

NATIONAL REMUNERATION BOARD

Proposed Recommendations



Attorneys and Notaries' Employees (R.O.) Regulations



9 February 2010

ATTORNEYS' AND NOTARIES' EMPLOYEES (R.O.) REGULATIONS
PROPOSED RECOMMENDATIONS

1. INTRODUCTION

On 7th August 2007, the Minister of Labour, Industrial Relations and Employment, acting under Section 94(1) of the Industrial Relations Act 1973 (IRA), referred to the National Remuneration Board (Board) the Attorneys' and Notaries' Employees (Remuneration Order) Regulations 1994 for an extensive review. The review exercise was initiated in January 2008. Public Hearings ended in October 2008. However following the reconstitution of the Board under the Employment Relations Act 2008 (ERA), acting under Section 108 (13), the Board proceeded as follows:

- Notice inviting interested parties to re-submit written representations were published in the Government Gazette on 9 June 2009 and two daily newspapers, namely Le Mauricien and Le Socialiste, on 11 June 2009.
- The same parties responded as in the previous exercise:
 - The Mauritius Law Society (MLS), representing the attorneys;
 - A group of employees representing the interest of attorneys' Clerks;
 - A group of employees representing the interest of notaries' Clerks;
- The Board held one public hearing on 17 July 2009 whereby parties confirmed their earlier written and oral submissions and with general consent, proceedings held previously were made part of the present proceeding. Despite being contacted on several occasions, notaries neither submitted any written representations, nor were they represented at the hearing sessions. To make matters worse, despite reminders the Chamber of Notaries did not make the least move to provide the information sought by the Board for the purpose of this review exercise.
- On completion of public hearing, the Board undertook its own fact gathering exercise. However, out of fear, real or imaginary, there was a certain reluctance on the part of employees to

respond and submit required information. Despite given the assurance that all information will be treated with strict confidentiality, only 12 respondents dared to participate in the Board's investigations. The Board would like to put on record the non-collaborative attitude of the employers and their representatives during the Board's survey.

2. OVERVIEW

Whereas the Notaries Act 2008 limits the number of notaries to a maximum of 100, there is no restriction as regards attorneys. As at November 2009, according to the records of the Supreme Court, there were 56 notaries and 138 attorneys as compared to 35 and 108 respectively in 1994, when the R.O. was last revised. Hardly 6 notaries and 3 attorneys employ more than 9 employees, providing employment to around 170 persons. Based on the figures of the Census of Economic Activities conducted in 2007, the attorneys and notaries employing less than 10 persons, employed around 728 workers of whom 6.6% were engaged on a part-time basis. 57% of the full time employees were female workers. The average number of paid employees per unit stood at 3.5 for attorneys and 5.4 for notaries. It should however be noted that the present R.O. caters for only two categories of employees in this sector namely, Clerks and Typists while the messengers are covered by a separate R.O. of their own.

According to the Board's observations 33.3% of employees are being remunerated above the minimum prescribed rates, 33.3% are drawing strictly the minimum rate and the rest are being under-remunerated. It is worth mentioning that in at least one case a clerk in his 8th year of service with his employer, while reckoning an overall 14 years' experience in this field, is drawing 3% below the starting salary prescribed for a new entrant and therefore 16% less than the rate prescribed for an employee with 8 years service! This is a clear sign of bad faith on the part of the employer.

3. RECOMMENDATIONS

The specificity of the sector has been the main consideration behind the recommendations of the Board, together with the long term interest of parties concerned and the economic consideration of protecting existing employment. At no time the Board lost sight of the fact that it is prescribing the minimum and in the spirit of the new labour legislations leaves ample room for negotiations, though the reality in the sector does not seem to be much encouraging in this direction.

I. **Definition Clause**

The R.O. makes reference to only two categories of employees working in this sector namely, Typist and Clerk.

I.1 *Typist*

The representative of Attorneys' employees requested that 'Typist' be restyled as 'Secretary/Receptionist/Computer Operator' as they are required to perform all of these duties and not only word processing. **The Board recommends accordingly.** The definition in the regulations is amended as follows:

'Secretary/Receptionist/Word Processing Operator' means an employee who is wholly or mainly engaged in typing documents according to given instructions and whose duties may include –

- (a) **operating a telephone switchboard;**
- (b) **receiving, recording and passing on telephone messages.**

I.2 *Attorneys' and Notaries' Clerk*

I.2.1 *Separate R.O. for Notaries' Clerks*

No distinction is made in the R.O. concerning a clerk of an attorney or a notary, the actual definition reading as follows: '*Clerk means a person employed by an attorney at law or a notary for the purpose of performing duties in connection with legal matters, attending courts, registration and mortgage office and such other duties relating or pertaining to the profession of attorney or notary.*' The definition is rather broad and flexible which should be convenient to those in this field. However whether it leaves room for abuse or not is a question of good or bad faith on the part of employers in the sector.

