Revised Regulations of Anguilla: S45-2

SOCIAL SECURITY ACT (R.S.A. c. S45)

CONTRIBUTIONS REGULATIONS

Note: These Regulations are enabled under sections 18, 19, 20 22 and 45 of the Social Security Act, R.S.A. c. S45.[1]

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[1] This Note has been corrected to reflect the renumbering of the Act by Act 2/2002.

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Interpretation

1. In these Regulations—

"Act" means the Social Security Act;

"Board" means the Social Security Board appointed under section 3 of the Act;

"contribution card" means a card issued under or prepared by virtue of the Registration of Employers and Employees Regulations;

"contribution week" means a week beginning on a Monday;

"contribution year" means a period of 52 or 53 weeks beginning with the first Monday in any calendar year and ending on the Sunday immediately preceding the first Monday of the succeeding calendar year;

"date due", in relation to any contribution, means the date on which that contribution was due to be paid in accordance with section 10 or the date on which that contribution would, if it had been payable have been due to be paid (as the case may be);

"insurable employment" means gainful employment which is under contract of service in which a person would be insured by virtue of the provisions of section 17 of the Act;

"termination of employment" means the day on which the employment comes to an end, whether such termination is in accordance with the terms of the contract or not, and whether or not the employment is to be resumed at a later date;

"wages" has the meaning assigned to it in section 3(3).

Notices, etc., may be sent by post

2. Any notice, application, card or other document which is authorised or required to be given, presented, issued or delivered under these Regulations may be sent by post.

Rate of contributions and upper wage limit

3. (1) Where a payment of wages is made to or for the benefit of an employee on or after 1st January, 1982, there shall be payable a contribution comprising—

(a) a contribution by the employee at the rate of 5%; and

(b) a contribution by his employer at the rate of 5%;

of the amount of such wages.

(2) There shall be for every contribution month and week an upper wage limit of—

(a) $6,000 and $1,386 respectively for the calendar year 2007; and

(b) $7,000 and $1,617 respectively from 1 January, 2008.

(R.A. 1/2007, s. 1)

(3) The wages of an employee for the purpose of subsection (1) shall consist of all pecuniary emoluments paid to or on behalf of the employee including—

(a) overtime payments;

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(b) cost of living payments;

(c) commission or profits on sales;

(d) payments for night or shift work; and

(e) holiday pay or other amounts set aside out of the employee's remuneration throughout the year or part of the year payable to him periodically.

Contributions on attaining ages 15 and 65

4. A contribution under the Act shall be payable—

(a) in the case of an employee attaining the age of 15 years, for the week in which that person reaches that age; and

(b) in the case of an employee attaining the age of 65 years, for the week in which the employed person reaches that age;

but—

(c) a contribution shall not be paid in respect of or on behalf of an employee if such employee attains the age of 65 years on the Monday of the week in question; and

(d) no contribution shall be payable by an employee who has on 1st January, 1982 reached 64 years of age.

Exemption from payment of contributions

5. (1) An employer shall be exempt from liability to pay contributions—

(a) for any contribution week in which no work is done by the employed person and that person receives no wages in respect of the period;

(b) for any contribution week in which the employed person is engaged as a full-time unpaid apprentice; or

(c) for any contribution week for the whole of which the employed person is in receipt of sickness or maternity benefit under the provisions of the Act.

(2) Nothing in subsection (1) shall be deemed to affect the liability of an employer to pay contributions for any contribution week in which an employee is on vacation if contributions are normally payable in respect of such a person.

Recovery by employer of contributions paid on behalf of employed persons

6. (1) Every employer shall, on or before making any payment of wages to any employed person, deduct the contributions payable on behalf of that person in accordance with these Regulations.

(2) Where by reason of any error made in good faith an employer on making any payment of wages to an employee fails to deduct therefrom the contribution or any part thereof payable to such employee, the employer, after prior notification to the employee, may recover such contribution or part thereof from any subsequent payment of wages to the employee.

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Manner of recording contributions

7. Every employer shall record, in each contribution year either on a contribution card or in such other form as may be authorised by the Director, the following particulars in respect of each of his employees—

(a) the date of each payment of wages;

(b) the amount of such wages;

(c) the amount of contribution due in respect of the employer and employee in respect of each such payment;

(d) the number of contribution weeks in which the employee was in insurable employment in the contribution year.

