

# ST. MAARTEN JURISDICTION



BENJAMIN LAW

## Toronto's Premier Family-First Law Firm For

Personal Injury | Long-Term Disability | Real Estate  
Employment | Notary | Wills and Power of Attorney

[www.benjaminlaw.ca](http://www.benjaminlaw.ca)

### Toronto

1018 Finch Avenue West, Unit 301  
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577 Kingston Road,  
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## Labour Overview

With the introduction of the Labour regulation 2000 on August 1st 2000, a distinction was made between non-schedule workers and scheduled workers. A scheduled worker is an employee whose working hours fall completely or partially outside the normal office (business) hours. There are different rules for both groups with regard to working hours, timetables etc.

Effective September 2000, exceptions to the hours of work rules apply for businesses in the hotel, restaurant and casino industry. Domestic personnel also have separate rules.

Maternity leave. By article 1614ca of the Civil Code, a woman is entitled to full paid leave from a minimum of 4-6 weeks prior to birth (Pregnancy leave) in addition to a minimum of 6-8 weeks after birth (Maternity leave). It is also illegal to dismiss an employee on maternity leave. There is no law for paternity leave.

Holidays. Under the Vacation Regulation 1949, there are 12 statutory holidays listed. The Regulation also provides rules concerning vacation leave. A person who is working continuously for over one year is entitled to the number of contracted working days per week multiplied by three. (up to a maximum of 15 days) Of course it is possible for an employer to give more that required by the regulation.

An employee, whose working relationship terminates other than through his or her own fault, is entitled to a severance pay. This right originates after the first full year of service of the employee.

When an employee is dismissed due to a reason, which is accountable to himself or herself, he or she cannot derive any rights from the Severance Ordinance. This is the case, for example, when an employee is dismissed on the spot due to a legally urgent reason, like a serious form of theft.

An employee also doesn't have a right to severance pay when he or she quits a job, unless the end of the working relationship was due to an urgent reason caused by an act of the employer.

Whether or not one is entitled to a severance pay, it does not matter if the employee is in permanent service, or works on the basis of a temporary contract (provided that the duration of it is longer than one year).

Public servants or employees working in the public sector and teachers in subsidized denominational education are not entitled to severance pay.

When an employee passes away, there is no right to severance pay for the next of kin. On the other hand, when an (former) employee already had a severance claim on the (former) employer, at the moment of his passing away, his next of kin (like his wife or children) can claim the right to this payment.

Furthermore, there is no need to pay severance pay if the employee receives at the end of his service a pension or a benefit by way of a pension. The amount of this pension or benefit has to be the same or more than the amount of the then valid legal old-age pension.



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## Labour Overview Continued

If the legal old-age pension is deducted as a whole or partially from the above-mentioned company pension or benefit by way of a pension, this pension or benefit must be at least the same as twice the amount of the then valid legal old-age pension.

Whether or not one is entitled to severance pay is not attached to a certain age, like reaching the majority age or the pensionable age.

The amount of severance pay is generally calculated in accordance with the Ordinance. The employee must claim his severance pay from the employer within one year; otherwise his right to severance will become superannuated.

If an employer becomes insolvent, has asked for a letter of license, or is in a position where he has stopped paying (this is to be judged by the Social Security Bank), the employee can make a claim on the Social Security Bank (Severance fund), however, up to a certain amount.

There are different rules for termination of a fixed (temporary) and a non-fixed (permanent) period contract. There are also special rules concerning extensions of fixed period labour agreements – see Ordinance Flexibilization of the Labour legislation (August 1, 2000).

## Social Security Benefits

Old Age, Widow & Orphans Pension. Each worker must be insured for old age pension and survivor (widow and orphans) pension. In respect of contributions to XXX, employees are required to contribute 6.5% of their earnings, with 6% made in respect of old age pension and 0.5% for the survivor pension. Employers are required to contribute 7.5%, with 7% going to old age and 0.5% to survivor pension. There is a maximum salary on which contributions are to be made.

### Sickness Insurance

Each worker earning less than the threshold amount, must be insured through the Social Security Bank by his / her employer. This insurance protects low income persons against cost of medical care and loss of income.

### Accident Insurance

Each worker, regardless of his income, must be insured through the Social Security Bank against on-the-job accidents. The premium depends on the risks related to the job and is to be paid by the employer on a basis of 0.5% to 5% calculated on a fixed threshold amount.



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