

# **Caribbean Digest of Legislation on Termination of Employment**

ILO Subregional Office for the Caribbean

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## FOREWORD

This digest on Caribbean legislation on termination of employment is a timely one. It comes at a time when employment patterns are changing more significantly as a result of mergers, acquisitions, restructuring of enterprises and outsourcing. The digest is particularly relevant in the Caribbean which is deepening the regional integration process through the Caribbean Community (CARICOM) Single Market and Economy (CSME), involving the free movement of labour across borders.

Laws pertaining to termination of employment play an integral part in the protection of Caribbean workers in the face of these global and regional economic changes. They help to ensure that decent work for all Caribbean people becomes a reality.

The digest provides a regional overview of legislation on termination of employment in ILO Caribbean member States. It will be an invaluable resource for employers and workers moving and operating within the CSME.

It is noteworthy that many countries already have comprehensive laws on termination of employment. In some cases however, there are gaps that need to be addressed if the laws are to be aligned to support the free movement of labour within the CSME. CARICOM is already taking steps to ensure the harmonization of labour laws, using the CARICOM Model Labour Laws which were adopted in 1995 and 1997. These laws cover the recognition of trade unions and employers' organizations; non-discrimination and equality in employment; occupational health, safety and the working environment; and termination of employment.

Harmonized laws would ensure that common industrial relations practices are observed, helping to create conditions that would make it possible to give effect to Article 73 of the *Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy*.

The *Caribbean Digest of Legislation on Termination of Employment* is one of the tangible outputs produced under the ILO project entitled, "*Harmonization of Labour Legislation in the ILO's member states of the English- and Dutch-speaking Caribbean*". The project was funded by the Labour Program of the Government of Canada.

I would like to acknowledge, with deep appreciation, the support provided by the Labour Program of the Government of Canada, and the guidance provided by Mary Read, Deputy Director, ILO Subregional Office for the Caribbean, in supervising the project and preparing this publication. Finally, I would like to express special thanks to Clive Pegus who conducted the legislative research and prepared the draft text, with the invaluable assistance of Labour Commissioners, Legal Officers and other representatives of the Ministries of Labour who validated the information relating to their respective countries.

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This specific project is supervised by Mary READ, Deputy Director, with support from Pierre-Francois RECOING, Specialist on International Labour Standards and Labour Law, and Roma WONG SANG, Information Officer of the ILO’s Subregional Office for the Caribbean in Port of Spain.

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# INTRODUCTION

In 1963, the International Labour Conference (ILC) adopted the Termination of Employment Recommendation (No. 119), which addressed the need for standards with regard to justifying termination, notice periods, the right to appeal, compensation and income protection and reduction in the workforce. This Recommendation arose out of international recognition that workers should be protected against arbitrary and unjustified termination of their employment and against the economic and social hardship inherent to their loss of employment.<sup>1</sup>

As a follow-up to the adoption of the Termination of Employment Recommendation, 1963 (No. 119), it was decided that the subject of the General Survey to be submitted to the 59th session of the ILC in 1974 would be termination of employment. At the time of examining this General Survey, the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Conference acknowledged that the Recommendation had served to encourage protection against unfair termination of employment, and had promoted employment security. Furthermore, it concluded that the issue should be put before the International Labour Conference in order to draw up another instrument that would take account of the changing nature of the employment relationship and the economic pressures of the economy.

Following that decision, the Termination of Employment Convention, 1982 (No. 158) was adopted by the International Labour Conference along with its accompanying Recommendation (No. 166), which replaced the Termination of Employment Recommendation, 1963 (No. 119).

## **Termination of Employment Convention, 1982 (No. 158)**

The ILO's Termination of Employment Convention (No. 158) refers exclusively to situations where the employment relationship, and not other business relations, is terminated at the initiative of the employer. It does not address situations of the employment relationship being terminated by the worker.

The Convention contains standards of general application and supplementary provisions. The standards of general application relate to the justification for termination, the procedures prior to or at the time of termination, the procedures of appeal against termination, the period of notice, and income protection in the event of termination of employment. The supplementary provisions concern the termination of employment for economic, technological, structural or similar reasons.

Part I of the Convention addresses the methods of implementation, the scope of the Convention and the definitions used. In this Part, it is indicated

<sup>1</sup> "Termination of employment", General survey of reports related to the Termination of Employment Recommendation 1963 (No. 119) International Labour Conference 59th Session, 1974, Report III (Part 4B) and "Protection against unjustified dismissal", International Labour Conference 82nd Session, 1995, Report III (Part 4B).

that the Convention applies to all economic activity and to all employed persons. It also provides for certain exclusions.

Part II of the Convention contains the general standards, and comprises five main divisions. Division A addresses justifications for termination and the need to have a valid reason for dismissal connected with the capacity or conduct of the worker, or based on the operational requirements of the undertaking. It also provides for specific cases that are not to be considered as valid reasons.

Division B addresses the procedures prior to or at the time of termination, and provides for the right of a worker who considers their employment to have been unjustifiably terminated to appeal against that termination to an impartial body empowered to decide whether the termination was justified.

Division C addresses the required procedures for appealing against termination. It stipulates that provisions must be made so that the burden of proving the existence of a valid reason for the termination rests on the employer, and the competent appeal body is empowered to reach conclusions on the reason for the termination.

Under Division D, the Convention stipulates that a worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless they are guilty of serious misconduct.

Division E addresses the issue of severance allowance and other income protection, and provides that the worker shall be entitled to a severance allowance or other separation benefits, or benefits from unemployment insurance or other social security benefits, or a combination of such allowance and benefits.

Part III of the Convention contains the supplementary provisions concerning termination of employment for economic, technological, structural or similar reasons and comprises two divisions.

The requirements related to the consultation of workers' representatives are addressed under Division A, and provide that the employer who contemplates terminations for economic, technological, structural or other similar reasons shall provide the workers' representatives concerned with relevant information and give them an opportunity for consultation on measures to avert or minimize the terminations and measures to mitigate their adverse effects.

Division B provides that the employer shall also notify the competent authority of such terminations as early as possible, giving relevant information.

### **Termination of Employment Recommendation, 1982 (No. 166)**

At the time of adopting the ILO Termination of Employment Convention,

1982, the International Labour Conference adopted the Termination of Employment Recommendation, 1982 (No. 166). This Recommendation supplements the provisions of the Convention.

Like the Termination of Employment Convention, 1982, the Termination of Employment Recommendation, 1982 (No. 166) comprises standards of general application and supplementary provisions.

The Recommendation makes provision for two additional grounds that should not constitute valid reasons for termination, and for appropriate written warning to be given before a worker's employment is terminated for misconduct, as well as for appropriate instructions, written warning and a reasonable period of time for improvement to be given before a worker's employment is terminated for unsatisfactory performance. It also provides for notification in writing of a decision to terminate employment and, on request, a written statement of the reason for the termination.

The Recommendation also indicates that a worker should be entitled to reasonable time off from work during the period of notice for the purpose of seeking other employment and to a certificate of employment.

The Recommendation contains a number of more detailed provisions concerning termination of employment for economic, technological, structural or similar reasons which provide useful suggestions for the application of the Convention.

### **Caribbean Community (CARICOM) Model Law on Termination of Employment**

In furtherance of the goal of regional integration and the establishment of a Caribbean Single Market and Economy, the International Labour Organization provided assistance to the Caribbean Community (CARICOM) Secretariat to draft model legislation in a number of areas, including termination of employment. The resultant Model Legislation on Termination of Employment was based largely on the standards established under the ILO's Termination of Employment Convention (No. 158) and Recommendation, 1982 (No. 166) and introduced a number of additional areas for consideration.

In addition to the provisions detailed in the ILO's Termination of Employment Convention and Recommendation, the CARICOM model law:

- lays out minimum standards for establishing a contract of employment;
- addresses the issue of continuity of the employment relationship;
- stipulates grounds and procedures for discipline; and
- establishes minimum standards for redundancy and severance benefits.

The CARICOM model law also recommends that the provisions of the Model be implemented through legislation.

At the CARICOM Standing Committee of Ministers responsible for Labour, held in April 1995, the proposed model legislation was accepted. As part of

its recommendations, CARICOM requested that member States consider the model legislation on termination of employment (as well as the other Models), as a basis for tripartite consultation at the national level with a view to legislative enactment, where appropriate, either as new legislation, in whole or in part, or as a basis for updating existing legislation.<sup>2</sup>

### **Status of Legislation on Termination of Employment in the Caribbean**

Almost all ILO member States in the English- and Dutch-speaking Caribbean have legislation regarding termination of employment.<sup>3</sup> There are however, significant differences between the exact provisions and procedures to be followed from country to country. While some of these differences can be expected, compliance with the basic principles and procedures, as outlined in the ILO's Termination of Employment Convention and Recommendation and the CARICOM Model Labour Law on Termination of Employment, should be assured so that there are no significant gaps from one country to the next within the established area of free movement of labour within the Caribbean.

The main identified differences or gaps between national legislation, the Termination of Employment Convention, 1982 (No. 158) and Recommendation, 1982 (No. 166) and the CARICOM Model Law on Termination of Employment can be summarized as follows:

- the scope of exemptions under national legislation in many countries is wider than that allowed under the instruments mentioned above;
- national legislation is often silent on the requirement to establish a written contract of employment;
- national legislation in many countries does not address the procedures related to the probationary period;
- some countries do not have statutory provisions covering the rebuttable presumption of continuity of employment;
- some countries do not provide for an act of God as being a valid ground for retrenchment;
- some countries do not require prior consultation with the recognized trade union or workers' representative before retrenchment takes place;
- some jurisdictions do not have legislation on the period of notice before termination of employment, summary dismissal, constructive dismissal, or imposition of burden of proof on employers; and
- no punitive damages are awarded in cases of dismissal on prohibited grounds.

### **Objective of the Digest**

The Caribbean Digest of Legislation on Termination of Employment has been developed with a view to assisting governments, employers, workers and the general public with easily understandable information on national

<sup>2</sup> The CARICOM model laws accepted in 1995 pertained to termination of employment; registration, status and recognition of trade unions and employers' organizations; and equality of opportunity in employment and occupation. In 1997 an additional model law was accepted on occupational safety and health and the working environment. <sup>3</sup> ILO member States in the English- and Dutch-speaking Caribbean include Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname and Trinidad and Tobago.

legislation governing the termination of employment. In the rapidly changing environment of the Caribbean Single Market and Economy, and following the introduction of free movement of labour across the Caribbean, it is very important and relevant that all parties to the employment relationship understand their duties, responsibilities and rights as regards the termination of employment.

This Digest also seeks to supplement the Termination of Employment Digest published by the ILO in 2000.

### **Scope of the Digest**

The Digest provides a profile of the national legislation on termination of employment in the ILO's 13 member States in the English- and Dutch-speaking Caribbean. It does not, however, cover case law or collective agreements on the subject and deals only with employees in the private sector. The legal position of public employees with regard to security of employment and termination has been regulated quite differently than that of private sector employees.

### **Summaries of National Legislation**

Each national legislative profile is divided into ten sections: (1) source of regulations; (2) scope of legislation; (3) contracts of employment; (4) termination of employment; (5) dismissal; (6) notice and procedural safeguards; (7) severance pay; (8) avenues for redress; (9) winding up and (10) useful links.

“Source of regulations” lists the source of legislative regulations on termination of employment. A short description of the purpose of each of the regulations is provided.

Under the section “Scope of legislation” the applicability of the legislation and its exceptions, both in terms of the persons covered or excluded, and industrial, sectoral or occupational exclusions, are described.

The “Contracts of employment” section describes the requirements for contracts of employment.

The section entitled “Termination of employment”, deals with the legislative provisions on termination of employment that is not at the employer's initiative.

The “Dismissal” section describes the national legislation that addresses dismissals at the initiative of the employer specified by statute as being invalid or unjustified, any reasons specified as justified, and any other legislative provisions governing the substantive standards to be applied to dismissals at the initiative of the employer. It also includes information available on specific provisions for collective dismissals or retrenchments.

The section on “Notice and procedural safeguards” addresses the legislative procedural safeguards which must be complied with before termination

(such as requirements for hearings or consultation), and statutory notice periods.

“Severance pay” deals with any statutory severance pay, not being damages or compensation for unfair or unjustified dismissal, which must be provided on dismissal. Where available, the statutory method for calculating the severance pay is provided.

The section on “Avenues for redress” covers the procedure for challenging dismissals and the remedies available, once a dismissal has been found by the adjudicating body to be unfair or unjustified.

“Winding up” deals with the ranking of wages and benefits due to workers in the event of bankruptcy, insolvency or winding up of the employer’s business or undertaking.

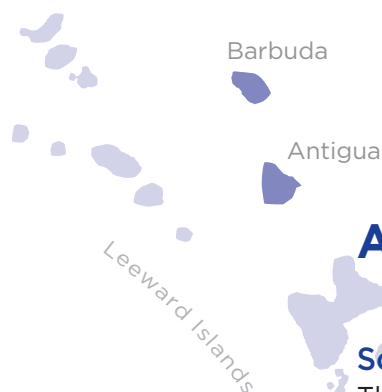
And finally, the section on “Useful links” provides internet-based information resources that deal with labour legislation, termination of employment and other related issues. The inclusion of references to websites outside of the ILO does not signify responsibility for or approval of the content of those sites on the part of the ILO.

### **Other Relevant ILO Instruments and Useful Sources**

In addition to the ILO instruments that focus specifically on termination of employment, a number of other ILO instruments, and in particular the basic instruments on the protection of human rights at work, provide protection in the area of employment security. Some of these other instruments include the:

- ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up;
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Workers’ Representatives Convention, 1971 (No. 135) and Recommendation (No. 143);
- Rural Workers’ Organisations Convention, 1975 (No. 141) and Recommendation (No. 149);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and Recommendation (No. 111);
- Workers with Family Responsibilities Convention, 1981 (No. 156) and Recommendation (No. 165);
- Maternity Protection Convention, (Revised) 1952 (No. 103) and Recommendation (No. 95);
- Protection of Workers’ Claims (Employer’s Insolvency) Convention, 1992 (No. 173) and Recommendation (No. 180);
- Part-Time Work Convention, 1994 (No. 175) and Recommendation (No. 182);
- Maritime Labour Convention, 2006; and
- Employment Relationship Recommendation, 2006 (No.198).





## ANTIGUA AND BARBUDA

### Source of Regulations

The laws of Antigua and Barbuda that apply to termination of employment are:

- Antigua and Barbuda Labour Code 1975 [Chapter 27 as amended];
- Antigua and Barbuda Labour Code (Amendment) Act 1998;
- Industrial Court Act 1992 [Chapter 214 as revised];
- Bankruptcy Act [Chapter 41];
- International Business Corporation Act [Chapter 222].

The Antigua and Barbuda Labour Code 1975 contains provisions relating to contracts of employment, termination of employment, dismissal, notice and prior procedural safeguards, severance pay and avenues for redress. The Antigua and Barbuda Labour Code (Amendment) Act 1998 introduces a number of amendments to the previously cited Act.

The Industrial Court Act 1992 contains provisions relating to avenues for redress and remedies for unfair dismissal.

The Bankruptcy Act provides for priority claims of workers' wages and benefits in the event of a winding up of a non-international employer.

The International Business Corporation Act provides for priority claims of workers' wages in the event of a winding up of an international business corporation.

Antigua and Barbuda ratified the ILO's Termination of Employment Convention (No. 158) on 16 September 2002.

### Scope of Legislation

The Antigua and Barbuda Labour Code 1975 (referred to in this section as "the Labour Code"), Chapter 27, applies to all employers and all employees, except established employees of the Government, persons in the naval, military, or air forces of the Government, the Police Force, persons holding the status of diplomatic agents, and persons employed by the United Nations or its specialized agencies.<sup>4</sup>

The Labour Code provides that where the provisions of the Code are in conflict with those of any other existing law, the provisions of the Labour Code shall prevail.<sup>5</sup>

The Bankruptcy Act, Chapter 31, applies to all private sector employers in Antigua and Barbuda.