Where no contribution document held by employer

8. If an employer makes any payment of wages to an employee in respect of whom such employer does not hold a contribution card or other authorised document, and that payment is a payment of wages in respect of which contributions are payable, such employer shall deduct the contribution so payable and shall keep a record of the information referred to in section 7 in respect of such payment.

Payment of contributions by employer

9. (1) Within one month of the end of each month, an employer shall transmit to the Director together with the approved form the total amount of contributions due by the employer and his employees during the month in compliance with the provisions of section 3.

(2) In addition to any other requirements, an employer shall, where the service of an employee is terminated, transmit to the Director all contributions due in respect of that employee within one month from the end of the month in which the employment is terminated together with the employee's contribution card.

(3) If an employer, by reason of an error made in good faith, has paid to the Director by way of contributions any amount exceeding what was due at a particular time, the excess payment shall be set off against any contribution that falls due subsequently.

Employer failing to pay contributions due

10. (1) If within the time prescribed by section 9—

(a) an employer has not paid any contributions which he is liable to pay to the Director for that month and the Director is unaware of the amount, if any, which the employer is liable to pay; or

(b) the employer has tendered in payment an amount which the Director has reasonable cause to believe is less than the employer is liable to pay in respect of any month;

the Director may give notice in writing to the employer requiring him to render, within the time specified in the notice (being not less than 5 days), a written return showing the name of every employee to whom he made any payment of wages in respect of any period specified in such notice, together with the following particulars regarding such employees—

(c) the amount of every payment of wages made during that period;

(d) the total amount of contributions which the employer was liable to deduct during the period;

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(e) the total amount of contribution which was payable by the employer in addition to the amount deductible under paragraph (d); and

(f) such other details and information as will enable the Director to ascertain the correctness or otherwise of the amounts.

(2) The Director shall ascertain and certify the amount of contributions which the employer is liable to pay in respect of any period.

(3) The production of the return made by the employer under subsection (1) and of the certificate of the Director under subsection (2) shall be good evidence of the amount of contribution which the employer is liable to pay to the Director in respect of the period specified therein, and any document purporting to be such a certificate shall be deemed to be such a certificate until the contrary is proved.

Surcharge for late or non-payment of contributions

11. (1) If within the time limit provided in section 9 an employer has not paid any contribution which he is liable to pay for any particular month, he shall be liable to pay to the Director a surcharge equivalent to 5% of the amount of the contributions which he was liable to pay for that month.

(2) If an employer fails within 1 month of being surcharged under the provisions of subsection (1) to pay the contributions due and the surcharge thereon, he shall be liable for an additional surcharge of 2% per month on the total amount of contributions and surcharge then owing.

(3) The Director may, if he is satisfied that the circumstances of the case so warrant, exempt an employer from the payment of the surcharges provided for in this section.

Employer's non-payment of contributions not to affect employee's rights

12. Non-payment or payment of contributions not in conformity with section 9, made by an employer, shall in no way affect the benefits that an employee is entitled to under the Act.

Nil returns

13. An employer who, during any contribution period, has no employees in his service shall send to the Director a statement to that effect within 1 month of his ceasing to employ any persons.

REFUNDS

Refund of contributions paid in error

14. (1) Contributions paid by an insured person as a voluntary contributor, or by an employer under the erroneous belief that such contributions were due, shall be refunded by the Board to the insured person or to the employer, as the case may be, if application to that effect is made in writing to the Board within the time specified in subsection (5).

(2) In calculating the amount of any repayment to be made under this section to an employed person, a voluntary contributor or an employer, there shall be deducted—

(a) in the case of an employer's contributions and contributions payable by or in respect of an insured person, the amount of any contributions paid under the erroneous belief as aforesaid which have been treated as paid on account of other contributions; and

(b) in the case of contributions from an insured person or a voluntary contributor, the amount, if any, paid to that person (and to any other person on the basis of the erroneous belief) by way

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of benefit which would not have been paid had the contributions (in respect of which an application for their return is duly made) not been paid in the first instance.

(3) Contributions erroneously paid by an employer on behalf of any employed person and not recovered by the employer from that person may be repaid to the employer instead of to that person, but, if so recovered, may be repaid to that person or, with his consent in writing, to his employer.

(4) An application for the return of any contributions made under subsection (1) shall be made in such form and in such manner as the Board may from time to time determine.