The Notaries' Clerks expressed their wish to have a separate R.O. as they claimed that the duties and responsibilities of a notary's clerk are different from those of an attorney's clerk. It has been gathered that the gist of the duties of a notary's clerk is as follows:

- preparation of deeds;
- Verifying deeds by conducting research at the mortgage office, Registrar General's Office and Registrar of Companies and deposit documents at the Supreme Court;
- Perform procedures and make payments for taxation and registration of deeds.

However, despite all its efforts the Board could not benefit from the views of the Chamber of Notaries nor its members regarding this issue. Based on the information at its disposal at present, **the Board does not consider it appropriate to make recommendations for a separate Remuneration Order for notaries' clerks as such.**

1.2.2 Provision for different levels of Clerk

The employers' side proposed that the revised R.O. should make provisions for different levels of Clerks, namely Trainee Clerks, Certified Clerks, Non-certified Clerks and Notaries' Clerks. However, the employees objected to this arguing that the R.O. should not make provisions for all these categories but leave it to the parties to negotiate among themselves whether they are qualified or not. The Board tends to agree with the latter and is of the opinion that this will open the door for abuse and therefore **makes no recommendation on this issue.**

1.3 Formal Training Needs

There is no formal training prior to joining these legal firms as clerk or typist though formal post-primary education is required. It has been gathered that most clerks have completed at least five years' secondary education, a few having a full Cambridge SC/GCE while the others have secured a pass in only three or four subjects.

During the hearing sessions both employees and employers expressed the need for clerks to undergo a formal training programme based on the argument that the attorneys' and notaries' clerks cannot be compared to clerks in other sectors of activity. While a notary's clerk is mainly concerned with the drafting of instruments and doing research at the mortgage office, the attorney's clerk has mainly to

attend courts, follow cases and take clients to swear affidavit. Moreover, changes in the legal environment necessarily mean that support staff should be academically and technically qualified.

While being fully alive to the training needs of the support staff, the Board regrets that it is outside the ambit of its mission to make any recommendation on this particular issue. However, the Board will venture to advise concerned parties to approach one of the Universities with a view to organizing a certificate course in legal studies similar to the one organised for Court's Clerks.

II. Other Terms and Conditions of Employment (Second Schedule)

II.1 Normal Working Hours

II.2 Meal Breaks and Tea Breaks

II.3 Notional Calculation of Basic Rate

The existing provisions in the R.O. consist of 33 hours work per week over 6 days, the daily hours of work being 6 on weekdays and 3 on Saturdays, excluding a meal break of 1 hour and a tea break of 15 minutes. The workers' representative requested that the lunch time be maintained at 1 hour and the tea break be extended to 30 minutes. The MLS was not agreeable to their demand and rather proposed that the lunch time be reduced to 30 minutes, with no amendments to the tea break and the number of working days be reduced to 5 days from Monday to Friday with the condition that the Saturday work be redistributed during the weekdays.

According to the Board's investigations the attorneys' or notaries' office are in general not open on Saturdays. And since the Court is closed on Saturdays, the Board tends to agree with the MLS. It is of the opinion that that it is to the advantage of both employers and employees in this sector that the number of normal working days per week be reduced to 5 from Monday to Friday and that the Saturday work be redistributed during the weekdays as follows: 6.5 hrs daily cumulating into a 32.5 hour normal working week. Given that the normal working hours is exclusive of the meal breaks it would not be in the interest of the workers to lengthen their tea break but it would not either be fair to reduce the lunch time to 30 minutes. However, the Board is also alive to the fact that there is no fixed lunch time or duration of lunch time due to the proceedings at the Supreme or Industrial Courts. Therefore it is suggested that in the spirit of good industrial relations, individual employers and employees sit round a table and work out such minor issues based on mutual agreement. **Although allowing for certain flexibility, the Board recommends that**