<sup>4</sup> Antigua and Barbuda Labour Code 1975 (as amended) sA6 (2). <sup>5</sup> Antigua and Barbuda Labour Code 1975 (as amended) sA10.

The International Business Corporation Act, Chapter 222, applies to international business corporations, defined as businesses engaged in international trade or manufacturing.

### Contracts of Employment

Employers are required under the Labour Code to provide all employees, within ten days of recruitment, with a written statement of their responsibilities and duties, the regular hours of work and rest periods, the starting pay and method of computation, the duration of the employment, period of probation, leave and other terms and conditions.<sup>6</sup>

In addition, where the position of a newly-recruited employee falls within a unionized bargaining unit, the employer must either post in a conspicuous place or give the employee a copy of the current collective agreement.

Employers are prohibited from providing terms and conditions which do not conform to the provisions of the Labour Code.

### Termination of Employment

According to the Labour Code, employees and/or employers have the right to terminate a fixed-term contract at the expiry of the term.<sup>7</sup> The termination of employment of an employee after the expiry of the term does not constitute grounds for a complaint of unfair dismissal.<sup>8</sup>

The Labour Code recognizes the right of an employee to voluntarily quit his employment, subject to the statutory notice to be given to the employer described below under the section "Notice and Procedural Safeguards".

### Dismissal

An employer has the right to terminate the employment of an employee during the probationary period, except on grounds related to the employee's exercise of their legitimate trade union rights.<sup>9</sup> The length of the probationary period is not to exceed three months, unless otherwise provided for in a collective agreement.

The Labour Code provides for dismissal of employees where they have been guilty of serious misconduct related to their employment. The misconduct must be so serious that the employer cannot reasonably be expected to take any action other than dismissal. Such misconduct includes, but is not limited to, situations in which the employees have:

- (a) conducted themselves in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue;
- (b) committed a criminal offence in the course of employment without the consent of the employer; or

<sup>6</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC5 (1). <sup>7</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC PART I.

<sup>8</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC57. <sup>9</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC8 (3).

(c) behaved immorally in the course of their duties.<sup>10</sup>  
 Where the misconduct is not sufficiently serious to permit the employer to dismiss the employees, the employer may give the employees a written warning. If the offence is repeated within six months of receipt of the warning notice, dismissal of the employees may take place.

An employer may dismiss employees for unsatisfactory performance, if the employees do not, during the three months following receipt of a written warning, demonstrate satisfactory performance of their duties.

### **Notice and Procedural Safeguards**

The Labour Code contains provisions on notice and procedural safeguards to be observed by employers intending to dismiss an employee and employees intending to voluntarily quit their employment. These provisions cover such situations as termination at the expiry of a fixed-term contract, during the course of an employment contract, and during the employee's probationary period.

#### **Notice by Employee**

Employees on a fixed term contract are not required to give notice of their intention to quit their employment at the end of such contract, unless the terms of the employment contract specify otherwise.

All other employees must give advance notice to their employers of an intention to quit their employment, as follows:

- (a) at least 24 hours' advance notice during the probationary period; or
- (b) thereafter, a period of notice equal to the interval of time between the employee's paydays, subject to a maximum of thirty days.<sup>11</sup>

The failure of an employee to give the requisite notice may provide the employer with grounds for their dismissal.

#### **Notice by Employer**

Employers have the right to terminate, without advance notice, the employment of persons who have engaged in serious misconduct related to their work.

In all other cases, employers must give advance notice to employees of the intention to terminate their employment as follows:

- (a) no advance notice in cases where the employees have been engaged for a specified term of employment of less than one week;
- (b) twenty-four hours' advance notice during the probationary period;
- (c) the number of days between the employee's paydays must be provided as advance notice for all employees having completed the probationary period and in no case shall it exceed thirty days, unless the contract calls for a longer period.

<sup>10</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC59. <sup>11</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC11 (2).

Employers have the option of paying the employee's wages in lieu of providing notice.<sup>12</sup>

Employees who receive a notice of termination of employment from their employer are entitled, as far as is practicable, to a reasonable amount of time off during the period of notice without loss of pay in order to seek other employment.<sup>13</sup>

In terms of procedural safeguards, the Labour Code prohibits dismissal of employees who have completed the probationary period, without just cause. Employees have the right to request the employer to furnish them with a statement of the reason for termination of employment, and the dates of engagement and termination.<sup>14</sup> Employers who furnish such a statement shall be bound by the contents of the statement in any proceedings testing the fairness of the dismissal.<sup>15</sup> Where employers fail to furnish the statement within seven days of a request, they shall be estopped from introducing testimony as to facts which might have been recited in such a statement, in any proceedings testing the fairness of the dismissal or the employer's liability for severance pay, whichever is applicable.

### Severance Pay

After one year's service, employees are entitled to receive severance pay upon termination of employment by their employers for reasons of redundancy.<sup>16</sup>

Redundancy includes situations in which, by virtue of a lack of customers' orders, retrenchment, the installation of labour-saving machinery, an employer's going out of business, force majeure, or any other reason, tasks which a person was last employed to perform, no longer exist.<sup>17</sup>

Severance pay consists of at least one day's pay, at the employee's latest basic wage, for each month or major fraction thereof of their term of employment with the employer and any predecessor employer.<sup>18</sup>

Where the termination of employment is intended to be temporary, severance pay is not payable unless the date of recall is more than six months after the termination.<sup>19</sup> However, if no date of re-engagement is given to the employee at the time of lay-off (meaning termination of employment of a temporary nature), severance becomes payable when and if, after three months from the termination, the employee is not recalled. In this instance, interest is payable at the rate of ten per cent per annum on the amount of severance pay due for the interval between the original termination date and the date of actual payment.

<sup>12</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC9 (4). <sup>13</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC9 (5).

<sup>14</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC10. <sup>15</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC10 (3).

<sup>16</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC40. <sup>17</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC3.

<sup>18</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC41. <sup>19</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC42 (2) (a).

If employment in an employee's last occupation is terminated because of redundancy, but they are offered other employment by the employer at a reduced wage, then the employee may accept the offered employment without forfeiture of their severance pay. However, such an employee will be considered newly hired for the purposes of subsequent severance pay.

Severance pay is not payable if the employee refuses to accept the same employment, without any break in service, by a successor employer.<sup>20</sup>

### Avenues for Redress

An employee, who claims to have been dismissed without just cause, has the right to file a "Complaint of Infringement" with the Labour Commissioner for conciliation.<sup>21</sup> Should the complaint fail to be settled within ten days, the Labour Commissioner must refer the matter to the Minister of Labour who will attempt to have the matter settled amicably by the parties. If the efforts of the Minister fail to provide a settlement within twenty days, the Minister may refer the matter to a Hearing Officer for a formal hearing and settlement. The decision of the Hearing Officer is subject to appeal to a Board of Review. The decision of the Board of Review is final and is binding on the parties. Non-compliance with the decisions of the Board of Review could attract a fine and/or term of imprisonment.<sup>22</sup>

The Hearing Officer is empowered to impose whatever remedies are considered appropriate in the matter and in particular:

- (a) in a severance pay matter, they may order the payment of a sum of money found due;
- (b) in an unfair dismissal matter, they may order the payment of a sum of money equal to the loss of wages sustained and reinstatement, or the payment of a sum of money in lieu of such reinstatement.

The test, generally, for deciding whether or not a dismissal is unfair is whether or not, under the circumstances, the employer acted unreasonably or reasonably. A mistake as to the reasonableness of the dismissal is not a defence.

Where the dismissal is brought before the Industrial Court, the Court in the exercise of its powers may:

- (a) make any such order or award in relation to a dispute as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;
- (b) act in accordance with equity, good conscience and the substantial merits of the case before it having regard to the principles and practices of good industrial relations.

In addition, an employee may recover by civil proceedings in a court of

<sup>20</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC44. <sup>21</sup> Antigua and Barbuda Labour Code 1975 (as amended) sK5.

<sup>22</sup> Antigua and Barbuda Labour Code 1975 (as amended) sK10.

competent jurisdiction the severance pay to which they are entitled under the Act. <sup>23</sup>

### Winding Up

The Bankruptcy Act, Chapter 44, provides for the ranking of debts of a bankrupt employer, except where the employer is an international business corporation. An international business corporation is defined as a corporation that is engaged in international business or trade.

In the event of liquidation or bankruptcy of the business of the employer, or on any other closure of business, all parochial or other rates due from the bankrupt and all taxes and other debts due from the bankrupt to the Crown, all wages or salary of any clerk, servant, labourer or workman (not exceeding two thousand dollars) in respect of services rendered to the bankrupt, during the period of four months immediately preceding the date of the receiving order and contributions payable pursuant to the Social Security Act are to be paid in priority to all other debts. <sup>24</sup>

With respect to an international business corporation, the International Business Corporation Act, Chapter 222 provides for the payment of necessary and reasonable expenses incurred in the winding up prior to the payment of the wages and salaries of employees accrued during the three months immediately preceding the winding up. In the cases of bankruptcy and winding up of an international business corporation, the payment of wages and salaries ranks above payment of taxes and rates and other debts.

### Useful links

[www.laws.gov.ag/acts](http://www.laws.gov.ag/acts)

This website provides the full text of the Laws of Antigua and Barbuda.

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.

[www.oecs.org](http://www.oecs.org)

This is the website of the Organization of Eastern Caribbean States (OECS).

<sup>23</sup> Antigua and Barbuda Labour Code 1975 (as amended) sC55 (1). <sup>24</sup> Bankruptcy Act [Chapter 44], 1893 (as amended) s37 (1).



### Source of Regulations

The relevant legislation in the Commonwealth of the Bahamas comprises:

- Employment Act 2001;
- Industrial Relations Act 1975 (as revised in 2000);
- Companies Act 1992 (as amended).

The Employment Act 2001 provides for contracts of employment, termination of employment, dismissal, notice and prior procedural safeguards and severance pay.

The Industrial Relations Act 1975 (as revised in 2000) deals with avenues for redress as well as for the registration and control of trade unions, the recognition of trade unions by employers, the registration of certain industrial agreements, the establishment of an Industrial Tribunal and the regulation of trade disputes.

### Scope of Legislation

The Employment Act 2001 applies to all branches of economic activities and to all employees except the disciplined forces. The disciplined forces are interpreted to include the defence force, the police and prison services.<sup>25</sup>

The Industrial Relations Act 1975 (as revised in 2000) also applies to all employees except those employed or serving in the disciplined forces.

The Companies Act 1992 (as amended) addresses preferential payments on winding up of companies.

### Contracts of Employment

An employer is required to inform an employee, as soon as practicable, of the following particulars of their employment:

- (a) the name of the employer and the place of employment;
- (b) the name of the employee, the place of engagement and where practicable the place of origin of the employee, and any other particulars for their identification;
- (c) the nature of the employment;
- (d) where a person is engaged for a fixed period, or in appropriate circumstances, the duration of the employment and the method of calculating the duration;
- (e) the rate of wages and other benefits and method of calculation thereof, the manner and period of payment of wages and other benefits, the advances of wages and other benefits, if any, and the manner of repayment of any such advances; and

<sup>25</sup> Employment Act 2001 s3.

(f) where any work is to be performed not by the piece but by time, the number of hours of daily work, and the hours of the day at which such work is to commence and to terminate.<sup>26</sup>

### Termination of Employment

An employee has the right to terminate their employment at any time, provided that they give the employer the requisite notice described below under the section “Notice and Procedural Safeguards”. However, where the employer has been guilty of a breach of the terms and conditions of employment, an employee may terminate their employment without notice.<sup>27</sup>

### Dismissal

An employer may summarily dismiss an employee without pay or notice where the employee has committed a fundamental breach of their contract of employment or has acted in a manner repugnant to the fundamental interests of the employer. The Employment Act 2001 provides an illustrative, non-exhaustive list of such acts of misconduct that includes theft; fraudulent offences; dishonesty; gross insubordination or insolence; gross indecency; breach of confidentiality, provided that these grounds shall not include a report made to a law enforcement agency or to a government regulatory department or agency; gross negligence; incompetence; and gross misconduct.<sup>28</sup>

An employer may also terminate the employment of an employee on grounds of redundancy where the redundancy is attributable to:

- (a) the fact that the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed or in the place where the employee was so employed; or
- (b) the fact that the requirements of that business have ceased or diminished or are expected to cease or diminish.

However, the employee must have been employed for one year or more or in the case of work on a specific construction project, two years, in order to qualify for a redundancy payment.<sup>29</sup> A redundancy payment shall be a preferred debt in all cases involving bankruptcy or liquidation.

There is no statutory provision relating to the probationary period of an employee. The probationary period is determined by the employment contract.

The Employment Act 2001 confers upon every employee the right not to be unfairly dismissed.

### Notice and Procedural Safeguards

#### Notice by Employee

An employee is to provide their employer with two weeks’ notice if they have been employed for less than two years, or four weeks’ notice in other

<sup>26</sup> Employment Act 2001 s5. <sup>27</sup> Employment Act 2001 s29 (2). <sup>28</sup> Employment Act 2001 s32. <sup>29</sup> Employment Act 2001 s27.



cases, of their intention to terminate the employment relationship.<sup>30</sup>

### **Notice by Employer**

An employer is required to give to an employee the following notice of termination of employment:

- (a) in cases of persons in supervisory or managerial positions:
  - (i) one month's notice or one month's basic pay in lieu of notice;
  - (ii) one month's basic pay (or a part thereof on a pro rata basis) for each year up to forty-eight weeks.
- (b) in all other cases:
  - (i) where the employee has been employed for six months or more but less than twelve months, one week's notice (or one week's basic pay in lieu of notice) and one week's basic pay (or a part thereof on a pro-rata basis) for the said period between six months and twelve months;
  - (ii) where the employee has been employed for twelve months or more, two weeks' notice (or two weeks' basic pay in lieu of notice) and two weeks' basic pay (or a part thereof on a pro-rata basis) for each year up to twenty-four weeks.<sup>31</sup>

As such, the employer is not obliged to provide a period of notice to an employee who has been employed for less than six months or during the probationary period as defined in the terms of the contract.

The Employment Act, 2001 confers upon every employee the right not to be unfairly dismissed. An employee is protected from dismissal for legitimate trade union activities or for any reason connected with pregnancy, race, creed, sex, marital status, political opinion, or HIV status.

The issue as to whether the employee was unfairly dismissed is determined in accordance with the substantial merits of the case. The employer has the burden to show that they honestly and reasonably believed on a balance of probability that the employee had committed the misconduct in question at the time of the dismissal and that they had conducted a reasonable investigation of such misconduct, except where such an investigation was otherwise unwarranted.

### **Severance Pay**

An employer is required to provide severance pay (referred to as redundancy pay in The Bahamas legislation) to an employee who has continuous service for one year or more, of two weeks' basic pay per complete year (or a part thereof on a pro-rata basis) of service, up to a maximum of twenty-four weeks' pay.

Where the employee holds a supervisory or managerial position, the severance pay shall be one month's basic pay for each year of continuous

<sup>30</sup> Employment Act 2001 s29 (2). <sup>31</sup> Employment Act 2001 s29 (1).

service (or a part thereof on a pro-rata basis) up to a maximum payment of forty-eight weeks' pay.<sup>32</sup>

### Avenues for Redress

A dismissed employee has the right to report a dispute themselves, or to have a trade union of which they are a member in good standing invoke the trade dispute procedure, and within twelve months of the dismissal, file a complaint to the Minister of Labour for conciliation.<sup>33</sup> The Minister has the discretion to extend the timeframe for the submission of the complaint if they consider it just to do so. The employer must submit to the conciliation process. Failure to attend the conciliation may give rise to a fine not exceeding five thousand dollars.