(5) Every application for a refund of contributions under subsection (1) shall be made within 3 years from the date of such payment.

Refund of contributions to certain elderly entrants

15. (1) Where an employed person attains the age of 65 years on a date not later than 26 contribution weeks after he has become an insured person under the Act, he shall be entitled to a refund of that part of the contributions paid in respect of him within the 26 weeks, and his employer shall be entitled to a similar refund.

(2) Where an employed person attains the age of 65 years on a date not later than 49 contribution weeks after he becomes an insured person under the Act, he shall be entitled to a refund of that element of the contributions paid in respect of him which represents invalidity, age and survivor's benefit.

(3) An application for a refund under this section shall be addressed to the office of the Board and shall be made—

(a) in respect of an application under subsection (1), within 3 months from the date on which the employed person attained 65 years; and

(b) in respect of an application under subsection (2), within 2 years from the date on which the employed person attained the age of 65 years;

or such longer period as the Director may allow.

Employment by 2 or more employers

16. (1) Where a person is employed during any contribution year by 2 or more employers, each such employer shall be liable to pay contributions in proportion to the wages paid to such person by each such employer.

(2) Where an employee to whom subsection (1) applies has paid in any contribution year in respect of every contribution month or week, contribution in excess of the maximum amount of wages in respect of which contributions are payable under section 3(2), such employee shall be entitled to a refund of the amount so paid on application to the Director.

MISCELLANEOUS

Records to be kept by employers

17. An employer shall maintain a record, in addition to a contribution card, showing in respect of each person employed by him—

(a) the date on which such employment commenced and the date of the termination of employment;

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(b) the date and amount of each payment of wages; and

(c) the date and amount of each monthly payment of contributions to the Director under the provisions of section 9.

Returns by employer

18. (1) An employer shall, before the end of January of each year, send to the Director, in such form as the Board may approve or prescribe, a return in respect of each person employed by him during the previous contribution year containing such particulars as the Board may require, but, where there is a change in the number of persons employed, or the employer has ceased to employ any person, such employer shall, within 1 month of such change or ceasing to employ any person, notify the Director thereof.

(2) The return described in subsection (1) shall contain a declaration and statement in a form approved or prescribed by the Board and shall be accompanied by the contribution cards of each employee during the previous contribution year, except those cards already surrendered in accordance with section 9(2).

(3) Where an employer is a body corporate, the declaration and the certificate referred to in subsection (2) shall be signed by a person duly authorised by the body corporate.

(4) A return shall be made under this section in respect of every employee in respect of whom a contribution card has been issued to the employer by the Director, or for whom the employer has at any time during the year made a payment of wages in respect of which contributions were payable.

(5) If an employer has failed to pay to the Director before the end of January of each year the total amount of contributions that the employer is liable to pay in respect of the previous contribution year, the Director may prepare a certificate showing the amount of contributions remaining unpaid and due to the Board for that previous year and such certificate shall be sufficient evidence in any court that the sum mentioned in the certificate is unpaid and due to the Board, and any document purporting to be such a certificate shall be deemed to be such a certificate issued by the Director until the contrary is proved.

Death of employer

19. If an employer dies, any obligation incurred under these Regulations shall be performed by his personal representatives.

Succession to business

20. Where there is a change of employer of a business, trade or undertaking, any obligation incurred under these Regulations before such change shall be performed by the person who was the employer before such change.

Issue of certificate to employee at end of year

21. (1) Within 30 days from the end of a contribution year or from the date of termination of employment, an employer shall give to each employee a certificate showing in respect of the employment—

(a) the total amount of contributions deducted from the wages of the employee during the contribution year;

(b) the employee's total wages for the contribution year; and

(c) the number of contribution weeks in the contribution year in which the employee was in insurable employment.

(2) The certificate specified in subsection (1) shall be in such form as may be provided or approved by the Board.

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Inspection of records by employee

22. An employee shall be entitled to inspect the record specified in section 17 in respect of him once in every period of 3 months.

Penalties for breach of Regulations

23. Any person who contravenes or fails to comply with any of these Regulations is guilty of an offence and is liable on summary conviction to a fine of $1,000, and in the case of a continuing offence to a fine of $250 for each day on which the offence is continued.

Citation

24. These Regulations may be cited as the Contributions Regulations, Revised Regulations of Anguilla, S45-2.

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