

**Ministry of Employment and Social Affairs**  
**Employment Department**  
**Employment (Amendment) Act, 2023 - 13th Month Pay**

**Introduction**

13th Month Pay resumed in 2022. The law was amended for that year only with payment arrangement changed from 100% mandatory to 50% mandatory and 50% performance based, amongst other changes.

Further amendments to the law were presented and passed by the National Assembly on 18<sup>th</sup> October for the year 2023 and beyond.

**13th Month Pay for 2023 and beyond**

- a. The same system as was applicable for 2022, that is 50% mandatory and 50% performance based, together with the existing provisions will be applicable for **2023, 2024 and 2025**, allowing more time to private organisations to put in place an appraisal system.
- b. The benefit will be 100% performance based as of **2026**.

**Provisions to remain applicable are as follows :**

- **Due date for payment remains the same**, i.e. 13th month pay is due every 31st December and employers have until 31st January of the following year to pay their workers ;
- **Modality of payment** introduced in year 2022 will also be maintained for year 2023, 2024 up to 2025, which means payment must be 50% mandatory and 50% based on a performance appraisal of the employees;

- **13<sup>th</sup> month pay remains applicable only for Seychellois workers**, and categories of workers not qualified are non-Seychellois workers, trainee on contract for Skills Development and workers whose basic salary is above SCR 45,450;
  
- **Payment pro-rata**
  - i. If a worker proceeds on training for more than 14 weeks or on unpaid leave for more than one month, the worker will receive a proportion of the 13th month pay excluding the period on training or unpaid leave ;
  
  - ii. If a worker is detained in police custody or on remand, the worker will receive a proportion of the 13th month pay, which will exclude the period in detention or on remand.
  
- **Applicable deductions**
  - i. An employer can make deductions on the 13th month pay of a worker. This is applicable in instances where the worker is absent without authorization. For example, a worker who has not reported for work for one day due to medical reason however, without producing a sick leave certificate. Then the employer can deduct equivalent to one day's salary on the 13th month pay ;
  
  - ii. After this deduction, the employer must automatically pay the worker 50% of the remaining amount ;
  
  - iii. On the remaining portion of **50%**, the employer can make further deductions however this will be possible only if the worker's performance is appraised.
  
- Any authorized leave under employment law entitled by a worker, should not be used as a **criteria or factor to measure performance or productivity** under an employer's performance appraisal system, in relation to 13th month pay. This includes maternity leave, paternity leave, annual leave, compassionate leave, sick leave, Education Leave, Corona virus Special leave.

- An employer who makes deductions on the second portion of 50% of the 13th month pay, after performance appraisal of a worker, must **notify the worker** in writing the total amount to be paid ;
- An employer who does not have a performance appraisal system in place, before 31st December, or who has not conducted performance appraisal of its workers before 31st January, must **pay the worker its 13th month pay in full**, equivalent to one month's basic salary, taking into consideration the legal deductions.
- A worker who is paid a 13th month pay and is paid in accordance to the law, shall **not pay any tax** on the benefit ;
- **This also applies in instances where the payment is made voluntarily by the employer, in circumstances where the worker is a Seychellois and its salary is below SCR 45,450, however the worker does not meet the criteria for a 13th month pay.**
- **Grievance**  
A worker who does not agree with the percentage given after its performance appraisal, can register a **grievance** at the Employment Department, if after discussion with the employer, the worker remains convinced that a higher percentage should have been given or the percentage has not been calculated in a fair manner.

**New provisions being introduced are as follows :**

- **Worker joins employment later than January**  
A worker who starts employment at any month of the year, and is in employment on 31st December (*must have already completed probation*), will be paid a proportion of its 13th month pay, covering the period in employment.

- **Worker earning above SCR 45,450**

- A worker whose salary is above the prescribed amount in the Regulations, i.e. SCR 45,450, is not entitled. However if the employer pays the benefit, tax will be applicable on the amount above SCR 45,450.

- **Employer's responsibility to provide deduction details**

- An employer will be compelled to provide its workers in writing, details of all deductions made on the workers' 13th month pay.

- **Worker leaving employment during the year**

- Effective year 2024, a worker who leaves employment during the year, will also receive a proportion of the 13th month pay as part of its final dues. The proportion will be calculated on the 50% mandatory part.
- The entire amount (equal to one-month basic salary) is subject to deductions in accordance to Section 46C of the Employment (Amendment) Act, 2016.

**Example 1: un-authorized absence**

**Salary: SR9000**

**Minus - Absences: SR1000**

.....

**Balance: SR8000**

**50% of the SR8000, i.e. SR4000**, would have been **paid to the worker automatically** if he had remained in the employer's employment until 31st December 2024. However, as he resigned after 3 months, i.e. after 25% of the year, he will be entitled only to 25% of what he would have been entitled to 31st December 2024, i.e. 25% of SR4000, which is SR1000.

He is not entitled to **the remaining SR4000** and the employer does not have **to appraise the worker's performance**.

- However, if the worker's departure was due to disciplinary reasons, is still on probation or has failed probation, the worker will not benefit.

## **Example 2:**

- ❖ On the 13<sup>th</sup> month pay of a worker who was in employment since 2023 and who resigns on 31 March 2024, an employer may make the deductions established under section 46C of the Employment Act. This means, among other things, that if the worker had one day of unauthorized absence, the employer will deduct one day's salary from his 13<sup>th</sup> month pay. If that worker worked 40 hours per week (5 days per week and 8 hours per day) and if his monthly salary is SCR 10,000, his salary per day is approximately SCR 461.54 and the employer will deduct 461.54 on his SCR 10,000 which amounts to 9538.46.
- ❖ After the deduction has been made, the employer will need to automatically pay 50% of the total remaining sum if he remained in that employer's employment until 31<sup>st</sup> December 2024;
- ❖ However, in this example, where the worker resigns after having worked only 3 months in the year 2024, which is one quarter of the year, he will obtain only one quarter of what he would have been entitled to if he remained in that employer's employment until 31<sup>st</sup> December 2024; eventually he will be entitled to only one quarter of SCR 4769.23 as his mandatory 50%, which amounts to approximately SCR 1192.31.
- ❖ On the other hand, if there are no deductions for the employer to make, if the worker has never had any unauthorized absences, then the worker will only be entitled to one quarter of SCR 5000 which would have been his automatic 50% which amounts to SCR 1250;
- ❖ This worker will not obtain the other half of his 13<sup>th</sup> month pay and his employer will not have to assess his performance through a *performance appraisal*.