Failing settlement at the conciliation stage, the Minister has the power to refer the dispute to the Tribunal for arbitration. Where the Tribunal finds that the grounds of the complaint are proved, it has the power to make an order for re-instatement with no loss of benefits, or re-engagement, or an award of compensation for unfair dismissal.<sup>34</sup>

The Tribunal's award of compensation for unfair dismissal may be such amount as it considers just and equitable, having regard to the loss sustained by the complainant as a consequence of the dismissal, in so far as the loss is attributable to the employer's action.<sup>35</sup> The award must not exceed twenty-four months' pay in the case of supervisory and managerial employees, and eighteen months' pay in the case of all other employees.

### Winding Up

The Companies Act, as amended, provides that, in winding up, all wages and salaries shall be paid after all rates, taxes and other statutory charges, but in priority to all other debts.<sup>36</sup>

### Useful links

[laws.bahamas.gov.bs/](http://laws.bahamas.gov.bs/)

This website contains the laws of the Commonwealth of the Bahamas.

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.

<sup>32</sup> Employment Act 2001 s26 (2). <sup>33</sup> Industrial Relations Act 1975 (as revised in 2000) s68. <sup>34</sup> Employment Act 2001 s42 and s43. <sup>35</sup> Employment Act 2001 s47. <sup>36</sup> Companies Act 1992 s267 (1).



Barbados

## BARBADOS

### Source of Regulations

In Barbados, employment relations are generally not as comprehensively covered by statutory provisions as in other Caribbean countries. Barbados employment law is largely based on the common law voluntary system of employment relations. Apart from legislation on severance payments and winding up, legislation on employment relations are specific to certain categories of workers. The relevant legislation comprises:

- Domestic Employees (Hours of Duty) Act [Chapter 344];
- Shops Act [Chapter 356A];
- Sugar Workers (Minimum Wage and Guaranteed Employment) Act [Chapter 359];
- Severance Payments Act [Chapter 355A];
- Employment of Women (Maternity Leave) Act [Chapter 345A];
- Employment Miscellaneous Provisions Act [Chapter 346];
- Factories Act [Chapter 347];
- Companies Act [Chapter 308];
- Bankruptcy and Insolvency Act [Chapter 303].

The Domestic Employees (Hours of Duty) Act provides for the Minister of Labour to prescribe minimum wages payable to domestic employees and the maximum number of hours to be worked per week. It also requires employers to keep a record of the hours of overtime worked by each domestic employee.

The Shops Act prescribes conditions of employment for shop assistants relating to hours and time of employment, rest periods and basic facilities to be provided.

The Sugar Workers (Minimum Wage and Guaranteed Employment) Act provides for the minimum wages of sugar workers as well as their guaranteed employment.

The Severance Payments Act provides for the making by employers of severance payments to employees who cease to be employed due to redundancy.

The Employment of Women (Maternity Leave) Act provides for the granting of maternity leave to female employees and for the protection of their employment during such leave.

The Employment Miscellaneous Provisions Act repeals the Employment of Women, Young Persons and Children Act and makes new provision relating to the employment of persons, including young persons and children.

The Factories Act provides for the safety, health and welfare of persons employed in factories.

The Companies Act provides for laws relating to companies and for related and consequential matters including winding up.

The Bankruptcy and Insolvency Act provides, amongst other things, for the payment of wages and other claims in cases of insolvency and/or liquidation of the business of the employer.

### Scope of Legislation

With respect to termination of employment, there are statutory provisions relating to retrenchment, and statutory protection against termination of employment due to pregnancy and trade union membership and activities.

### Contracts of Employment

Legislative provisions relating to contracts of employment are limited to domestic workers, shop assistants and sugar workers.

### Termination of Employment

There are no statutory provisions relating to termination of employment by the employee or by the employer. These matters are regulated by collective agreements and individual contracts of employment. Generally, an employee has the right to terminate their employment, subject to the contractual notice required.

### Dismissal

The Severance Payments Act provides for dismissal by the employer for redundancy in the following cases: <sup>37</sup>

- (a) cessation of (or intention to cease) business in the place where the employee was employed;
- (b) reduction in business operations; and
- (c) destruction of or damage caused to the place of business due to fire, flood, hurricane, earthquake or other acts of God.

The Trade Unions Act prohibits an employer from dismissing a worker because: the worker proposes to become an officer, delegate or member of a trade union; the worker is absent from work without leave after making an application for leave for the purposes of carrying out or exercising trade union rights as an officer or delegate and the leave has been refused or withheld; or the worker takes part in union activities. <sup>38</sup>

The Employment of Women (Maternity Leave) Act provides that an employer is not allowed to:

- (a) dismiss, give notice of dismissal to or force to resign a pregnant employee between the date of the receipt of a medical certificate and the date of the expiration of her maternity leave;

<sup>37</sup> Severance Payments Act [Chapter 355A] s3 (3). <sup>38</sup> Trade Unions Act, s40.

- (b) dismiss or give notice of dismissal to a pregnant employee so that it would expire during her maternity leave;
- (c) dismiss an employee or require an employee to resign on the grounds that she is pregnant, except where:
  - (i) there has been serious default or gross negligence amounting to abandonment of duty on the part of the worker;
  - (ii) there has been an expressed contract of service for a fixed term between the employer and the employee which has expired; or
  - (iii) the business in which the employee was engaged has ceased to exist.<sup>39</sup>

### Notice and Procedural Safeguards

The Severance Pay Act provides for notice of termination of employment by an employer to be given to an employee and notice by the employee to an employer.<sup>40</sup>

#### Notice by Employee

An employee who has been continuously employed for one hundred and four weeks or more must provide at least one week's notice to terminate their contract of employment.

#### Notice by Employer

An employer must provide to an employee who has been continuously employed for one hundred and four week's or more the following notice to terminate the contract of employment:

- (a) not less than two weeks' notice if the employee's period of continuous employment is two years or more but less than five years; and
- (b) not less than four weeks' notice if the employee's period of continuous employment is five years or more.

There are no statutory provisions relating to notice to be given to, or the right of consultation with, the recognized trade union or for priority treatment in subsequent recruitment. These matters are generally covered in the Protocol of the Social Partnership. Notice is otherwise governed by collective agreement.

With respect to procedural safeguards, employees have recourse to the conciliation services of the Ministry of Labour, arbitration under the Arbitration Act and the common law courts for wrongful dismissal.

#### Severance Pay

The Severance Payments Act, section 17 provides for continuity of employment for purposes of severance in cases of short-term lay-offs. With respect to a successor employer, section 9 of the same Act provides for the continuity of employment with the successor employer in cases of re-engagement or renewal of contracts of employment from the predecessor employer.

<sup>39</sup> Employment of Women (Maternity Leave) Act [Chapter 345A] s6. <sup>40</sup> Severance Payments Act [Chapter 355A] s20.

Barbados has a Severance Fund that is administered by the National Insurance Board. Although contributions to this Fund are made by the employer only, this Fund serves two purposes:

- (i) employers are paid a rebate from this Fund after having made a severance payment; and
- (ii) employee claims for severance payments are paid from the Fund when an employer refuses to or cannot pay.<sup>41</sup>

As regards subparagraph (ii) above, an award must be made by the Tribunal or the National Insurance Board for an employee to be paid from the Fund.

### Avenues for Redress

Employees have recourse to arbitration under the Arbitration Act and the common law courts for wrongful dismissal.

### Winding Up

The Bankruptcy and Insolvency Act provides for the payment of wages claims, with the exception of severance payments, to take priority over the following debts in the case of insolvency and/or liquidation:

- contribution payable by the bankrupt, as an employer, pursuant to the National Insurance and Social Security Act;
- all taxes including land tax or income tax assessed on the bankrupt and not exceeding in total one year's assessment.<sup>42</sup>

### Useful links

<http://labour.gov.bb/>

This is the website of the Barbados Labour Market Information System.

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.

<sup>41</sup> Severance Payments Act [Chapter 355A] s30 and s31. <sup>42</sup> Bankruptcy and Insolvency Act [Chapter 303] s113 and Companies Act [Chapter 308 Part IV].

A map of Belize is shown in the top left corner, with the word "Belize" written to its left. The map is a light blue outline of the country's borders.

Belize

## BELIZE

### Source of Regulations

The laws of Belize relating to termination of employment are:

- Belize Labour Act [Chapter 297];
- Bankruptcy Act [Chapter 244];
- Companies Act [Chapter 250];
- Trade Unions Act [Chapter 300].

The Belize Labour Act has provisions relating to contracts of employment, dismissal, notice and prior procedural safeguards, and severance pay.

The Bankruptcy Act provides for preferential payments to workers in respect of bankruptcy of an employer who is not a company.

The Companies Act has provisions relating to employers who are companies.

The Trade Union Act has certain prohibitions against dismissal for legitimate trade union activities.

### Scope of Legislation

The Belize Labour Act, the principal legislation on termination of employment, has no general exemption from its applicability.

### Contracts of Employment

All contracts of employment in excess of three months must be in writing and must contain clear and unambiguous terms relating to the rights and obligations of the parties, including:

- (a) the name of employer and place of employment;
- (b) the name of worker, place of engagement, place of origin of worker and identification particulars;
- (c) name and address of next of kin of worker;
- (d) nature of employment;
- (e) duration of employment and method of calculating duration;
- (f) appropriate period of notice for termination of contract;
- (g) rates of pay, method of calculation, manner and periodicity of payment of wages, advances and manner of repayment;
- (h) measures taken to provide for the welfare of worker and accompanying dependents;
- (i) conditions of repatriation where applicable; and
- (j) special conditions of contract.<sup>43</sup>

The employer must present the contract to a Labour Officer for attestation. The attesting officer must ensure that the employee freely consents to the contract and fully understands the terms before signing.<sup>44</sup>

<sup>43</sup> Belize Labour Act [Chapter 297] s51. <sup>44</sup> Belize Labour Act [Chapter 297] s52.

## Termination of Employment

An employer or employee may terminate at will, without notice, the employment relationship during the probationary period. The length of the probationary period in written contracts of employment is not indicated.

For an oral contract of employment, the probationary period is two weeks.<sup>45</sup>

Outside of the probationary period, the contract may be terminated on medical grounds or by agreement between the parties with the consent of the Commissioner of Labour.<sup>46</sup>

A contract for an indefinite period may be terminated by either party giving to the other, notice of such termination in accordance with the terms of the contract. The relevant period of notice is described under the section “Notice and Procedural Safeguards”.

Where a worker under an oral contract of service for an indefinite time fails to give requisite notice, they are liable to pay to the employer a sum equal to half the wages that would be payable in respect of the period of notice.<sup>47</sup>

A worker has the right to abandon the service of the employer without giving notice and without any liability to make payment, if there is good and sufficient cause for such abandonment.<sup>48</sup>

## Dismissal

The termination of employment by an employer is permitted for good and sufficient cause, including misconduct, wilful disobedience of lawful orders of the employer, lack of requisite skill, habitual or substantial neglect of duties or unauthorized absence from work.<sup>49</sup>

The employer cannot terminate the employment of a worker during any period of incapacity caused by personal injury or by accident that occurred in the course of employment or by any of the occupational diseases in respect of which compensation is payable under the Workmen’s Compensation Act. Injury benefit is payable under the Social Security Act, unless the incapacity continues beyond twelve months.<sup>50</sup>

An employer, who terminates an oral contract before the end of the contract period without good and sufficient cause, is liable to pay wages in respect of the remainder of the contractual period.<sup>51</sup>

An employer has the right to dismiss a worker without giving notice and without any liability to make payment, if there is good and sufficient cause for such dismissal. Grounds for dismissal or abandonment of duty with good and sufficient cause shall include:

- (a) when a worker is guilty of misconduct;
- (b) for wilful disobedience to lawful orders given by the employer;

<sup>45</sup> Belize Labour Act [Chapter] 297 s39. <sup>46</sup> Belize Labour Act [Chapter 297] s186. <sup>47</sup> Belize Labour Act [Chapter 297] s43. <sup>48</sup> Belize Labour Act [Chapter 297] s46 (2). <sup>49</sup> Belize Labour Act [Chapter 297] s46. <sup>50</sup> Belize Labour Act [Chapter 297] s47. <sup>51</sup> Belize Labour Act [Chapter 297] s44.



- (c) for lack of skill of the employee;
- (d) for habitual or substantial neglect of duties; or
- (e) for absence from work without permission of the employer or without a reasonable excuse.<sup>52</sup>

An employer is not permitted to dismiss a worker for carrying out legitimate trade union activities or for reasons of pregnancy.<sup>53</sup>

## Notice and Procedural Safeguards

### Notice by Employee and Employer

Both the employer and the employee are required to provide notice of the intention to terminate a contract of employment for an indefinite period as follows:

- (a) where the period of employment is for more than one month, the period of notice shall not be less than fourteen days and may be given only after the expiry of the first month of employment; or
- (b) where the period of employment is for one month or less, the period of notice shall not be less than seven days.<sup>54</sup>

Where a worker under an oral contract of service for an indefinite time fails to give requisite notice, they shall be liable to pay to the employer a sum equal to half the wages that they would have received during the period of notice.<sup>55</sup>

A worker who abandons the service of their employer before the time definitely specified by an oral contract of service shall pay to their employer a sum equal to half of the full wages to which they would have become entitled if they had continued in employment for the remainder of the time specifically agreed upon.<sup>56</sup>

Where the employer fails to give the said notice, they shall be liable to pay to such worker a sum equal to the wages that would be payable in respect of the period of notice.<sup>57</sup>

An employer, who dismisses a worker before the expiry of the time specified by an oral contract of service, shall pay to the worker a sum equal to the wages that would have been due to the worker in respect of the remainder of the time specifically agreed upon.<sup>58</sup>

### Severance Pay

Severance pay of one week's wages in respect of each year of service is to be provided to retrenched workers who have worked with the employer for a minimum of five years.<sup>59</sup> There is a maximum ceiling of forty-two weeks' wages.

<sup>52</sup> Belize Labour Act [Chapter 297] s46 (2). <sup>53</sup> Belize Labour Act [Chapter 297] s46 (1) and s178. <sup>54</sup> Belize Labour Act [Chapter 297] s57.

<sup>55</sup> Belize Labour Act [Chapter 297] s43. <sup>56</sup> Belize Labour Act [Chapter 297]s44 (2). <sup>57</sup> Belize Labour Act [Chapter 297] s 43.

<sup>58</sup> Belize Labour Act [Chapter 297] s44 (1). <sup>59</sup> Belize Labour Act [Chapter 297] s183.

Where a worker who has been continuously employed by any employer for a period of ten years or more retires on or after attaining the age of sixty years or on medical grounds, they shall be paid a severance payment of one week's wages in respect of each year of service.<sup>60</sup>

Employment shall be deemed to have been terminated on grounds of redundancy if the worker's contract is terminated by the employer for any reason, which does not amount to dismissal with good and sufficient cause as defined above under the section "Dismissal".<sup>61</sup>

### Avenues for Redress

The Labour Commissioner shall receive and investigate all representations of workers concerning their employment, with a view to settlement and conciliation of disputes. Should conciliation fail, the employee has the right to refer their complaint to the High Court of Justice, which has the power to order re-instatement, re-engagement or an award of compensation.<sup>62</sup>

### Winding Up

In the event of death or bankruptcy of an employer, their employees are entitled to all outstanding payments due to them.<sup>63</sup> The Act fails to provide for a priority claim for such payments.

Section 37 (1) of the Bankruptcy Act and section 201 (1) of the Companies Act, provide the same priority ranking of payment of wages and salaries on winding up or insolvency of an employer. Wages and salaries in respect of employment or services rendered by a worker during the four-month period prior to the commencement of the bankruptcy or winding up, up to a maximum of two hundred and fifty dollars, rank second to payment of all rates and taxes due from the employer.

