



Fundamental Rights of the Worker

A labour market consists of both the supply and demand of labour. A labour agreement can be verbal or written. It is between 2 parties: an employer and a worker. The worker has the right to be informed of his/her rights to avoid any form of miscommunication as far as the labour laws are concerned.

The Ministry of Public Health, Social Development & Labour recognizes therefore the need to aid, protect and inform the working population of their rights as employed residents of Sint Maarten.

Rights of the Worker:

1. RIGHT TO FAIR ACCESS TO THE LABOUR MARKET

The right to fair access to the labour market exceeds the right to work, it starts with the right to seek employment. Employment possibilities should be equally attainable to all and should not discriminate on the basis of any prejudices or predispositions.

2. RIGHT TO EQUALITY

Everyone has the human right to be treated equally at all times, which also includes equality at work. ILO Convention no. 111 Discrimination (Employment and Occupation) Convention defines discrimination as: *“any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”*. Discrimination can be direct or indirect and denies individuals the opportunity to contribute to the world of work. Direct discrimination happens when a person is treated differently based on race, gender, or other individual characteristics. Indirect discrimination occurs where rules or practices appear on the surface to be neutral but in practice lead to exclusions. Equality at work means that all individuals should be afforded equal opportunities to develop fully, the knowledge, skills and competencies that are relevant to the economic activities they wish to pursue. Equality also includes the equal compensation of workers in equal or similar positions.

3. RIGHT TO AN EMPLOYMENT CONTRACT

An employment contract is a mutually binding agreement between an employer and worker. The contract should highlight important terms and conditions of the agreement which should at all-times be within the boundaries stipulated by labour legislation and regulations such as: the working hours, salary, notice period, name and signature of worker and employer, rights and responsibilities of both parties, sick leave and vacation days, maternity leave, duration of contract, termination of contract, etc.

4. RIGHT TO DECENT WORK AND REST HOURS

According to the International Labour Organization ILO, “Decent Work” involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

5. RIGHT TO AN OVERVIEW OF COMPENSATION (SALARY SLIP)

A salary slip is a very important document for a worker. It provides an overview of the hours worked, inclusive of overtime hours, the hourly wage as well as total worked hours, any deductibles, bonuses, etc. You have the right as a worker to verify what is being paid to you and the right to be able to correct any discrepancies with regards to your compensation.

6. RIGHT TO (OVERTIME) COMPENSATION

Workers are entitled to receive at least the minimum wage allotted to their respective age and hours worked. Parties are however free to (and are advised to) agree on a wage compensation higher than the legal minimum wage amount. The proposed compensation amount should be stipulated and agreed upon prior to employment by both the worker and employer. Parties are also free to agree on the timeframe in which this compensation will be paid. Overtime is the additional hours spent at work beyond your regular working hours and must also be compensated justly in accordance with the Labour Ordinance 2000 and the Minimum Wage Law.

7. RIGHT TO MEDICAL COVERAGE (PERSONS EARNING UNDER A LEGAL LIMIT SET BY SZV)

The National Ordinance regulating the right of a worker to be compensated during sickness A.B. 2013, GT no. 802 affords workers medical coverage for medication and treatment during sickness. Every worker as well as their employer pays into their medical coverage. These payments vary per worker and should be reflected in your salary slip.

8. RIGHT TO FREEDOM OF ASSOCIATION & COLLECTIVE BARGAINING (RIGHT TO UNIONIZE)

The freedom to associate and to bargain collectively are powerful tools to address social labour market concerns and for workers and employers to reach agreement on issues affecting their working relationship (convention no.87 & 98). These enabling rights make it possible to promote and realize decent working conditions. It can strengthen weak voices and reduce poverty and social disadvantage. The right to strike has, for instance, been recognized internationally as a fundamental right of workers and their organizations.

9. RIGHT TO FREE LEGAL COUNSEL/LABOUR MEDIATION

As a worker you have the right to be properly represented during legal cases. The Labour Ordinance 2000 allows the provision of legal assistance, collective labour mediation and the possibility to acquire legal aid for labour related disputes. The Department of Labour Affairs is tasked with legal aid assistance (for civil and labour cases) and the Mediator provides collective labour mediation.

10. RIGHT TO SEVERANCE PAY (ONLY APPLICABLE TO (FORMER)EMPLOYEES THAT WERE UNJUSTLY DISCHARGED)

A worker who has been unlawfully terminated due to no fault of their own, has the right to severance pay. Severance pay is a one-time compensation by termination of employment, for the years contributed to the establishment and is paid by the employer. The Severance Ordinance AB 2013, GT no. 529, provides the calculation of the amount to be compensated, on an individual basis.

The Ministry of Public Health, Social Development & Labour also endorses the following prohibitions:

11. THE PROHIBITION OF ALL FORMS OF CHILD LABOUR

Children ages 16 and older are allowed to work, however convention no. 182 prohibits all forms of hazardous work for children. The intention is to ensure that every girl and boy has the opportunity to develop physically and mentally to her or his full potential, prohibiting all work by children that jeopardizes their education and development.

12. THE PROHIBITION OF ALL FORMS OF FORCED LABOUR

Convention no. 29 prohibits any kind of forced labour. Forced labour is the exploitation of a worker's freedom. It occurs where work or service is demanded by an employer who has the will and power to threaten workers with severe deprivations, such as withholding food or wages, physical violence or sexual abuse, restricting peoples' movements or incarceration. Labour trafficking is also considered forced labour. A worker has the right to choose their occupation, which should be free from threats and oppression.

If you feel any of your rights are being violated, please contact the Ministry of Public Health, Social Development & Labour:

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See also website: www.sintmaartengov.org under subtitle “laws” for further explanation of the labour legislations and regulations.

Disclaimer: the full list of “worker’s rights” is far more comprehensive than the abovementioned list. This list gives merely an overview of the top 10 fundamental rights of the worker and 2 prohibitions that should be observed within every labour agreement.