



# Parliament of Sint Maarten

## Staten van Sint Maarten

Parliamentary year 2015-2016-082

**National Ordinance amending the Civil Code and some other national ordinances relating to the replacement of the seventh Title A of Book 7A with a new Title 10 of Book 7 regulatory requirement for employment**

**Report  
No. 5**

The Parliament in its meeting of the Central Committee had an exchange of views with the Government on the Draft National Ordinance amending the Civil Code and some other national ordinances relating to the replacement of the seventh Title A of Book 7A with a new Title 10 of Book 7 regulatory requirement for employment.

The Parliament considers the draft to be sufficiently prepared if the questions asked below are answered in time for the public meeting so that the draft can be discussed in a public meeting.

**The National Alliance faction** has taken note of this draft and indicates to be disappointed that this draft was submitted by the National Alliance faction and Member Frans Richardson six years ago to curb the abuse of short term labor contracts. How will compliance be dealt with? Article 668a intends to regulate the revolving door construction what wasn't there before. It used to be 36 months and now it is being proposed to make it 24 months. The faction intends to submit an amendment to decrease this to 12 months. Apparently short term labor contracts have already been eliminated. If that is indeed the case then Sint Maarten is running behind and the faction intends to submit an amendment on this. Government also needs to give the right example. Certain students that return to Sint Maarten from the Netherlands are offered a three year contract before going into permanent service while students from the US get a one year contract right away before going into permanent service.

What happens when a person gets a contract for six months for a permanent position, why does the person have to be sent home for three months and get a new contract? Or does the person have to get an extension of the contract? Employers have the obligation to give pay slips to their employees. In certain cases employers refuse to do so. How will this be monitored?

Maternity leave can be increased based on the ILO Treaty to 14 weeks. In Colombia it is eighteen weeks. Apparently in Colombia the importance of the bond between a mother and child is understood. Sint Maarten needs to take an example from it. Extension of paternity leave is necessary to be a more progressive island in the region. What are the consequences of not regulated paternity leave (for example low to no productivity of demotivated personnel)?

It is a pity that Parliament has to legislate morality.

What is the real intention of article 668a 1 b? It needs to be clear what is meant in down to earth language for people to understand. Definitions need to be added to this draft so that it becomes clear what is meant with unregulated work. How is it possible for security workers who work for 12 hours to get paid for only 8? More information needs to be provided to employees in order for them to know what their rights are. How do these changes prevent another Pelican debacle?

Can it be made possible for employers to identify permanent functions?

On the issue of labor contracts, employers have the authority to make up the contract. Are there particular criteria as to what is allowed in the contract? Is there a way that an employee can come with their labor contract to review and take measures towards employers if abuse is evident?

Is it possible to publish this draft online (in Dutch and English)?

How will compliance be monitored by the supervisor? Explain how the changes in this draft national ordinance will prevent and deal with abuse of powers by the supervisor?

In the revised legislation what would be the new trial period? Would it remain two months or is it between 24 months or a year? Is there a difference? In the English version, part of article 652 is missing. Please provide this.

Please explain article 657a. Based on article 668a paragraph 1 section b, can an employer send an employee home at the time an employee has received three labor agreements for a definite period which have succeeded each other with intervals of not more than three months, and hire someone else? What type of work is considered short-term labor?

How many employment agencies do we have and how many persons are employed by these agencies? Can you work for an employment agency for a short period? When a director's license is requested, does an employment permit need to be requested or is it given automatically? A few years back 1200 Director's licenses were approved. Were employment permits given and are they working in the companies that they requested? How do we categorize the labor agreement between the employment agency and the employee? Who does an employee of an employment agency work for? Can they work for one business and then work for another? Will this legislation govern the employment agency sector? Please provide clarification on the legality of employment agencies. Are there articles of incorporation, and can the employers charge a fee and withhold money from the employees? There are several national ordinances that are part of the Civil Code. Is the matter of maternity leave, pensions and sole proprietors also part of it? What impact studies will be done? How does reporting to the Department of Labor Affairs take place? Specifically, as it pertains to employees not receiving pay slips, persons who are being paid below the minimum wage and security guards and others who have to work 12 hours, no overtime nor compensation?

With SZV if you are working five days a week consecutively you are covered by medical insurance, however, if you are working 16 hours 4 days a week you are not. Are they covered for some hours worked? Who is responsible for employee taxes and social premiums at the employment agencies? What is the Government's position on making it mandatory for each company to identify all permanent jobs

within their organization? Article 612 is regarding the employment of minors which stipulates that at the age of 16 years they can enter a labor agreement with an employer. Was any consideration given to the law on compulsory education when this age was put in? Is there legislation to combat youth unemployment? Is there anything in the law about protecting children from dangerous conditions? Where in the legislation are employees safeguarded from employers who force them to work and take time back rather than pay the overtime?