### Useful links:

[www.belizelaw.org](http://www.belizelaw.org)

This is the website of the Ministry of the Attorney-General in Belize and it contains the laws of Belize.

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

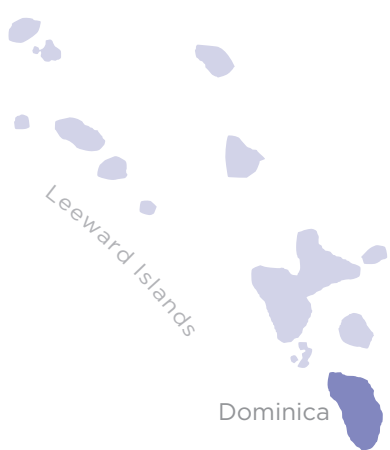
This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.

<sup>60</sup> Belize Labour Act [Chapter 297] s183 (1). <sup>61</sup> Belize Labour Act [Chapter 297] s183 (3). <sup>62</sup> Belize Labour Act [Chapter 297] s4.

<sup>63</sup> Belize Labour Act [Chapter 297] s33.



## DOMINICA

### Source of Regulations

The relevant laws of Dominica relating to termination of employment are:

- Protection of Employment Act 1977 [Chapter 89:02];
- Labour Contracts Act 1983 [Chapter 89:04];
- Bankruptcy Act.

The Protection of Employment Act 1977 provides for termination of employment, dismissal, prior procedural safeguards, and severance pay.

The Labour Contracts Act 1983 addresses minimum terms in a contract of employment.

The Bankruptcy Act provides for winding up of the employer's business or undertaking.

### Scope of Legislation

The provisions of the Protection of Employment Act 1977 relating to redundancy do not apply to domestic servants or workers where the duties of those persons are performed in or in connection with a private dwelling occupied by the employer, and where not more than two such persons are employed as domestic servants by the employer.

The provisions of the Labour Contracts Act 1983 do not apply to the State or to workers:

- (a) who are included in a category of employees for which a trade union is recognized as the bargaining agent by the employer;
- (b) who normally work or are expected to work less than twenty-one hours per week;
- (c) who are hired for a fixed term of two weeks or less;
- (d) who, having been a party to a labour contract with the employer, are re-engaged in the same or similar employment by the employer after an absence from that employment of less than six months;
- (e) who shall be presumed to be employed on the same terms as under the former contract unless the contrary appears;
- (f) who are the father, mother, husband, wife, brother, sister, son or daughter of the employer;
- (g) who are employed as home assistants; or
- (h) who are employed as agricultural workers.<sup>64</sup>

### Contracts of Employment

Under section 3 of the Labour Contracts Act 1983, an employer is obliged to provide to the employee a written contract describing the terms and conditions of the employment within fourteen days of the commencement of work by the employee.

<sup>64</sup> Labour Contracts Act 1986 s2.

The contract shall include the following: the names of the parties; the starting date of the employment contract; the description of duties; the rate of pay; the pay periods; the duration of the probationary period; the normal hours of work; the overtime rates; the annual leave entitlements; the sick leave entitlements; the period of notice of termination by either party; and any other term and condition. <sup>65</sup>

### Termination of Employment

Employees may terminate their employment by giving the employer notice of their intention to terminate. The period of notice is described under the section “Notice and Procedural Safeguards”.

Employees are also permitted to terminate their employment without giving prior notice where the employer has been guilty of serious misconduct in relation to the employees such that the employees cannot reasonably be expected to take any other course than to terminate their employment with the employer. <sup>66</sup>

### Dismissal

An employer may dismiss an employee at any time during the probationary period without notice or payment in lieu of notice for unsatisfactory performance. <sup>67</sup>

An employer may dismiss an employee, without notice or payment in lieu of notice, where the employee has been guilty of serious misconduct in or in relation to their employment. Serious misconduct is defined as misconduct that is of such a nature that the employer cannot reasonably be expected to take any other course than to terminate the contract of employment. <sup>68</sup>

Paragraph 8 (2) of the Schedule to the Contracts Labour Act 1986 provides for dismissal for misconduct that is not serious misconduct and breach of the conditions of employment after a written warning. It states that the employer may terminate the employment of an employee where the employee received a written warning in respect of his or her misconduct and is, within six months following the day on which they received the warning notice, guilty of the same or substantially the same misconduct in relation to their employment for which the written warning was given.

An employee may be dismissed for failure to perform duties in a satisfactory manner where the employee has received a written warning from the employer in respect of the performance of their duties and the employee does not, during the period of three months following the day on which they

<sup>65</sup> Labour Contracts Act 1986 s5. <sup>66</sup> Labour Contracts Act 1986 Schedule 8 (4), Protection of Employment Act 1977 s20.

<sup>67</sup> Protection of Employment Act 1977 s4. <sup>68</sup> Protection of Employment Act 1977 s5.

received the written warning, demonstrate that they are able to perform the duties in a satisfactory manner.<sup>69</sup>

An employee is not to be considered guilty of serious misconduct or misconduct or failure to perform their duties in a satisfactory manner by reason of:

- (a) their membership in a trade union;
- (b) their participation in union activities outside of working hours or, with the consent of the employer, during working hours;
- (c) the fact that they have, in good faith, filed a complaint or participated in a proceeding against their employer involving an alleged violation of any law;
- (d) their race, colour, sex, marital status, religion, political opinion, national extraction or social origin; or
- (e) their being absent on Saturdays or Sundays to take part in religious worship.<sup>70</sup>

In cases of redundancy, the employer may terminate the employment of an employee where that termination is or is part of a reduction in the workforce employed by the employer, as a direct result of the fact that:

- (a) the employer has modernized or automated or mechanized all or part of their business;
- (b) the employer has discontinued or ceased to carry on all or part of their business;
- (c) the employer has sold or otherwise disposed of all or part of their business;
- (d) the employer has reorganized their business to improve efficiency;
- (e) the employer's need for employees in that category has diminished or ceased;
- (f) it has become impossible or impracticable for the employer to carry on the business at the usual rate or level or at all due to:
  - (i) a shortage of materials;
  - (ii) a mechanical breakdown;
  - (iii) force majeure; or
  - (iv) an act of God.

## Notice and Procedural Safeguards

### Notice by Employee

Where the employee intending to terminate their employment is paid on a monthly (or longer) basis, the period of notice to be provided to the employer is to be one month before the date on which the termination is to have effect. Where the employee is paid on a basis of less than one

<sup>69</sup> Protection of Employment Act 1977 s9. <sup>70</sup> Protection of Employment Act 1977 s10.

month, the period of notice is to be one week before the date on which the termination is to have effect.<sup>71</sup>

### Notice by Employer

The notice required to be given by an employer to terminate the employment of an employee who is paid on a monthly basis or a basis of more than a month shall not be:

- (a) less than one month, where the employee's period of continuous employment with the employer is less than ten years; or
- (b) two months, where the employee's period of continuous employment with the employer is more than ten years.<sup>72</sup>

The notice required to be given by an employer to terminate the employment of an employee who is paid on a basis of less than one month shall not be less than:

- (a) one week, where the employee's period of continuous employment with the employer is less than two years; or
- (b) two weeks, where the employee's period of continuous employment with the employer is more than two years but not more than five years; or
- (c) four weeks, where the employee's period of continuous employment with the employer is more than five years.<sup>73</sup>

An employer is prohibited from avoiding their statutory obligations to the employee(s) through the sale or other disposition of the business.<sup>74</sup>

### Severance Pay

An employer who retrenches an employee who has at least three years' service is to pay redundancy benefits to the employee.<sup>75</sup>

The formula for the determination of redundancy benefit is as follows:

- (a) where the employee has been continuously employed by the employer for a period not exceeding five years, one week's pay for each year of service, plus two weeks' pay for each year in excess of three years' service;
- (b) where the employee has been continuously employed by the employer for a period of more than five but less than ten years, nine weeks' pay plus two weeks' pay for each year of service in excess of five years;
- (c) where the employee has been continuously employed by the employer for a period of more than ten years, nineteen weeks' pay plus three weeks for each year of service in excess of ten years.<sup>76</sup>

<sup>71</sup> Protection of Employment Act 1977 s19. <sup>72</sup> Protection of Employment Act 1977 s16 (2). <sup>73</sup> Protection of Employment Act 1977 s16 (3).

<sup>74</sup> Protection of Employment Act 1977 s12. <sup>75</sup> Protection of Employment Act 1977 s21. <sup>76</sup> Protection of Employment Act 1977 s22.

A redundancy benefit payable to an employee by an employer shall not exceed an amount that is equal to fifty-two weeks' pay for that employee.

### Avenues for Redress

An employee or employer may make a complaint in writing to the Minister with a brief statement of the facts and circumstances and the relief claimed. Upon receipt of such a complaint, the Minister may send a copy of the complaint to the Labour Commissioner for the purpose of giving an opportunity for the complaint to be settled by way of conciliation.<sup>77</sup>

The Labour Commissioner must take such urgent steps as they consider appropriate to assist the parties to settle the complaint. Where the Labour Commissioner reports to the Minister that the parties are unable to settle the complaint, the Minister may refer the complaint to the Tribunal.<sup>78</sup>

The Tribunal may, in cases where the dismissal is found to be unfair, reinstate the dismissed employee and order an employer to pay compensation not exceeding such sum equivalent to remuneration that would have been paid to the employee but for the termination action of the employer.<sup>79</sup>

If the Tribunal concludes that while the employee is entitled to reinstatement, an order of reinstatement would not be practicable or desirable for the reason that the return of the employee would have a seriously detrimental effect on industrial relations in the business concerned, or the employee does not wish to return to their former employment, it may, in lieu of making an award of reinstatement, order the employer to pay compensation in such amount as the Tribunal may determine.<sup>80</sup>

In determining the amount of compensation, the Tribunal shall, in addition to all of the circumstances of the case, have regard to the salary at the time of termination, the remuneration that would have been paid from date of termination to the date of the order, the number of years of service, the age of the employee, the number of persons who are dependent on the employee, and the prospects of the employee for other employment.

### Winding Up

Section 37(1) of the Bankruptcy Act, provides that in the distribution of the property of a bankrupt employer, all salaries and wages of any worker in respect of services rendered to the bankrupt during the four months before the date of the receiving order and all redundancy payments shall be given the first priority over all other debts.<sup>81</sup>

<sup>77</sup> Protection of Employment Act 1977 s36 (1) and 36 (2). <sup>78</sup> Protection of Employment Act 1977 s36 (3). <sup>79</sup> Protection of Employment Act 1977 s38 (1). <sup>80</sup> Protection of Employment Act 1977 s38 (2). <sup>81</sup> Protection of Employment Act 1977 s39.

## Useful links

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.

[www.oecs.org](http://www.oecs.org)

This is the website of the Organization of Eastern Caribbean States (OECS).





## GRENADA

### Source of Regulations

The Employment Act 1999 (as amended), provides for contracts of employment, termination of contracts, dismissal, notice and prior procedural safeguards, termination benefits, and winding up of an employer's business.

### Scope of Legislation

The Employment Act 1999 applies to all workers except members of the police force, armed forces, prison guards or officers employed in a non-civilian capacity. However and as far as practicable, the terms and conditions of the excluded workers should not be less favourable than the other workers.<sup>82</sup>

### Contracts of Employment

Employers are required to give to each employee, within one month of the commencement of duties, a written statement of the particulars of the employment. The written statement is to include the following particulars: the names of the employee and employer; the date of commencement of the contract; the rate of remuneration and the method of calculating remuneration; the intervals at which remuneration is paid; the nature of the work to be performed; normal hours of work; any provisions for the termination of the contract not provided for in the Employment Act; and any disciplinary rules applicable to the employee.<sup>83</sup>

However, a written statement of employment is not required in the following cases:

- (a) an employee whose normal hours of work are less than 16 hours per week;
- (b) workers employed for a fixed term of less than 12 weeks or a fixed task to be performed within 12 weeks;
- (c) the worker is a member of the immediate family of the employer; and
- (d) employees covered by collective agreement.<sup>84</sup>

In the case of public contracts, the contractor, subcontractor and assignee are required to pay rates of wages and observe hours and conditions of employment which are no less favourable than those established in the trade or industry in the district where the work is performed or by collective agreement or other negotiation machinery or by arbitration award.<sup>85</sup> Where no rates and conditions are established for the District, established rates and conditions in other districts shall apply.

Maximum weekly working hours are no more than forty hours per week for agricultural, construction or industrial workers, no more than forty-four hours per week for clerical, catering and shop assistants, and no more than sixty hours for domestic workers and security guards.<sup>86</sup>

<sup>82</sup> Employment Act 1999 s4. <sup>83</sup> Employment Act 1999 s30 (3). <sup>84</sup> Employment Act 1999 s30 (4). <sup>85</sup> Employment Act 1999 s31 and Schedule. <sup>86</sup> Employment Act 2000 s37.

Employers are required to give overtime pay to employees who work for more than eight (8) hours on any day, exclusive of lunch period, except for security guards and domestic workers.<sup>87</sup>

Domestic workers are not required to work for more than ten hours per day, inclusive of two hours for lunch and rest periods and security guards for more than twelve hours per day.<sup>88</sup>

### Termination of Employment

A contract of employment for an unspecified period of time may be terminated by either party provided that notice is provided.<sup>89</sup> The required periods of notice are described below in the section “Notice and Procedural Safeguards”.

A contract for a fixed period of time shall automatically terminate on the date specified for its termination and no notice shall be required for its termination, unless it is expressly or tacitly renewed or prolonged.<sup>90</sup>

A contract for a specific task shall terminate on the completion of the task and no notice shall be required of either party.<sup>91</sup>

However, where a contract for a specific period of time or for a specific task is filled on a lasting basis and is connected with the normal and permanent activity of the undertaking, establishment or service, it shall be deemed to be a contract for an unspecified period of time.<sup>92</sup>

An employee has the right to terminate the contract of employment without notice or with less notice than required by the statutory provisions or the contractual terms, where the employer’s conduct has made it unreasonable to expect the worker to continue the employment relationship. In such cases, the employee is deemed to have been unfairly dismissed by the employer.<sup>93</sup>

### Dismissal

During the probationary period, which shall be a maximum of three months, a contract of employment may be terminated at any time by either party without notice.

Following the probationary period, a worker may not be dismissed unless there is a valid reason for the dismissal connected with the capacity or conduct of the employee or based on the operational requirements of the enterprise or breach of the contract of employment or disciplinary rules.<sup>94</sup>

<sup>87</sup> Employment (Amendment) Act 2000 s3 (a). <sup>88</sup> Employment (Amendment) Act 1999 s5 (a) and (b). <sup>89</sup> Employment Act 1999 s29 (3).  
<sup>90</sup> Employment Act 1999 s29 (4). <sup>91</sup> Employment Act 1999 s29 (6). <sup>92</sup> Employment Act 1999 s29 (5). <sup>93</sup> Employment Act 1999 s80 (1) and s80 (2). <sup>94</sup> Employment Act 1999 s74 (1).

The following reasons do not constitute valid reasons for dismissal or the imposition of disciplinary action:

- (a) an employee's race, colour, national extraction, social origin, religion, political opinion, sex, marital status, family responsibilities or disability;
- (b) a female employee's pregnancy;
- (c) an employee's exercise of trade union rights;
- (d) an employee's temporary absence from work because of sickness or injury;
- (e) an employee's exercise or proposed exercise of the right to remove themselves from a work situation which they believe presents an imminent or serious danger to life or health;
- (f) an employee's participation or proposed participation in industrial action in conformity with the law;
- (g) an employee's refusal to do any work normally done by an employee who is engaged in an industrial action;
- (h) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of any enactment.<sup>95</sup>

## Notice and Procedural Safeguards

### Notice by Employee

An employee must give their employer a minimum period of two weeks' notice where the employee has been employed for three months or more. Where the employee has been employed for one year or more, a minimum period of notice of one month is to be given.<sup>96</sup>

Where the employee terminates the contract without notice in circumstances where notice is required and the employer has not waived the right to notice, the employee shall be entitled only to be paid such wages and other remuneration and to receive such other benefits which accrued to the date of termination.

