled to the remainder of the paid family care leave entitlement under section 68A after the COVID-19 period reduced by any paid family care leave utilised within the COVID-19 period for such year of service;
  - (iii) 4 working days of paid family care leave before the operative date, he or she is entitled to one working day of paid family care leave for the remainder of such year of service; or

- (iv) 5 working days of paid family care leave before the operative date, he or she is not entitled to the paid family care leave entitlement under section 68A after the COVID-19 period for the remainder of such year of service;
  - (e) if a worker utilises the paid family care leave entitlement under section 245C in a year of service commencing within the COVID-19 period and ending after the COVID-19 period, he or she is entitled to the paid family care leave entitlement under section 68A after the COVID-19 period reduced by any paid family care leave utilised in such year of service within the COVID-19 period; and
  - (f) if an employer approved, before the operative date, an application for paid family care leave in a year of service commencing before the operative date and ending within the COVID-19 period and the approved application pertains to working days within the COVID-19 period and which, when counted together with any paid family care leave days utilised within that year of service amount to an aggregate sum of more than 2 working days, the excess days are not a statutory leave entitlement under this Act, however the employer, at the employer's discretion, may grant the approved leave despite the statutory reduction of such leave in this Part.
- (2) In relation to paternity leave, and for the avoidance of doubt—
- (a) a man who has utilised one working day of paid paternity leave under section 101A in a year of service commencing before the operative date and ending within the COVID-19 period is only entitled to one working day of paid paternity leave for the remainder of such year of service;
  - (b) a man who has utilised 2 or more working days of paid paternity leave under section 101A in a year of service commencing before the operative date and ending within the COVID-19 period is not entitled to paid paternity leave for the remainder of such year of service;
  - (c) a man who has utilised more than 2 working days of paid paternity leave under section 101A in a year of service commencing before the operative date and ending within the COVID-19 period—
    - (i) must not be made to reimburse his employer for the use of such leave; and

- (ii) subject to the reductions to leave entitlements under this Part, does not lose his entitlement to any other type of leave guaranteed under this Act or his employment contract;
- (d) if a man has utilised, in a year of service commencing before the operative date and ending after the COVID-19 period—
  - (i) 2 or more working days of paid paternity leave under section 101A before the operative date, he is not entitled to paid paternity leave for the COVID-19 period;
  - (ii) up to 3 working days of paid paternity leave before the operative date, he is entitled to the remainder of the paid paternity leave entitlement under section 101A after the COVID-19 period reduced by any paid paternity leave utilised within the COVID-19 period for such year of service;
  - (iii) 4 working days of paid paternity leave before the operative date, he is entitled to one working day of paid paternity leave for the remainder of such year of service; or
  - (iv) 5 working days of paid paternity leave before the operative date, he is not entitled to the paid paternity leave entitlement under section 101A after the COVID-19 period for the remainder of such year of service;
- (e) if a man utilises paid paternity leave under section 245D in a year of service commencing within the COVID-19 period and ending after the COVID-19 period, he is entitled to the paid paternity leave entitlement under section 101A after the COVID-19 period reduced by any paid paternity leave utilised in such year of service within the COVID-19 period; and
- (f) if an employer approved, before the operative date, an application for paid paternity leave in a year of service commencing before the operative date and ending within the COVID-19 period and the approved application pertains to working days within the COVID-19 period and which, when counted together with any paternity leave days utilised within that year of service amount to an aggregate sum of more than 2 working days, the excess days are not a statutory leave entitlement under this Act, however the employer, at the employer’s discretion, may grant the approved leave despite the statutory reduction of such leave in this Part.”.

*Section 264 amended*

4. Section 264(5) of the Principal Act is amended by deleting “191BU” and substituting “191BV”.

## **EMPLOYMENT RELATIONS (AMENDMENT) BILL 2020**

### **EXPLANATORY NOTE**

*(This note is not part of the Bill and is intended only to indicate its general effect)*

#### **1.0 BACKGROUND**

- 1.1 The Employment Relations Act 2007 (**‘Act’**) sets out the framework for Fiji’s employment law.
- 1.2 The Employment Relations (Amendment) Bill 2020 (**‘Bill’**) seeks to amend the Act to provide for a more realistic work environment which enables the sustainability of jobs and businesses, and to clarify the meaning of “an act of God” in the Act during the COVID-19 period.

#### **2.0 CLAUSES**

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.
- 2.2 Clause 2 of the Bill amends section 24 of the Act to clarify that an act of God, for the purposes of the section, includes a pandemic declared by the World Health Organization.
- 2.3 Clause 3 of the Bill amends the Act by inserting a new Part after Part 20. The new Part 20A sets out employment related measures to respond to COVID-19. These include—
  - (a) reducing the entitlement to paid family care leave to 2 days during the COVID-19 period;
  - (b) reducing the entitlement to paternity leave to 2 days during the COVID-19 period; and
  - (c) providing for the transition to the reduced family care and paternity leave entitlements during the COVID-19 period.

2.4 Clause 4 of the Bill amends section 264(5) of the Act to correct a cross-referencing error.

### **3.0 MINISTERIAL RESPONSIBILITY**

3.1 The Act comes under the responsibility of the Minister responsible for employment.

A. SAYED-KHAIYUM  
Attorney-General