Is it listed somewhere specifically, that the father is eligible for paternity leave? What happens if the employer does not oblige with stipulations laid down in article 657b?

The **United Sint Maarten Party** faction has taken note of the draft and indicates that the draft was submitted by the National Alliance and this faction years ago. The current draft differs significantly from the original draft. Nevertheless it is a win for businesses and employees. Does Government intend to provide information sessions to the public on the changes to come and the implementation of the draft? How will the enforcement of this legislation will be monitored? Is there a timeframe in which the implementation will take place? How do we ensure that persons who have been abused for years do not get fired as a result of the proposed legislation? How many people in the labor force have the legal residence and have labor contracts? Who is responsible for the departure of immigrants after the contract is ended and who controls this? Is old age pension, put on hold if an employee continues working after the pension? Are sick days during maternity leave considered part of leave or sick days?

The **Democratic Party** faction has taken note with interest of the draft and sees it as a joint effort. How will the financing take place? How are we going to afford it? Don't we have to revise the policy on minimum wage? How are we going to control and enforce the legislation? The faction is a proponent of paternity leave, what is the official language of this legislation? English or Dutch?

Who will benefit from these changes? There is a mismatch on the labor market. Can some data on work permit requests, what positions, data on persons seeking employment be provided? What is the Tripartite Committee's opinion on amending maternity leave from 14 to 18 weeks as recommended by ILO? Is it possible to have labor

agreements be issued in the English language? There is currently a loophole whereby businesses are requesting Director Licenses rather than employment permits. What has been put in place to curb this situation? The faction requests that Parliament be provided with information regarding the application of ILO Conventions and regarding any discussions if any have taken place within the context of the Kingdom.

The latest labor force survey shows an unemployment rate of 6.2%. Can Parliament be provided with data such as when this survey took place? The last figure was 8.2%, and now it's 6%. How does the Government know that when it talks to the employers representative that they are getting the feedback from the businesses and business sector on Sint Maarten? How does this feedback take place? How has the current proposal at Parliament changed from the original proposal by the National Alliance Faction in 2011? How can we ensure that the TPC Consultations that are taking place now will continue for the execution of this legislation?

The **United People's Party faction** has taken note with interest of the draft and asks if an example can be given of what is meant by unregulated work in article 614b. As for maternity the following. Former Member of Parliament Leona Marlin was busy with an amendment to extend it. What are the possibilities of including an extension of the maternity leave and are there provisions to extend paternity leave? How many days does a father get leave in case of the birth of twins, triplets and quadruplets?

What is the period between the consecutive contracts? Is it up to the discretion of the employer to decide which means will be used to issue a pay slip? How does casual labor work in practice? Can a casual laborer be placed on a schedule or placed on multiple days? If it is not casual then what is it? It was mentioned that the maternity leave of a woman who has been hospitalized for an extended period could be transferred to the male. How is this done? The faction requests that the reports from the consultation with the Tripartite Committee be sent to Parliament. What were the positions of the members of the Tripartite Committee? How did those positions affect the final draft of the law? How exactly will we be able to enforce these new regulations? How will these supervisions be done? Would more

Inspectors be hired? By changing the law how exactly will respect be given by those who are always looking to circumvent their way around the law? When can an employer give the notice to terminate a contract with an employee and under what conditions? What are the checks and balances to ensure that employers do not take advantage of hiring persons for casual labor? Do casual workers pay taxes on what they collect? Will there be a labor agreement for those casual laborers? What medical coverage do casual laborers have if something was to happen while they are loading or offloading? How do you control how many hours a casual laborer works in one day? How many times can you employ a casual laborer to help out or work with the same company? What's the limit? At what point do we say no, this is no longer a casual laborer, this is an employee?

How do the amendments apply to other sectors outside of the hospitality sector? What about the civil servants, do they fall under this legislation? Was there discussion done with the unions concerning this? What are the inputs of the different unions and the Tripartite Committee? What specifically are the remarks and suggestions of the Department of Labor? How do they feel about it? Can Parliament receive a copy of any remarks or contributions from? What is provided in the law for both parents if a child is sick and needs to be flown out? And what if there is more than one child? What happens if an employee reaches the end of their three-year contract and is switched to another company? Are there changes to the cessionia? Is the cessionia different to what is here now?

This report can be considered the end report.

Adopted at the meeting of the Central Committee of the 17<sup>th</sup> August 2017.

The Reporter,

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