### Notice by Employer

A contract for an unspecified period of time may be terminated by an employer after the probationary period, if any, upon giving the following minimum periods of notice in writing:

- (a) one working day where the employee has been employed by the employer for less than one month;
- (b) one week where the employee has been employed by the employer for one month or more, but less than three months;
- (c) two weeks where the employee has been employed by the employer for three months or more, but less than one year;

<sup>95</sup> Employment Act 1999 s74 (2). <sup>96</sup> Employment Act 1999 s75 (2).

- (d) one month where the employee has been employed by the employer for one year or more, but less than five years;
- (e) two months where the employer has employed the employee for five years or more.<sup>97</sup>

In lieu of providing notice of termination, the employer shall pay the employee a sum equal to the wages and other remuneration and confer on the employee all other benefits that would have been due to the employee up to the expiry of any required period of notice.<sup>98</sup>

An employer is entitled to dismiss summarily an employee guilty of serious misconduct of such a nature that it would be unreasonable to require the employer to continue the employment relationship.<sup>99</sup>

The onus is on the employer to prove the reason for dismissal, and they must show that they acted with justice and equity in dismissing the employee.<sup>100</sup>

As indicated above, the employer is not permitted to dismiss workers on the grounds of an employee's exercise of their legitimate trade union rights or on the grounds of pregnancy.

### Severance Pay

On the termination at the initiative of the employer, an employee who has completed one year or more of continuous employment with their employer and who is not entitled to a gratuity shall be entitled to be paid by the employer a termination allowance of not less than one week's wages for each completed year of service.<sup>101</sup>

The termination allowance is not payable, however, where the employee is fairly dismissed for a reason related to their conduct or if the employee unreasonably refuses to accept an offer of re-employment by the employer at the same place of work, under no less favourable terms than those under which they were employed immediately before the termination or has reached retirement age.

### Avenues For Redress

Within three months of the date of dismissal, an employee has the right to make a complaint of unfair dismissal to the Labour Commissioner. If the Labour Commissioner fails to settle the matter, it may be referred to the Minister of Labour. If the Minister fails to settle the matter, it may be referred to an arbitration tribunal.<sup>102</sup>

<sup>97</sup> Employment Act 1999 s75. <sup>98</sup> Employment Act 1999 s79 (1). <sup>99</sup> Employment Act 1999 s77. <sup>100</sup> Employment Act 1999 s81.  
<sup>101</sup> Employment Act 1999 s84. <sup>102</sup> Employment Act 1999 s82.

If the complaint of unfair dismissal is well founded, the employee may be awarded one or more of the following remedies:

- (a) reinstatement, if requested, without loss of benefits;
- (b) re-engagement in comparable work;
- (c) an award of compensation.<sup>103</sup>

The Tribunal, in deciding on a remedy, must take into account the particular wishes of the employee and the circumstances in which the dismissal took place, including the extent, if any, to which the employee caused or contributed to the dismissal. An award of compensation shall be an amount that the Tribunal considers to be just and equitable in all the circumstances having regard to the loss sustained by the employee as a consequence of the dismissal, in so far as that loss is attributable to the action taken by the employer, and the extent, if any, to which the employee caused or contributed to the dismissal.

### Winding Up

On the insolvency or winding up of an employer's business, the claim of an employee (or those claiming on his or her behalf) to wages and other payments to which they are entitled, or any contract shall have priority over all other creditors, including the state and social security system, for the following amounts:

- (a) wages, overtime pay, commissions or other forms of remuneration relating to work performed during the twenty-six weeks preceding the date of declaration of insolvency or winding up;
- (b) holiday pay due as a result of work performed during the two years preceding the date of the declaration of insolvency or winding up;
- (c) amounts due in respect of other types of paid absence accrued during the twelve months preceding the date of the declaration of insolvency or winding up;
- (d) termination allowance, compensation for unfair dismissal and other payments due to employees upon termination of their employment.<sup>104</sup>

<sup>103</sup> Employment Act 1999 s83. <sup>104</sup> Employment Act 1999 s87.

## Useful links

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

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This is the website of the Organization of Eastern Caribbean States (OECS).



### Source of Regulations

The relevant laws on termination of employment in Guyana are:

- Termination of Employment and Severance Pay Act 1997;
- Labour (Conditions of Employment of Certain Workers) Act [Chapter 99:03];
- Companies Act [Chapter 89:01].

The Termination of Employment and Severance Pay Act 1997 provides for termination of employment, dismissal, notice and procedural safeguards, and severance pay.

The Labour (Conditions of Employment of Certain Workers) Act guarantees minimum basic conditions of work for persons employed in cook shops, discotheques, guest houses, hotels, night clubs, parlours, restaurants, retail spirit shops and taverns.

The Companies Act provides for the priority payment of wages and salaries in the event of the winding up of a company.

### Scope of Legislation

The Termination of Employment and Severance Pay Act 1997 is applicable to any contract, whether express or implied, written or oral. The only exceptions stated are for contracts of less than six weeks, contracts by an employer to employ a family member and those regulated by a collective agreement.

### Contracts of Employment

There is no statutory requirement for an employer to provide a written contract of employment to an employee. The Labour (Conditions of Employment of Certain Workers) Act provides for minimum wage and basic conditions of work for the workers listed above.

### Termination of Employment

A contract of employment for an unspecified period may at any time be terminated by mutual consent, on grounds of redundancy, or by either party for good and sufficient cause or by notice given and served upon the other party.<sup>105</sup> The period of notice is described below under the section “Notice and Prior Safeguards”.

<sup>105</sup> Termination of Employment and Severance Pay Act 1997 s7.

## Dismissal

An employer may dismiss an employee during the probationary period, which is not to exceed three months, for any reason and without notice.<sup>106</sup>

The following reasons for dismissing an employee are prohibited as they do not constitute good or valid reasons for dismissal or imposition of disciplinary action:

- (a) an employee's race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, family responsibility, or marital status;
- (b) an employee's age, subject to any law or collective bargaining provisions regarding retirement;
- (c) a female employee's pregnancy or a reason connected with her pregnancy;
- (d) an employee's absence from work because of sickness or injury as certified by a registered medical practitioner;
- (e) an employee's absence from work due to compulsory military service or other civic obligation in accordance with any law;
- (f) an employee's participation in industrial action in conformity with the provisions of any law or collective agreement;
- (g) an employee's refusal to do any work normally done by an employee who is engaged in industrial action; or
- (h) the filing by an employee of a complaint or the participation in proceedings against an employer involving alleged violations of any rule or law.<sup>107</sup>

An employer has the right to dismiss an employee without notice or payment of terminal benefits if the employee is guilty of serious misconduct.<sup>108</sup> The serious misconduct must be directly related to the employment relationship and have a detrimental effect on the employer's business. Serious misconduct must be such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the employee.

Where an employee is guilty of an offence in employment or breach of their condition of employment or any misconduct that is not serious or any misconduct for which the employer cannot be expected to continue to employ the employee if it is repeated, the employer may give the employee a written warning. If the employee after being warned in writing is guilty of the same or a similar offence or misconduct during the following six months, the employer may terminate the employee's contract of employment without notice.

<sup>106</sup> Termination of Employment and Severance Pay Act 1997 s9. <sup>107</sup> Termination of Employment and Severance Pay Act 1997 s8 (1).

<sup>108</sup> Termination of Employment and Severance Pay Act 1997 s10 (1).



The employment of an employee shall not be terminated for unsatisfactory performance unless the employer has given the employee instructions as to how the employee should perform his duties and a written warning to adhere to the employer's instructions and the employee continues to perform the duty unsatisfactorily. <sup>109</sup>

Notice of termination shall not be given by an employer during the employee's period of absence on any authorized leave.

An employer may terminate the employment of employees on grounds of redundancy due to:

- (a) modernization, automation or mechanization of all or part of the business;
- (b) the discontinuance by the employer to carry on all or part of the business;
- (c) the sale or other disposition by the employer of all or part of the business;
- (d) the reorganization of the business to improve efficiency;
- (e) the impossibility or impracticability of the employer to carry on business at its usual rate or level or at all due to:
  - (i) a shortage of materials;
  - (ii) a mechanical breakdown;
  - (iii) force majeure; or
  - (iv) an act of God;
- (f) reduced operation in the employer's business made necessary by economic conditions, including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory. <sup>110</sup>

## Notice and Procedural Safeguards

### Notice by Employee

An employee is to provide to the employer the following period of notice where the employee intends to end their employment contract:

- (a) two weeks, where the employee has been employed by the employer for less than one year;
- (b) one month, where the employee has been employed by the employer for one year or more. <sup>111</sup>

### Notice by Employer

Where a contract of employment for an unspecified period of time is being terminated for reasons of redundancy or by notice, the employer shall provide to the employee the following minimum period of notice, in

<sup>109</sup> Termination of Employment and Severance Pay Act 1997 s11. <sup>110</sup> Termination of Employment and Severance Pay Act 1997 s12.

<sup>111</sup> Termination of Employment and Severance Pay Act 1997 s15 (2).

writing:

- (a) two weeks, where the employee has been employed by the employer for less than one year;
- (b) one month, where the employee has been employed by the employer for one year or more.<sup>112</sup>

Payment of a sum equal to remuneration and benefits can be made in lieu of notice.

No notice of dismissal is required in cases of summary dismissal or during the probationary period.

An employer intending to retrench employees is required to give notice and consult with the recognized trade union (or if none exists the employee or the employee's representative) and the Chief Labour Officer on the possible measures that could be taken to avert or mitigate the adverse effects of such circumstances in relation to employment generally and the employees concerned. This should be done as early as possible, but not later than one month from the date of the existence of any of the circumstances giving rise to the retrenchment. Any employer who contravenes this requirement is liable on summary conviction, to a fine of twenty thousand dollars and imprisonment of three months.

### Severance Pay

The following severance payment is to be made upon retrenchment where the employee has completed one year or more of continuous employment:

- (a) one week's wages for each completed year of service for the first five years including the entitlement year;
- (b) two weeks' wages for each completed year of service after the fifth year and up to the tenth year;
- (c) three weeks' wages for each completed year of service in excess of ten years up to a maximum of fifty-two weeks.<sup>113</sup>

Severance pay is not payable to an employee who is summarily dismissed during the probationary period or for termination due to misconduct or breach of contract. In addition, severance payments are not due where the employee unreasonably refuses to accept an offer of re-employment by the employer at the same place under no less favourable conditions than the employee enjoyed immediately prior to the termination.<sup>114</sup>

<sup>113</sup> Termination of Employment and Severance Pay Act 1997 s15. <sup>114</sup> Termination of Employment and Severance Pay Act 1997 s15.

<sup>115</sup> Termination of Employment and Severance Pay Act 1997 s21 (4).

An employer, who fails to make the statutory severance payments, is liable on summary conviction to a fine of thirty-one thousand two hundred and fifty dollars and to imprisonment for one year in addition to the payment of the severance or redundancy allowance.

### Avenues For Redress

An employee has the right to seek redress from the High Court where he or she is unfairly dismissed. This is without prejudice to any right an employee may enjoy under a collective agreement.<sup>116</sup>

The High Court may award compensation, having regard to the loss attributable to the action taken by the employer and the extent to which the employee caused or contributed to dismissal or discipline. In addition, the High Court may, if it deems fit, award any other just remedy in addition to or in lieu of the award. There is no explicit reference to reinstatement or re-engagement or the basis on which compensation will be calculated.<sup>116</sup>

### Winding Up

The Companies Act [Chapter 89:01] provides that in the winding up of a company, the following payments shall be paid in priority to all other debts:

- (a) all local government rates and taxes of every description due from the company within the period of 12 months before the relevant date and not exceeding in the whole one year's rates and taxes;
- (b) all wages and salaries of any employee in respect of services rendered to the company during the period of four months before the relevant date;
- (c) all wages of any employee whether payable for time or piece work, in respect of the company during the period of four months before the relevant date; and
- (d) contributions payable under the National Insurance and Social Security Act.

<sup>115</sup>Termination of Employment and Severance Pay Act 1997 s19. <sup>116</sup> Termination of Employment and Severance Pay Act 1997 s20.

## Useful links

[www.gina.gov.gy](http://www.gina.gov.gy)

This is the website of the Government Information Agency of Guyana.

[www.ilo.org](http://www.ilo.org)

This is the official website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the official website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the official website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.



Jamaica

## JAMAICA

### Source of Regulations

The Jamaican law on termination of employment is based on, and governed by English common law, except to the extent that the common law has been modified by statute. The relevant statutes are:

- Employment (Termination and Redundancy Payments) Act 1974 as amended;
- Employment (Termination and Redundancy Payments) Regulations 1974;
- Labour Relations and Industrial Disputes Act 1975;
- Labour Relations and Industrial Disputes Regulations;
- Maternity Leave Act 1979;
- Companies Act 2004.

The Employment (Termination and Redundancy Payments) Act 1974 provides for the minimum period of notice and the right to certain facilities, redundancy payments, and other miscellaneous provisions. The Act is supplemented by the Employment (Termination and Redundancy Payments) Regulations 1974.

The Labour Relations and Industrial Disputes Act 1975 provides for the establishment of the labour relations climate, the establishment and functioning of the Industrial Disputes Tribunal, Boards of Inquiry, and other miscellaneous provisions related to labour relations and industrial disputes. The Act is supplemented by the Labour Relations and Industrial Disputes Regulations. In addition, the Labour Relations Code 1976 (promulgated pursuant to the Labour Relations and Industrial Disputes Act 1975) while not having the force of law, is a supplementary source of regulation to the extent that its provisions influence the decisions of the courts or are embodied in contracts of employment.

The Maternity Leave Act 1979 provides for the granting of maternity leave.

The Companies Act 2004 provides among other matters for the status of payments due to employees upon cessation of business by an employer.

### Scope of Legislation

The definition of employee contained in the Employment (Termination and Redundancy Payments) Act 1974 excludes any person employed by the Government or the Council of Kingston and St. Andrew Corporation or any Parish Council.

For the purpose of redundancy payments, the provisions apply to an employee in a private household as if the household were a business.<sup>117</sup>

The Labour Relations and Industrial Disputes Act 1975 applies to all workers, except members of the Jamaica Defence Force, the Jamaica Constabulary Force, the Island Special Constabulary Force or the Rural Police.<sup>118</sup>

### Contracts of Employment

As part of good human resources management practices, an employer is to make clear to the worker the requirements, terms and conditions of employment, including inter alia:

- (a) general conditions of employment;
- (b) job requirements and the person to whom the worker is directly responsible;
- (c) disciplinary rules and the procedures for the examination of grievances;
- (d) opportunities for promotion and training;
- (e) social welfare services such as medical care, canteens, pensions, etc;
- (f) occupational safety, health and welfare regulations;
- (g) methods of consultation;
- (h) any trade union arrangements; and
- (i) the company's personnel and industrial relations policies.<sup>119</sup>

### Termination of Employment

Both the employer and the employee have the right to terminate a contract of employment during the first ninety days of the probationary period.<sup>120</sup>

A fixed-term contract of employment can terminate at the expiration of the term.

### Dismissal

An employer may dismiss an employee for gross misconduct. However, no worker should be dismissed for a first breach of discipline, except in the case of gross misconduct.<sup>121</sup> No definition of gross misconduct is provided within the Labour Relations Code.

The right of an employer to terminate an employee's contract of employment by reason of the employee's conduct is recognized in the Labour Relations and Industrial Disputes Act, 1975.<sup>122</sup>

An employee is considered to be dismissed by their employer:

- (a) if the contract under which they are employed is terminated by the employer, either with or without notice;

<sup>117</sup> Employment (Termination and Redundancy Payments) Act 1974 s2. <sup>118</sup> Labour Relations and Industrial Disputes Act 1975 s25.