- **no amendments be made to the duration of lunch time and tea break;**
- **the number of normal working days be reduced to 5 days per week from Monday to Friday;**
- **a normal working day shall consist of 6.5 hours, excluding time allowed for meal and tea breaks;**
- **a normal working week therefore cumulates into 32.5 hours; and**
- **for the purpose of notional calculation of basic rate a month shall be deemed to consist of 22 days.**

II.4 Payment of Remuneration

The workers' representative requested that their salary be credited to their bank account on 27th of each month. The MLS did not want to stick to a date as such but rather agreed to 3 working days before the end of the month but whether be credited to the bank or not be left at the employer's and employee's discretion because standing orders involve a cost to the employer. **In the light of the above, the Board recommends that every employee be paid his salary 3 working days before the end of the month and that same be credited to the employee's bank account upon mutual agreement between the employer and the employee.**

The Board also considers that the pay slip issued to the worker should clearly mention the National Identity Card Number, the grade of the worker and his basic wages in addition to the existing provisions in the R.O. under this item.

II.5 Leave Entitlements

II.5.1 Annual Leave and Sick Leave

The Board recommends status quo on these two items as the provisions in the R.O. are adequate.

II.5.2 Study Leave

The Board recommends that the existing paragraph 8 on 'Special Leave' be renamed 'Study Leave'.

II.5.3 Special Leaves

The Board recommends that a new paragraph entitled ‘Special Leaves’ be introduced after paragraph 8. In a spirit of harmonization of such provisions in the recent recommendations in other sectors, the Board recommends that

- **On the occasion of his first civil or religious marriage the employee be entitled to 5 working days leave on full pay provided he reckons 12 months continuous employment with the same employer.**
- **On the marriage of his child the employee be entitled to 3 working days leave on full pay provided he reckons 12 months continuous employment with the same employer.**
- **On the occasion of the death of his spouse, child, father, mother, brother or sister the employee be entitled to a minimum of 3 working days leave with pay irrespective of his length of service.**
- **On the occasion of the birth of his child, upon the production of proof of same, the employee be entitled to 5 continuous working days leave provided he reckons 12 months continuous employment with the same employer immediately preceding the birth of the child. Such leave should begin within the first week following the birth of the child.**

II.6 Maternity Benefits

The Board recommends that the maternity allowance to be paid to the employee within 7 days following the confinement be increased to Rs 2000. Provisions should be made in the regulations to cater for the eventuality of a still-birth. It is recommended that a new paragraph be introduced immediately after subparagraph (9) (1) stating that a female employee who gives birth to a still-born child may opt for either 2 weeks or 12 weeks leave on full pay, the latter to be drawn from the 3 confinements provided in the regulations. It is also recommended that such benefits be extended to employees reckoning less than 12 months continuous employment, albeit without pay. The remaining paragraphs should be renumbered accordingly.

II.7 Medical Facilities/Medical Scheme

As per the existing R.O., only the employees of notaries are entitled to a pair of spectacles free of charge upon the recommendation of an eye specialist. The Board finds no logic in restricting such provisions to one category or the other and therefore **recommends that same be extended to all employees covered**

by the R.O. However during the deliberations agreement was reached between the parties on the payment of a sum of Rs 3000 every two years for spectacles. Accordingly, the Board recommends that every employee be entitled to an allowance of Rs 3000 every 2 years for spectacles.

However, on the question of Medical scheme and medical check up, the Board recommends status quo as health facilities are free and anything beyond that would better be left to be negotiated by parties and cannot be imposed as minimum terms and conditions of employment.

II.8 Transport Facilities

In the quest of harmonization, the Board **recommends that the distance limit between the employee's residence and his place of work be brought down to 3 km. However in case the employee is called upon to attend duties away from his normal place of employment, the Board finds that 1.6 km is a reasonable distance for eligibility to refund of travelling expenses and recommends status quo on this issue.**

II.9 Meal Allowance

An employee is eligible for a meal allowance in the event he has to spend the day at a distance of 5 km or above from his normal place of work for the purpose of his employer's business. The actual provision stands at Rs 25. The employees' representative proposed that given the increase in the cost of living the allowance be increased to Rs 75 while the MLS was agreeable to increase it to Rs 50. **The Board is of opinion that the sum of Rs 50 is reasonable and recommends accordingly.**

II.10 Death Grant

The Board recommends that the grant shall be increased to Rs 3500; and the eligibility period for the payment of death grant shall be removed.

