



MONTSERRAT

## CHAPTER 10.09

# ESSENTIAL SERVICES ACT

### Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### ESSENTIAL SERVICES ACT

Act 1 of 1988 .. in force 11 February 1988

Amended by Act 9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

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**CHAPTER 10.09**

**ESSENTIAL SERVICES ACT**

**ARRANGEMENT OF SECTIONS**

SECTION

1. Short title
2. Breach of contract in essential service
3. Breach of contract endangering life or property
4. Fraudulent medical certificates
5. Prosecutions and disciplinary action

SCHEDULE: Services

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**CHAPTER 10.09**

**ESSENTIAL SERVICES ACT**

*(Acts 1 of 1988 and 9 of 2011)*

AN ACT TO PROVIDE FOR THE MAINTENANCE OF ESSENTIAL SERVICES AND FOR MATTERS INCIDENTAL THERETO.

**Commencement**

*[11 February 1988]*

**Short title**

1. This Act may be cited as the Essential Services Act.

**Breach of contract in essential service**

2. (1) Every person employed in an essential service who wilfully breaks or terminates his contract of service, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the public, wholly or to a great extent, of that service, shall render himself or herself liable to summary dismissal or to some lesser form of disciplinary action:

Provided that, where any collective withdrawal of labour from an essential service is contemplated, whether in pursuance of a trade dispute or otherwise, and notice in writing of their intended participation in such withdrawal is given either individually by persons employed in that service or on their behalf by a registered trade union or registered trade unions of

which such persons are members, any such person shall not be liable under this subsection unless he breaks or terminates his contract of service before the expiration of the period of twenty eight days next following delivery of that notice, or otherwise than strictly in accordance with the valid terms of that notice.

(2) The Governor acting on the advice of Cabinet may make regulations prescribing the form and manner in which the notice referred to in the preceding subsection shall be rendered, and the period and time for which such notice shall be valid. (*Amended by Act 9 of 2011*)

(3) Every person who incites or instigates or in any way encourages, persuades or influences a person employed in an essential service to break or terminate his contract of service, knowing or having reasonable cause to believe that the probable consequences of that employed person so doing, either alone or in combination with others, would be to deprive the public, wholly or to a great extent, of that service, shall if breach or termination of contract has taken place—

- (a) without notice having been given as provided in the proviso to subsection (1); or
- (b) such notice having been given, and remaining valid otherwise than on the expiration of that notice not being earlier than twenty eight days after delivery thereof;

be guilty of an offence and shall, on summary conviction thereof, be liable to a fine of \$1,000 or to imprisonment for a term of six months or to both such fine and imprisonment.

(4) Every employer in an essential service shall cause to be posted up on premises used for the purpose of that service, a printed copy of this section in some conspicuous place where the same may conveniently be read by persons employed therein, and as often as such copy becomes defaced, obliterated, destroyed or removed, shall cause it to be replaced with all reasonable despatch.

(5) Every employer, other than Government, who fails to comply with the provisions of subsection (4) shall be guilty of an offence and shall, on summary conviction thereof, be liable to a fine of \$50 for every day during which he fails to comply.

(6) Every person who unlawfully injures, defaces, obliterates, destroys or removes any printed copy of this section posted up as required by subsection (4) hereof shall be guilty of an offence and shall, on summary conviction thereof, be liable to a fine of \$100 or to imprisonment for a term of one month or to both such fine and imprisonment.

(7) For the purposes of this section—

- (a) each of the services specified in the Schedule shall be an essential service;
- (b) save as is otherwise provided in this Act the term “**employer**” includes Government and the term “**person**”

**employed”** or **“employed person”** includes a person employed by Government.

### **Breach of contract endangering life or property**

**3.(1)** Any person who wilfully breaks or terminates a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, shall render himself or herself liable to summary dismissal or to some lesser form of disciplinary action.

**(2)** Every person who incites or instigates, or in any way encourages, persuades or influences another to break or terminate a contract of service or hiring, knowing or having reasonable cause to believe that the probable consequences of that other person’s so doing would be to endanger, cause serious bodily injury, or to expose valuable property, whether real or personal to destruction or serious injury, shall be guilty of an offence and shall, on summary conviction thereof, be liable to a fine of \$1,000 or to imprisonment for a term of six months or to both such fine and imprisonment.

### **Fraudulent medical certificates**

**4.(1)** A worker who by deception absents himself from his employment is liable on summary conviction to a fine of \$1,000 or to imprisonment for six months.

**(2)** A medical practitioner who issues a medical certificate to any worker for the purpose of enabling the worker by deception to absent himself from his employment by means of the certificate is liable on summary conviction to a fine of \$2,000 or to imprisonment for twelve months.

**(3)** For the purposes of this section a medical practitioner may be held to be guilty of an offence although the worker was not convicted of or did not commit the offence under subsection (1), if, but only if, from all the circumstances of the case the medical practitioner may reasonably be considered to have acted for such purpose as is specified in subsection (2).

**(4)** In any prosecution for an offence under subsection (2)—

*(a)* it shall be competent for the prosecution to adduce evidence of all the surrounding circumstances of the case including the existence of other medical certificates of the medical practitioner issued allegedly for the purpose of enabling the worker or co-worker of the worker in question by deception to absent himself or themselves, respectively, from his or their employment by means of such certificates; and such evidence shall be admissible notwithstanding any rule of law to the contrary;

- (b) it shall be a defence for a medical practitioner to prove that he did not know and had no reasonable cause to believe that the medical certificate would be used for the purpose of enabling the worker by deception to absent himself from his employment by means of the certificate.

(5) In this section—

“**deception**” means the fraudulent or deceitful use of a medical certificate;

“**medical certificate**” means a document of a medical practitioner certifying that a person is suffering from physical, mental, nervous or other illness, and recommending or purporting to recommend that some period of time should be spent away from work on account of the illness;

“**medical practitioner**” means a person registered under the Medical Act.

### **Prosecutions and disciplinary action**

5. (1) No prosecution for an offence under either of the three last preceding sections shall be commenced without the written consent of the Director of Public Prosecution. (*Amended by Act 9 of 2011*)

(2) No person shall be subject to any form of disciplinary action for a breach of section 2(1) or 3(1) if he—

- (a) terminates his contract with the written consent of his employer; or
- (b) terminates his contract—
- (i) in the case of a contract of service made in writing, by giving his employer such notice as may be specified therein; or
- (ii) in all other cases, by giving his employer one month’s notice in writing.



**SCHEDULE**

*(Section 2(7)(a))*

**SERVICES**

Air Traffic (including meteorological, telecommunications, security, fire and crash services connected with airports)

Electricity

Fire

Medical and Health

Telecommunications

Water

Ports

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