<sup>119</sup> Labour Relations Code 1976 s9. <sup>120</sup> Employment (Termination and Redundancy Payments) Act 1974 s3 (4).

<sup>121</sup> Labour Relations Code 1976 s22. <sup>122</sup> Labour Relations and Industrial Disputes Act 1975 s6 (2).

- (b) if the contract under which they are employed for a fixed term expires without being renewed under the same contract; or
- (c) if the employee is compelled, by reason of the employer's conduct, to terminate that contract without notice.<sup>123</sup>

It is an offence for an employer to dismiss or in any way discriminate against an employee for the exercise of the employee's legitimate trade union rights.<sup>124</sup>

It is also an offence for an employer to terminate the employment of a worker because of pregnancy.<sup>125</sup>

## Notice and Procedural Safeguards

### Notice by Employee

An employee who has been continuously employed for four weeks or more shall give at least two weeks' notice to terminate their contract of employment.<sup>126</sup>

### Notice by Employer

Where an employee has worked continuously for an employer for at least four weeks, the employer is required to give the following notice of termination to the employee:

- (a) if the employee has been continuously employed for less than five years, the notice period is to be at least two weeks long;
- (b) if the employee has been continuously employed for more than five years but less than ten years, the period of notice is to be at least four weeks long;
- (c) if the employee has been continuously employed for more than ten years but less than fifteen years, the period of notice is to be at least six weeks long;
- (d) if the employee has been continuously employed for more than fifteen years but less than twenty years, the period of notice is to be at least eight weeks long;
- (e) if the employee has been continuously employed for more than twenty years, the period of notice is to be at least twelve weeks long.<sup>127</sup>

Either party to a contract of employment can waive his or her right to notice at the time of termination or accept payment in lieu of notice.

While a contract of employment for a fixed period can be terminated without notice on the expiry of the term, if the employment continues for four weeks after the expiration of the term, the contract is then to be treated as if it were a contract of employment for an indefinite period.<sup>128</sup>

<sup>123</sup> Employment (Termination and Redundancy Payments) Act 1974 s5 (5). <sup>124</sup> Labour Relations and Industrial Disputes Act, 1975 s4 (2).  
<sup>125</sup> Maternity Leave Act 1979 s7 (2). <sup>126</sup> Employment (Termination and Redundancy Payments) Act 1974 s3 (2). <sup>127</sup> Employment (Termination and Redundancy Payments) Act 1974 s3 (1). <sup>128</sup> Employment (Termination and Redundancy Payments) Act 1974 s3 (5).

The Labour Relations Code 1976 provides that disciplinary procedures should be agreed between management and worker representatives, and should ensure that fair and effective arrangements exist for dealing with disciplinary matters. The procedure should be in writing and should:

- (a) specify who has the authority to take various forms of disciplinary action, and to ensure that supervisors do not have the power to dismiss without reference to more senior management;
- (b) indicate that the matter giving rise to the disciplinary action be clearly specified and communicated in writing to the relevant parties;
- (c) give the worker the opportunity to state their case and the right to be accompanied by their representative; and
- (d) provide for a right of appeal.<sup>129</sup>

### Severance Pay

A worker who has been continuously employed for one hundred and four weeks and is dismissed on the grounds of redundancy has the right to receive redundancy payments. An employee who is dismissed shall be taken to be dismissed by reason of redundancy, if the dismissal is attributable to:

- (a) the fact that the employer has ceased, or intends to cease to carry on the business or intends to cease to carry on the business in the place where the employee was so employed; or
- (b) the fact that the requirements on the quantity and nature of the workforce of the business have ceased or diminished or are expected to cease or diminish; or
- (c) the fact that the employee has suffered personal injury, or has developed a disease which was caused in the course of their employment.<sup>130</sup>

A worker employed in seasonal employment for two or more consecutive years is eligible for redundancy payments.<sup>131</sup>

An employee who has been laid off for a period in excess of one hundred and twenty days may, by notice in writing to the employer, elect to have their retrenchment regarded as a dismissal by reason of redundancy for the purpose of receiving the redundancy payment.<sup>132</sup>

An employee shall not be entitled to any redundancy payment if they terminate the contract or retire in circumstances where they are entitled to pension, superannuation or other retirement benefits (other than benefits under the National Insurance Act). In addition, an employee shall not be

<sup>129</sup> Labour Relations Code 1976 s22. <sup>130</sup> Employment (Termination and Redundancy Payments) Act 1974 s5 (1) and (2).

<sup>131</sup> Employment (Termination and Redundancy Payments) Act 1974 s5 (3). <sup>132</sup> Employment (Termination and Redundancy Payments) Act 1974 s5A (1).



entitled to any redundancy payment where their employer was entitled to terminate the contract without notice by reason of the employee's conduct. If an employee unreasonably refuses an offer by the employer of employment at the same place of work and on terms and conditions no less favourable than the employee's previous contract, no redundancy payment shall be paid.<sup>133</sup>

After the two-year qualifying period, the rates of redundancy payments are: for one to ten years of service, two weeks' pay per year; and for service beyond ten years, two weeks' pay per year for years one to ten, then three weeks' pay per year for each year of service beyond ten years of service.<sup>134</sup>

Different rates of redundancy payment are applicable to seasonal workers.<sup>135</sup>

The employer is required to give the employee a written statement of the calculation of the redundancy pay.

### Avenues for Redress

A worker has a period of 12 months within which to challenge the dismissal by reporting it to the Minister of Labour.<sup>136</sup> The Minister has the power to refer a dispute on any matter to the Industrial Tribunal either at the request of the parties or on their own initiative.

The Industrial Tribunal, on finding that the employee's dismissal was unjustifiable, can order the employer to reinstate the employee with compensation for loss of wages, compensation, or any other relief as it may determine.<sup>137</sup>

### Winding Up

The Companies Act, 2004 provides that in the winding up of an employer's undertaking there shall be paid, in priority over all other debts:<sup>138</sup>

- (a) all rates, charges, taxes, assessments, or impositions, whether imposed by the Government or by any public authority, having become due and payable;
- (b) all wages or salary of any clerk or servant in respect of services rendered to the company during the four-month period before the date of winding up and all wages of any labourer in respect of services rendered.

The priority claims of workers are subject to a maximum of two hundred thousand dollars.

<sup>133</sup> Employment (Termination and Redundancy Payments) Act 1974 s6. <sup>134</sup> Employment (Termination and Redundancy Payments) Regulations, 1974 s8. <sup>135</sup> Employment (Termination and Redundancy Payments) Regulations, 1974 s9. <sup>136</sup> Labour Relations and Industrial Disputes Act 1975 s11. <sup>137</sup> Labour Relations and Industrial Disputes Act 1975 s12 (5) (c). <sup>138</sup> Companies Act 2004 s311.

## Useful links

[www.moj.gov.jm/law](http://www.moj.gov.jm/law)

This is the website of the Ministry of Justice of Jamaica that contains the laws of Jamaica.

[www.jis.gov.jm/labour](http://www.jis.gov.jm/labour)

This is the website of the Ministry of Labour and Social Security of Jamaica.

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.



## SAINT KITTS AND NEVIS

### Source of Regulations

There are two pieces of legislation that concern termination of employment in Saint Kitts and Nevis.

- Protection of Employment Act 1986 (as amended by Act No. 24 of 2001);
- Protection of Employment Act (Written Terms and Conditions of Employment) Regulations 1986.

The Protection of Employment Act 1986 provides for termination, dismissal, notice and prior procedural safeguards, and avenues for redress.

The Protection of Employment Act (Written Terms and Conditions of Employment) Regulations 1986 provide for terms and conditions of employment.

### Scope of Legislation

The Protection of Employment Act 1986 does not cover the following categories of workers:

- (a) employees of the Crown and statutory corporations to which special provisions apply, both to termination notice and retiring benefits;
- (b) directors of companies and members of partnerships;
- (c) an employee who is either the husband, wife, father, mother, brother, sister or child of the employer living in the employer's household;
- (d) a master or a member of a fishing vessel, if payment is made in respect of the employment by way of a share in the profit of the vessel;
- (e) a temporary worker except in respect of maternity leave qualification; and
- (f) a casual worker, except in respect of maternity leave qualifications.<sup>139</sup>

### Contracts of Employment

Under the Protection of Employment Act (Written Terms and Conditions of Employment) Regulations 1986, an employer is required to provide to each employee, within fourteen days of employment, written terms and conditions of the employment, which is to include: the name and address of the employer; the name and address of the business or establishment at which the employee is to be assigned; the name and address of the employee; the starting date of the employment; the post or position in which the employee is to be engaged; a brief description of the duties and responsibilities of the position; the rate of pay and the intervals at which

<sup>139</sup> Protection of Employment Act 1986 as amended in 2001, s3.

payment will be made; the hours of work and the times for completing such hours; the rate of overtime and premium pay (if any); the duration of the probationary period; the length of notice which either party must give to the other to terminate the contract, if different from the provisions of the Act; and the leave entitlement.<sup>140</sup>

The probationary period is not to exceed one month in the case of household employment and three months in other employment.

### Termination of Employment

An employee has the right to terminate their employment by giving the employer notice of their intention to terminate. The period of notice to be provided by an employee to an employer is the same as that required to be provided by the employer to the employee and is as described below under the section “Notice and Procedural Safeguards”.<sup>141</sup>

Where the contract of employment is not in writing, the period of notice of termination of employment by the employee shall not exceed four weeks.<sup>142</sup>

An employee may terminate their service without providing any prior notice if the conduct of their employer is of such a nature that the employee cannot reasonably be expected to continue in the employment. This type of termination is to be considered as a dismissal by the employer.<sup>143</sup>

### Dismissal

An employment contract may be terminated by the employer in the following circumstances:<sup>144</sup>

- (a) without notice during the probationary period;
- (b) without notice where the employee is guilty of serious misconduct in relation to their employment;<sup>145</sup>
- (c) without notice where the employee is guilty of misconduct in relations to their employment or the employee is no longer performing their duties satisfactorily, provided that the employee has been warned, in writing, on at least two occasions within a period of six months indicating the nature of the misconduct or unsatisfactory performance. In the case of the last warning, the employer must state their intention to dismiss the employee for a repeat offence or continued unsatisfactory performance (This subsection shall apply only when the employer has warned the employee in writing on at least two occasions.);
- (d) where a medical practitioner certifies infirmity of mind or body likely to be permanent, provided the infirmity has continued over a period of three months;

<sup>140</sup> Protection of Employment Act (Written Terms and Conditions of Employment) Regulations, 1986 s2. <sup>141</sup> Protection of Employment Act 1986 s8. <sup>142</sup> Protection of Employment Act 1986 s8 (2). <sup>143</sup> Protection of Employment Act, 1986 s8 (3). <sup>144</sup> Protection of Employment Act 1986 s5 and Protection of Employment (Amendment) Act 2001 s3. <sup>145</sup> Serious misconduct includes fraud, dishonesty or any other conduct of such a nature that it is unreasonable to require the employer to continue employment during the notice period.

- (e) where the employee is made redundant because the employer:
  - has discontinued or ceased to carry on all or part of the business;
  - has modernized, automated or mechanized all or part of the business;
  - has reorganized the business to improve efficiency;
  - finds it impossible to carry on business at the usual rate or level due to a shortage of material or a mechanical breakdown or for any cause beyond their control; or is forced to reduce business due to lack of market or change in market;
- (f) where the employer dies and the business ceases to exist; or
- (g) where the business is liquidated by bankruptcy.

An employer is prohibited from terminating the employment of an employee on any of the following grounds:

- (a) union membership or participation, outside working hours or with the consent of the employer during working hours;
- (b) seeking office as or acting in the capacity of a workers' representative;
- (c) making a complaint or participating in proceedings against the employer involving a violation of law or regulations;
- (d) race, place of origin, birth out of wedlock, political opinion or affiliations, colour, sex or creed, marital status or family responsibilities;
- (e) absence from work due to maternity leave that is certified by a medical practitioner;
- (f) temporary absence from work due to illness or injury that is certified by a medical practitioner and provided by the employee to the employer within forty-eight (48) hours of absence;
- (g) absence from work due to jury service as required under the Jury Act [Chapter 38]; or
- (h) absence from work to attend a court hearing in response to a summons, provided prior notice has been given to the employer.<sup>146</sup>

The burden of proof in any termination shall be on the employer.<sup>147</sup>

## Notice and Procedural Safeguards

### Notice by Employee and Employer

An employee is to provide to the employer and the employer is to provide to the employee the following periods of notice of the intention to terminate the employment contract:

- (a) for periods of continuous service over three months but less than one year, one week of notice is to be provided;
- (b) for periods of continuous service over one year but less than three years, a notice period of two weeks is to be provided;
- (c) for periods of continuous service over three years but less than five years, a notice period of three weeks is to be provided;

<sup>146</sup> Protection of Employment Act 1986 s11 and Protection of Employment (Amendment) Act 2001 s5. <sup>147</sup> Protection of Employment Act 1986 s44(3)

- (d) for periods of continuous service over five but less than seven years, a notice period of four weeks is to be provided;
- (e) for periods of continuous service over seven but less than ten years, a notice period of five weeks is to be provided;
- (f) for periods of continuous service over ten but less than fifteen years, a notice period of six weeks is to be provided;
- (g) for periods of continuous service of fifteen and more years, a notice period of ten weeks is to be provided.<sup>148</sup>

For monthly paid workers, the periods of notice are as follows:

- (a) for periods of continuous service over three months but less than five years, a notice period of one month is to be provided;
- (b) for periods of continuous service over five but less than ten years, a notice period of two months is to be provided; and
- (c) for periods of continuous service of ten and more years, a notice period of three months is to be provided.<sup>149</sup>

The employer is permitted to pay the employee wages and benefits in lieu of notice.<sup>150</sup>

An employer must give one month's prior notice to the Labour Commissioner of their intention to retrench ten or more employees or ten per cent or more employees on grounds of redundancy.<sup>151</sup> The employer must specify the number and categories of workers affected, the period over which the terminations are intended to be carried out, and summarize the results of the consultations with any trade unions representing employees.<sup>152</sup>

An employer is prohibited from dismissing an employee by reason only of her pregnancy or confinement or of any illness consequent upon her pregnancy or confinement. Where an employee claims to be dismissed on grounds of pregnancy, the employer has the burden to prove that the dismissal was for a reason other than pregnancy.<sup>153</sup>

### Severance Pay

Saint Kitts and Nevis has a statutory Severance Payments Fund under the control and management of the Labour Commissioner. All claims for severance pay are to be met out of the Fund. Employers are required to contribute one per cent of the normal wages of their employees to the Fund.

Where an employer has terminated the services of an employee who has been continuously employed for a period of not less than one year on the

<sup>148</sup> Protection of Employment (Amendment) Act 2001 s4. <sup>149</sup> Protection of Employment (Amendment) Act 2001 s4.

<sup>150</sup> Protection of Employment (Amendment) Act 2001 s7 (2). <sup>151</sup> Grounds for redundancy as specified in the Protection of Employment Act Section 5 (1) (e) include where; the employer has had to discontinue or cease to carry on all or part of his business; the employer has modernized, automated or mechanized all or part of their business; the employer has reorganised their business to improve efficiency; the employer finds that it is impossible to carry on the business at the usual rate or level due to shortage of material or a mechanical breakdown or for any cause beyond their control; or the employer is forced to reduce their business due to lack of change or change in markets.