II.11 Overseas Leave

During the recent review exercise it has been the general trend to change overseas leave into vacation leave as investigations tend to reveal that this is a provision from which employees do not really benefit as a trip abroad becomes rather costly at the end of the day. The Attorneys' representative had no objection as such to the 'overseas leave' being restyled 'vacation leave' on the condition that such leaves be taken subject to the exigencies of service and only when the Court is on vacation. **The Board recommends that 'Overseas Leave' be replaced by 'Vacation Leave' wherever it appears in paragraph**

16 and such vacation leave to be spent wholly or partly locally or abroad at the employee's discretion. It is also recommended that the eligibility period for such leave be reduced to 10 years continuous employment.

II.12 Gratuity at Death or on retirement before the age of 60

The Regulations provide that a worker is entitled to a gratuity at death or on retirement before the age of 60 on medical grounds provided the worker reckons at least 10 years continuous service with the same employer. The lump sum is calculated according to the formula $N \times W/2$, where 'N' means the number of years of service and 'W' means the last monthly wage.

As in its recently reviewed R.O.s, the Board recommends that the gratuity shall be calculated on the basis of 15 days' basic wages per year of service of the employee. The employee's year of service shall be computed as from the first day of the period during which the employee has been in continuous employment with the same employer up to his last day of employment.

II.13 Provision of Black Coat

There are no provisions for uniforms or black coat in the present regulations. It has been the contention of the Attorneys' clerks that the Court insists that Clerks attending Court be well-groomed and should wear a black coat. They have therefore requested that such provisions be made every 2 years. The representative of the MLS had a tendency to agree with their statement and did not have any objection to providing black coat but suggested that such item be issued every 3 years.

As wearing of black coat by clerks attending Court is mandatory, **the Board recommends that a new paragraph entitled 'Provision of Black Coat' be added to the regulations and every employer be required to provide one black coat every 2 years to every employee attending Court. The first issue of such coat should be made not later than the first time the employee is required to attend Court for his employer and thereafter to be issued at a period to be mutually agreed between the employer and the employee, but preferably at the beginning of the year when the Court resumes. It is also recommended that such black coat shall remain the property of the employer.**

III. Wages

III.1 'Carry Forward' of Salary and Length of service upon transfer from one employer to another

During their oral submissions, much discussions were held on this issue. The employees' representative argued that when an employee moves from one attorney's office and joins another attorney's office, the specific salary being drawn by the latter employee be carried forward as a recognition of the years of service with the previous employer and should at no point in time be reduced. The MLS put forward that they are individual employers and not firms and were not agreeable to this.

The Board is of the opinion that no employee will leave an employment for a worse offer. The R.O. makes sufficient provision for the issue of a certificate of employment in case an employee is leaving an employment and the parties may even work towards improving upon it. It believes that such issues can not be imposed by law. This is where negotiation should step in and be encouraged. **The Board therefore makes no recommendation on this item in the spirit of giving a boost to negotiations, at least in theory, as targeted by the Employment Relations Act!**

III.3 Proposed Wages

Given circumstances, working out a reasonable wage scale has not been an easy task. After careful consideration of all factors and the specificity of the activities in this sector, the Board has come up with the following wage proposal which it feels is in the best interest of both the employers and employees alike. Protection of employment having been assigned the highest weight in this exercise, the Board would like to point out that the recommended wage scale is inclusive of the salary compensation due at the end of January 2010 under the Additional Remuneration (No. 2) Act 2009.

<i>Category of Worker</i>	<i>Year of Service</i>	<i>Monthly Basic Wages (Rs)</i>
Secretary/Receptionist/Word Processing Operator	1st Year	6930
	2nd Year	7080
	3rd Year	7230
	4th Year	7380
	5th Year	7530
	6th Year	7730
	7th Year	7930
	8th Year	8130
	9th Year	8330
	10th Year	8530
	11th Year	8780

	12th Year	9030
	13th Year	9280
	14th Year	9530
	15th Year	9830
Clerk	1st Year	6930
	2nd Year	7080
	3rd Year	7230
	4th Year	7380
	5th Year	7530
	6th Year	7730
	7th Year	7930
	8th Year	8130
	9th Year	8330
	10th Year	8530
	11th Year	8780
	12th Year	9030
	13th Year	9280
	14th Year	9530
	15th Year	9830
	16th Year	10130
	17th Year	10430
	18th Year	10730
	19th Year	11055
	20th Year	11405

4. ACKNOWLEDGEMENTS

The Board wishes to extend its appreciation to all parties, whether individuals, groups or associations, who might have contributed in one way or another to the successful completion of this exercise.

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