<sup>152</sup> Protection of Employment (Amendment) Act 2001 s4 (3). <sup>153</sup> Protection of Employment (Amendment) Act 2001 s39.

grounds that;

- (a) the employee has become redundant;
- (b) the employer has died and the business ceases to operate;
- (c) the business is liquidated by bankruptcy; or
- (d) the employee has terminated the employment due to the conduct of the employer being of such a nature that the employee cannot reasonably be expected to continue their employment;
- (e) the employee shall be entitled to severance payment.<sup>154</sup>

In cases where an employee is laid off for twelve weeks or more, the employee may request the employer to treat their employment as being terminated and have severance pay made.<sup>155</sup>

Severance pay is calculated on the following basis:<sup>156</sup>

- (a) two weeks for each year of continuous service for the first five years of employment with the employer;
- (b) three weeks per year of continuous service in respect of each year between five to ten years;
- (c) four weeks per year of continuous service in respect of any period in excess of ten years.

Periods of a half year or more are to be counted as a full year for the purposes of severance pay. There is a maximum payment of fifty-two weeks' pay.

An employee who has worked for the same employer on a seasonal basis for the three seasons immediately preceding the termination of their employment shall be deemed to qualify for severance payment if they have worked for the same employer for three-fourths of the number of working days in each of the reckonable years. In this case, the rate shall be one week's pay for each period that the seasonal employee qualifies.<sup>157</sup>

The sale or other disposition of the business shall not affect the rights of an employee and the obligations accruing to any employee at the time of the sale or disposition shall be met by the buyer or the person acquiring the business. The rights and obligations accruing to each employee are to be recorded with the Labour Commissioner at the time of the sale or disposition.<sup>158</sup>

The employer is to give preference in any future recruitment that is to take place within the twelve week period immediately following the laying off of workers, to the former employees whose services have been terminated owing to a reduction of the work force.<sup>159</sup>

<sup>154</sup> Protection of Employment Act 1986 s25. <sup>155</sup> Protection of Employment Act 1986 s27. <sup>156</sup> Protection of Employment Act 1986 s29.

<sup>157</sup> Protection of Employment Act 1986 s29. <sup>158</sup> Protection of Employment Act 1986 s6 (1) and s6 (2). <sup>159</sup> Protection of Employment Act 1986 s42.

## Avenues for Redress

Any employer or employee or any person or organization acting on their behalf, has the right to make a complaint to the Labour Commissioner that the provisions of the Act have been contravened by an employer or employee.<sup>160</sup> The employee and employer shall have the right to be represented.

The Trade Disputes (Arbitration and Inquiry) Act provides in section 5 that in the event of a finding of unfair dismissal, the Tribunal may grant an order for reinstatement or re-engagement or an award for compensation.

## Winding Up

In the event of bankruptcy or judicial liquidation of an undertaking, the employees shall be treated as privileged creditors both as regards wages due to them and to any prescribed amount as may be ordered by a Court.<sup>161</sup>

## Useful links

[www.gov.kn](http://www.gov.kn)

This is the website of the Government of Saint Christopher (Saint Kitts) and Nevis.

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

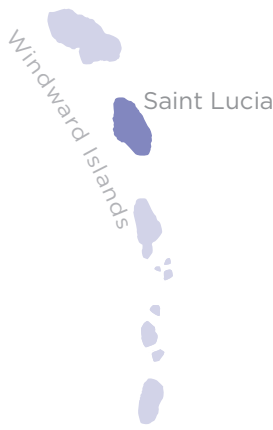
This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.

[www.oecs.org](http://www.oecs.org)

This is the website of the Organization of Eastern Caribbean States (OECS).

<sup>160</sup> Protection of Employment Act 1986 s43 (1). <sup>161</sup> Protection of Wages Ordinance 1967 s12.





## SAINT LUCIA

### Source of Regulations

The laws of Saint Lucia relating to termination of employment are:

- Contracts of Service Act 1970;
- Registration, Status and Recognition of Trade Unions and Employers' Organizations Act.

The Contracts of Service Act 1970 regulates contracts of service, including the details to be given in written contracts. It provides for a minimum period of notice to terminate the employment of those who have been employed for a qualifying period, and provides for severance payments on the termination of a contract of service and related matters.

The Registration, Status and Recognition of Trade Unions and Employers' Organisations Act protects an employee from dismissal on grounds of legitimate trade union activities.

Saint Lucia ratified the ILO's Termination of Employment Convention, 1982 (No. 158) on 6 December 2000.

Saint Lucia has a comprehensive and modern Labour Code which has been enacted by Parliament, but as of August 2008 was yet to enter into force.

### Scope of Legislation

The Contracts of Service Act 1970 applies to all employees except a member of an employer's family who is maintained by and resides with the employer.

### Contracts of Employment

An employee has the right to request from the employer a written statement of their terms and conditions of employment. The employer has one month to provide such a written statement, failing which they could be fined.<sup>162</sup>

Written contracts must contain the following particulars: the names of the parties; the commencing date of employment; the scale or rate of remuneration and the method of calculating which remuneration is to be paid; the intervals at which remuneration is to be paid; any terms and conditions relating to hours of work; and length of notice which the employee is obliged to give and entitled to receive to determine their contract of service.<sup>163</sup>

<sup>162</sup> Contracts of Service Act 1970 s5 (4). <sup>163</sup> Contracts of Service Act 1970 s (1).

## Termination of Employment

An employee has the right to terminate a contract of employment of an indefinite period, subject to the requisite notice as described below under the section “Notice and Procedural Safeguards” being given to the employer.

Termination of employment by virtue of abandonment by the employee for good cause, force majeure not caused by the wilful act or negligence of the employer, and the expiry of a fixed term contract, do not give rise to any liability on the part of the employer for the payment of wages or to make payment in lieu of notice. <sup>164</sup>

## Dismissal

An employer may dismiss an employee, without giving due notice, in the following circumstances:

- (a) where an employee is guilty of misconduct, whether in the course of their duties or not, inconsistent with the fulfilment of the conditions of the contract of service;
- (b) for wilful disobedience of lawful orders given by the employer;
- (c) for repeated substantial neglect of their duties;
- (d) for absence from work without the permission of the employer or without reasonable excuse;
- (e) for lack of skill which the employee had assured the employer of possessing;
- (f) abandonment of employment by the employee;
- (g) by agreement, in writing, between the parties;
- (h) by expiry of the term of the contract of service. <sup>165</sup>

Implied or constructive termination of employment is permitted where in accordance with any enactment or rule of law:

- (a) any act on the part of the employer; or
- (b) any event affecting an employee (including in the case of an individual, their death),

operates so as to terminate the contract of employment; that act or event is to be treated as a termination of the contract by the employer. <sup>166</sup>

## Notice and Procedural Safeguards

The first twelve weeks of any employment under an oral contract of service shall be deemed to be probationary employment and may be terminated at will by either party without notice. <sup>167</sup>

## Notice by the Employee

The period of notice to be provided by an employee to their employer is to be at least:

- (a) one week’s notice if the period of continuous employment is more than 12 weeks but less than 5 years; and

<sup>164</sup> Contracts of Service Act 1970 s7. <sup>165</sup> Contracts of Service Act 1970 s7. <sup>166</sup> Contracts of Service Act 1970 s21.

<sup>167</sup> Contracts of Service Act 1970 s6 (2).

- (b) two weeks' notice if the period of continuous employment is 5 years or more.<sup>168</sup>

### **Notice by the Employer**

In the event of a contract of employment for an indefinite period, which is any contract of more than twelve continuous weeks, the period of notice required to be given by an employer to an employee shall be not less than:

- (a) one week's notice, if the period of continuous employment is more than twelve weeks but less than two years;
- (b) two weeks' notice, if the period of continuous employment is two years or more but less than five years;
- (c) four weeks' notice, if the period of continuous employment is five years or more but less than ten years; and
- (d) six weeks' notice, if the continuous period of employment is more than ten years.<sup>169</sup>

Any contract which purports to exclude or limit the notice obligations imposed on an employer by the above mentioned provision, is void.

Either party can waive his or her right to notice or accept payment in lieu of notice.

The only provision on burden of proof and remedies is contained in Section 11 of the Registration, Status and Recognition of Trade Unions and Employers' Organisations Act, and applies to the dismissal of employees on account of their pursuit of lawful trade unions activities. That Act provides that where an employee or a person seeking employment is dismissed or denied employment contrary to section 5 on freedom of association for employees, the burden is on the employer to prove that the dismissal or denial of employment had no connection to the trade union membership or activities of the employee or person seeking employment.

### **Severance Pay**

An employee, who has been continuously employed for more than 104 weeks (counted after the age of 16), is to be considered as retrenched if the dismissal is attributable wholly or mainly to:

- (a) the fact that their employer has ceased, or intends to cease, to carry on the business for the purposes for which the employee was employed, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or
- (b) the fact that the requirements of the business for employees to carry out work of a particular kind, or for an employee to carry out work of a particular kind in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.

In these cases, the employer is liable to make severance payments.<sup>170</sup>

<sup>168</sup> Contracts of Service Act 1970 s6 (4). <sup>169</sup> Contracts of Service Act 1970 s6 (3). <sup>170</sup> Contracts of Service Act 1970 s10 and s14 (1).

The Act, however, does not define the formula to be used for the calculation of severance benefits. The Minister of Labour is given the power to make regulations for severance pay, and a special Tribunal may be established to determine the severance entitlements of employees.

The Act also describes cases where severance payments would not be due, namely:

- (a) where a man has reached the age of 65 and a woman the age of 60;
- (b) by reason of dismissal where the employer is entitled to terminate the contract of service of the employee without notice by reason of the employee's conduct;
- (c) by reason of dismissal where the contract of service is for a fixed term and that term expires without being renewed under the same contract.<sup>171</sup>

Change in ownership in the business or short-term lay-offs do not affect the period of continuous employment.

### Avenues for Redress

Complaints of unfair dismissal may be brought to the Minister of Labour for conciliation. If the parties are unable to settle the dispute at the Ministry of Labour, the dispute may be taken to the Tribunal.<sup>172</sup>

### Useful links:

[www.stlucia.gov.lc](http://www.stlucia.gov.lc)

This is the website of the Government of Saint Lucia.

[www.stats.gov.lc](http://www.stats.gov.lc)

This is the website of the Government Statistics Department of Saint Lucia.

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.

[www.oecs.org](http://www.oecs.org)

This is the website of the Organization of Eastern Caribbean States (OECS).

<sup>171</sup> Contracts of Service Act 1970 s11. <sup>172</sup> Contracts of Service Act 1970 s26.



## SAINT VINCENT AND THE GRENADINES

### Source of Regulations

The Protection of Employment Act 2003 provides for contracts of employment, termination, dismissals, notice and prior procedural safeguards, severance pay, and avenues for redress.

### Scope of Legislation

The Protection of Employment Act 2003 applies to all employees, and states that every person shall be protected against the unfair termination of their employment without good cause.<sup>173</sup>

### Contracts of Employment

The Protection of Employment Act 2003 (referred to in this section as “the Act”) places an obligation on the employer to provide a written contract of employment to their employee within seven days of the start of the employment, except for the case of daily paid and weekly paid workers.<sup>174</sup>

The Act also provides that the probationary period shall not exceed six months.<sup>175</sup>

An employer is to provide to an employee, in writing, the terms and conditions of employment and it shall include: the date of commencement; the name and address of the parties; the rate of pay and pay period; the probationary period, if any; the hours of work including time off and rest period, if any; the rate of vacation, sick leave and maternity leave, if applicable; and the duties to be performed.<sup>176</sup>

The continuity of employment is preserved where there is a change in ownership of a business. The Act provides that the sale of a business shall not affect the accruing or accrued rights of the employees and that the successor employer remains liable.<sup>177</sup>

### Termination of Employment

An employee is required to give, in writing, a minimum of two weeks’ notice to their employer of their intention to terminate their contract of employment, unless the nature of their work would customarily require a longer period.<sup>178</sup>

Termination of a fixed-term contract of employment upon the expiration of the fixed term is permitted.<sup>179</sup>

<sup>173</sup> Protection of Employment Act 2003 s5 (1). <sup>174</sup> Protection of Employment Act 2003 s8 (1) and (2). <sup>175</sup> Protection of Employment Act 2003s7 (1). <sup>176</sup> Protection of Employment Act 2003 s8. <sup>177</sup> Protection of Employment 2003 s20. <sup>178</sup> Protection of Employment Act 2003 s13. <sup>179</sup> Protection of Employment Act 2003 s6 (1).

## Dismissal

The Act provides that the employment of a worker shall not be terminated before they are provided an opportunity to defend themselves against the allegations made, except in cases where the employer cannot reasonably be expected to provide such an opportunity.<sup>180</sup>

Termination with good cause without severance pay is permitted where the employee:<sup>181</sup>

- (a) has been found guilty of misconduct in or in relation to employment which is of such a nature that it would be unreasonable to expect the employment relationship to continue;
- (b) has:
  - (i) been guilty of repeated misconduct or unsatisfactory performance which is not sufficiently serious to warrant dismissal under paragraph (a) above, and is of such a nature that the employer cannot reasonably be expected to continue the employee's employment if such conduct is repeated; or
  - (ii) not been performing satisfactorily and during any period within six months, the employee has been warned by the employer in writing (or orally in the presence of two credible witnesses) on more than one occasion and the employer has indicated the nature of the employee's conduct/ unsatisfactory performance and the action which the employer intends to take and thereafter no improvement in the conduct or the performance has occurred;
- (c) has been found guilty of a criminal offence relating to their employment, without the connivance, expressed or implied, of the employer;
- (d) does not have the capacity or qualification to perform the work that they were employed to do:

Provided that the employer has given the employee at least two written warnings and that within three months, the employee does not rectify the defect pointed out to them; or

- (e) cannot be retained in the position without contravention of some existing law.

In all other cases, where the employer desires to dismiss an employee on the grounds that no reasonable employer can continue to employ the employee in that position, the employer must file a petition to the Labour Commissioner seeking permission for dismissal. The Labour Commissioner is required to inform the employee of the potential dismissal and employees have a right to defend themselves to the Labour Commissioner.<sup>182</sup>

The employer may also terminate the employment of an employee on medical grounds where the employee is incapable of performing their

<sup>180</sup> Protection of Employment Act 2003 s5 (2). <sup>181</sup> Protection of Employment Act 2003 s9. <sup>182</sup> Protection of Employment Act 2003 s10.

duties due to physical or mental illness over a period of six months and the incapacity is likely to be permanent. In this case, the employer is required to inform the Labour Commissioner and the employee is eligible for severance pay.<sup>183</sup>

An employer may summarily dismiss an employee, without notice or without severance pay, where the employee is found to be guilty of serious misconduct pertaining to their employment if the conduct is of such a nature that it would be unreasonable to require the employer to continue the employment relationship. The serious misconduct must be directly related to the employment relationship and have a detrimental effect on the employer's business.<sup>184</sup>

## Notice and Procedural Safeguards

### Notice by Employee

The Act does not provide for any required period of notice to be given by the employee of their intention to terminate their contract of employment.

### Notice by Employer

An employer is required to give to a weekly paid employee the following periods of notice:<sup>185</sup>

- (a) for service of less than one year, one week's notice;
- (b) for service of more than one year but less than three years, two weeks' notice;
- (c) for service of more than three years but less than six years, three weeks' notice;
- (d) for service of more than six years, four weeks' notice.

An employer is required to give to a fortnightly paid employee the following periods of notice:<sup>186</sup>

- (a) in respect of service under two years, two weeks' notice;
- (b) in respect of service of more than two years but less than six years, three weeks' notice;
- (c) in respect of service of over six years, four weeks' notice.

An employer is required to give to a monthly paid employee, four weeks' notice.<sup>187</sup>

The notice of termination of employment must be in writing.

Payment in lieu of notice is permitted.<sup>188</sup>

No notice period or severance payment is required in cases of summary dismissal.<sup>189</sup>

<sup>183</sup> Protection of Employment Act 2003 s11. <sup>184</sup> Protection of Employment Act 2003 s15. <sup>185</sup> Protection of Employment Act 2003 Schedule.

<sup>186</sup> Protection of Employment Act 2003 Schedule. <sup>187</sup> Protection of Employment Act 2003 Schedule. <sup>188</sup> Protection of Employment Act 2003 s14 (1) and Schedule. <sup>189</sup> Protection of Employment Act 2003 s14 (3).

An employer is prohibited from dismissing an employee on the following grounds:

- (a) trade union membership or participation in lawful trade union activities outside working hours or with the employer's consent within working hours;
- (b) seeking office or acting in the capacity of a workers' representative;
- (c) making a complaint or participating in proceedings against the employer involving an alleged violation of laws or regulations;
- (d) race, colour, sex, marital status, pregnancy, religion, political opinion, nationality or social origin of the employee;
- (e) reasonable absence from work due to family responsibilities;
- (f) maternity leave certified by a medical practitioner;
- (g) absence due to illness or injury with medical certificate by third day;
- (h) jury service of the employee.<sup>190</sup>

The onus of proving that the dismissal was reasonable in the circumstances lies with the employer.<sup>191</sup>

In the case of redundancies, where five or more employees are affected, the employer must inform the recognized trade union (or, if none exists, the employees' representative) and the Labour Commissioner in writing of:

- (a) the existence of the circumstances that led to the reduction in the workforce;
- (b) the reasons for the proposed termination;
- (c) the number and categories of persons involved;
- (d) the period over which the termination is intended to be carried out; and
- (e) the results of consultations with any trade union representing the employees.<sup>192</sup>

### Severance Pay

The Act indicates that severance pay shall be calculated as follows;

- (a) two weeks' pay for each year of continuous service from two years to ten years;
  - (b) three weeks' pay for each year of continuous service from eleven to twenty-five years;
  - (c) four weeks' pay for each year in excess of twenty-five years;
- at the rate of pay at the time of termination. For the purpose of this calculation, a half year or more is to count as a full year and less than half year is to be excluded.<sup>193</sup>

<sup>190</sup> Protection of Employment Act 2003 s16. <sup>191</sup> Protection of Employment Act 2003 s18. <sup>192</sup> Section 12 (2) of the Protection of Employment Act 2003 indicates that grounds for redundancy occur where the termination is part of a reduction in work force as a direct result of: modernization or automation; sale or disposition; reorganization; discontinuance; impossibility or impracticability to carry on at usual level as a result of (i) materials shortage; (ii) acts of God; (iii) breakdown of equipment; and/or operations reduction due to economic circumstances. <sup>193</sup> Protection of Employment Act 2003 s 25.



In cases where there is a change in ownership or operation of a business or where the employer dies, the employees are not entitled to severance pay if their contracts of employment continue, or if they are offered new contracts of employment on terms and conditions no less favourable than their previous contracts.<sup>194</sup>

Where an employer intends to lay off an employee for a period of at least six weeks, the employee may request their employer (by notice in writing) to treat their employment as being permanently terminated. The employee shall then be entitled to severance pay and the employer shall so treat the employee unless the employer is able to offer to the employee employment which is substantially similar to the terms and place of employment as the previous employment for a period of at least thirteen weeks. This offer is to be made no later than seven weeks following the date of laying-off of the employee.<sup>195</sup>

Where an employee has been demoted or given employment on diminished wages by their employer on any date, the services of the employee in the earlier employment shall be deemed to have been terminated on that date and the employee shall be entitled to severance pay accordingly.<sup>196</sup>

Every employer is required to maintain an accurate record of date of employment for each employee. The record is to be made available for inspection by the employee.<sup>197</sup> Failure to maintain accurate records is an offence.

When services are terminated, the employer shall provide to the worker information on: (a) the date of employment; (b) the category of employment; and (c) the reason(s) for termination.<sup>198</sup>

### **Avenues for Redress**

Where an employee alleges that they have been unfairly dismissed, the employee (or any person or organization acting on his or her behalf) may raise the issue as a dispute to the Labour Commissioner. Where the Labour Commissioner, Hearing Officer or Tribunal finds that the complaint is substantiated, the employer may be ordered to:

- (a) reinstate the employee, if appropriate and both parties agree;
- (b) re-engage the employee in a comparable or suitable work or position; or
- (c) pay severance benefits.<sup>199</sup>

<sup>194</sup> Protection of Employment Act 2003 s26. <sup>195</sup> Protection of Employment Act 2003 s27. <sup>196</sup> Protection of Employment Act 2003 s28.  
<sup>197</sup> Protection of Employment Act 2003 s31. <sup>198</sup> Protection of Employment Act 2003 s34. <sup>199</sup> Protection of Employment Act 2003 s17.

## Winding up

In cases of a winding up or insolvency of the employer's business or undertaking, the contracts of employment of the employees shall be terminated one month from the date of winding up or the appointment of a receiver. This provision does not apply where the business continues to operate.

Where the employer's business is wound up or a receiver has been appointed, any payment to which an employee is entitled (or any person legally entitled to claim on their behalf) shall have priority over all other creditors including the Crown for the following sums:<sup>200</sup>

- (a) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the twenty six weeks preceding the date of winding up proceedings or the appointment of a receiver;
- (b) outstanding holiday pay for work performed during the last two years;
- (c) sums owing in respect of other types of paid absence accrued during the preceding twelve months;
- (d) severance pay, compensation for unfair dismissal and other payments that are owing in respect of the termination of employment.

## Useful links

[www.gov.vc](http://www.gov.vc)

This is the website of the Government of Saint Vincent and the Grenadines.

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.

[www.oecs.org](http://www.oecs.org)

This is the website of the Organization of Eastern Caribbean States (OECS).

<sup>200</sup> Protection of Employment Act 2003 s21.



### Source of Regulations

The regulations relating to termination of employment in Suriname are contained in the following pieces of legislation:

- Constitution;
- Labour Code;
- Civil Code;
- Dismissal Permits Act.

### Scope of Legislation

The Dismissal Permits Act, the primary legislation on termination of employment, applies to all workers with employment contracts, except civil servants. The conditions for termination of employment relating to civil servants are contained in separate legislation.

### Contracts of Employment

The Civil Code requires that a statement, in the Dutch language, of the employment terms and conditions, including the applicable provisions related to the probationary period, be given to every worker on their appointment.

The State has to guarantee the right of employment by executing a policy to achieve full employment, prohibiting dismissal without reason or on religious or ideological grounds, securing equal opportunities in employment for both sexes and promoting vocational training.<sup>201</sup>

The Constitution provides for certain rights of all workers regardless of age, sex, race, nationality, religion or political belief. These rights are:

- the right to pay, depending on the effort, quality and type of work and experience, based on the principle of equal pay for work of equal value;
- the right to perform work under decent working conditions;
- the right to safe and healthy working conditions; and
- the right to sufficient rest and recreation.<sup>202</sup>

Probationary periods are not obligatory. According to the Civil Code, probationary periods have to be stated at the commencement of the contract of employment. Where stated in the contract of employment, the probationary period should be no longer than two months.

### Termination of Employment

An employment contract for a fixed term or for an indefinite period can be terminated in the following manner:

<sup>201</sup> Constitution of Suriname, 1987 Article 27. <sup>202</sup> Constitution of Suriname, 1987 Article 28.

- (a) in the case of a fixed-term contract, on expiry of the term of the contract;
- (b) in the case of a fixed-term contract that has been renewed, the employer has to apply for a dismissal permit;
- (c) termination without notice and with compensation for termination for reasons other than urgent grounds or serious misconduct;
- (d) death of the worker;
- (e) instant dismissal on urgent grounds without notice or compensation.

A worker may terminate the employment contract without due notice for urgent reasons. Urgent reasons for the worker are conditions which make it unreasonable for them to continue the relationship and may include: assault by the employer or family members; threats to the worker or his or her family members; late payment of wages/salaries; non-performance of the employer regarding board and lodging, if such is stipulated; insufficient amount of work or assistance to the worker, if such is stipulated; neglect of duties; orders from employer to perform duties for another employer without reasons being given; personal safety, health, morals and dignity; and sickness.

Other ways to terminate an employment contract include:

- (a) immediate notice during the stipulated probationary period (maximum two (2) months);
- (b) termination with mutual consent;
- (c) termination by a court on request of a statutory representative; or
- (d) the request of the Procurator-General in the case of employment of a minor.

Either party may terminate the contract of employment during the probation period.

### **Dismissal**

The Dismissal Permits Act 1983 provides that an employer shall not dismiss an employee without a dismissal permit. Exceptions to this general rule are; termination during the probationary period or by mutual consent; by operation of law and on urgent grounds (serious misconduct). The Dismissal Board, which decides on applications for dismissal permits on behalf of the Minister of Labour, is a tripartite body.

The Labour Inspectorate is to be notified within four days after a dismissal for urgent reasons. The Inspector-General can overturn the dismissal within fourteen days.

Urgent reasons for dismissal are those acts or conduct of the employee which make it unreasonable to require the employer to continue the

employment relationship and may include such acts as: misleading the employer by providing false information or submitting false or forged documents to influence the employee's recruitment; serious lack of skills and competencies; drunkenness or other misbehaviour of the worker; theft, embezzlement, fraud or other criminal offences of the worker affecting the trust of the employer; offences of the worker effecting the trust of the employer; assault, gross insult or threat to the employer, their family or colleagues; vandalizing the employer's property; breach of confidentiality by the worker; refusal of the worker to do a particular job; negligence by the worker in relation to the duties; and the impossibility of the worker to perform duties due to his or her own acts.<sup>203</sup>

Rejection of an application for a dismissal permit means that the employment contract can be terminated only by mutual consent or by the judge of a court of justice.

Termination of employment for urgent reasons without notification being given to the Labour Inspectorate or without a dismissal permit in other cases is an offence.

### **Notice and Procedural Safeguards**

Workers have the right to give notice to terminate their employment contract at any time. An employer can compel a worker to give due notice. In the absence of due notice by an employee for termination of employment at their request, an employer can claim damages in the Court of Justice.

Unless the employer has urgent reasons for the dismissal of an employee, the employer must submit an application to the Dismissal Board before the dismissal of the worker can take place.

Some of the valid reasons for summary or instant dismissal have been discussed above under the section "Dismissals".

### **Severance Pay**

The Dismissal Board also addresses issues relating to retrenchment and severance pay.

### **Avenues for Redress**

There is no specific mention of the avenues for redress as they relate to termination of employment.

<sup>203</sup> Civil Code, a1615.

## Useful links

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILO Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.



Tobago

Trinidad

# TRINIDAD AND TOBAGO

## Source of Regulations

There is no general legislation governing termination of contracts of employment in Trinidad and Tobago. Common law principles apply in the absence of termination provisions in an individual contract of employment and/or a collective agreement.

Specific provisions concerning termination of contract of employment are found in the following statutes:

- Industrial Relations Act 1972 (as amended);
- Retrenchment and Severance Benefits Act 1985;
- Maternity Protection Act 1998;
- Companies Act 1995 (as amended).

The Industrial Relations Act 1972 (as amended) makes provisions for the stabilization, improvement and promotion of industrial relations.

The Retrenchment and Severance Benefits Act 1985 prescribes the procedures to be followed in the event of redundancy and to provide for severance payments to retrenched workers.

The Maternity Protection Act 1998 provides for a minimum level of maternity leave benefits and protection.

The Companies Act 1995 (as amended) provides for the ranking of wages in cases of insolvency and winding up amongst other matters.

## Scope of Legislation

The Industrial Relations Act 1972 excludes the following categories from the definition of a worker: <sup>204</sup>

- a public officer, as defined by section 3 of the Constitution;
- a member of the Defence Force or any ancillary force or service thereof, or of the Police, Fire or Prison Service or of the Police Service of any Municipality, or a person who is employed as a rural constable or estate constable;
- a member of the teaching service as defined in the Education Act, or who is employed in a teaching capacity by a university or other institution of higher learning;
- a member of the staff and an employee of the Central Bank established under the Central Bank Act;

<sup>204</sup> Industrial Relations Act 1972 s2 (3).

- (e) a person who, in the opinion of the Registration, Recognition and Certification Board:
  - (i) is responsible for the formulation of policy in any undertaking or business, or has the effective control of the undertaking or business or part thereof; or
  - (ii) participates in the formulation of policy in any undertaking or business;
- (f) a person employed in any capacity of a domestic nature, including that of a chauffeur, gardener or handyman in or about a private dwelling house and paid by the householder;
- (g) an apprentice within the meaning of the Industrial Training Act.

The Retrenchment and Severance Pay Act 1985 applies to persons falling within the definition of “workers” under the Industrial Relations Act 1972 with the exception of:

- (a) workers who have not completed more than one year of service, subject to the provisions mentioned under (d) below;
- (b) workers serving a known pre-determined probationary or qualifying period of employment;
- (c) casual workers;
- (d) seasonal workers, unless such workers are employed as part of the regular work force for at least three consecutive seasons with the same employer and for at least one hundred days each season;
- (e) workers employed on a fixed-term basis or workers engaged to perform a specific task over an estimated period of time where these conditions are made known to the worker at the time of engagement,
- (f) independent contractors.<sup>205</sup>

### Contracts of Employment

Trinidad and Tobago has no legislative provision relating to individual contracts of employment. There is no legislative provision defining the period of probation or any requirement for a contract of employment to be in writing and delivered to an employee.

Collective agreements must contain provisions concerning proceedings for avoiding and settling disputes, and must be for a period of time not less than three years or more than five years. In addition, every collective agreement must contain a provision for the settlement of all differences between the parties arising out of the interpretation, application and administration or alleged violation of the collective agreement.<sup>206</sup>



## Termination of Employment

There are no statutory provisions relating to the termination of employment by the employee, neither is prior notice required.

## Dismissal

There are no statutory provisions relating to dismissal on the grounds of misconduct, unsatisfactory performance, breach of contract of employment or notice required to be given by either party. There are also no statutory provisions on summary dismissal or constructive dismissal or on the burden of proof in the matter of dismissals.

The Industrial Relations Act 1972 sets out the broad principles for the dismissal of an employee, and indicates that an employer is prohibited from dismissing an employee in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice. The Industrial Court of Trinidad and Tobago has adopted natural law principles and looks to ILO Conventions for guidance as to what constitutes good industrial relations practices.

The Industrial Relations Act 1972 also states that an employer shall not dismiss workers by reason only of the circumstances that the workers: are officers, delegates or members of a trade union; are entitled to the benefit of an order or award under this Act; have appeared as witnesses or have given any evidence in a proceeding under this Act; or have absented themselves from work without leave after they have made an application for leave for the purpose of carrying out their duties as officers or delegates of a trade union and the leave has been unreasonably refused or withheld.<sup>207</sup>

Equally, an employer shall not: make the employment of a worker subject to the condition that they shall not join a trade union or shall relinquish trade union membership; dismiss or otherwise prejudice a worker for the reason of union membership or because of participation in union activities outside working hours; dissuade or prevent the worker from becoming an officer, delegate or member of a trade union or from so appearing or giving evidence, threaten to dismiss a worker, or to affect adversely their employment, or to alter their position to their prejudice by reason of the circumstance that the worker is, or proposes to become, an officer, delegate or member of a trade union or that the worker proposes to appear as a witness or to give evidence in any proceeding.<sup>208</sup>

<sup>207</sup> Industrial Relations Act 1972 s42 (1). <sup>208</sup> Industrial Relations Act 1972 s42 (2).

## Notice and Procedural Safeguards

The Retrenchment and Severance Benefits Act 1985 provides in section 6 for a minimum period of formal notice of forty-five (45) days before the proposed date of retrenchment. Section 5 states that an employer may, prior to giving formal notice in writing of retrenchment enter into consultation with the recognized majority trade union with a view to averting, reducing or mitigating the effects of the proposed retrenchment.

A worker is protected from dismissal as a result of their lawful trade union activities, and also from circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice.<sup>209</sup>

## Severance Pay

Where a retrenched worker is covered by a registered collective agreement and the terms in respect to severance benefits are no less favourable than those set out in the Retrenchment and Severance Benefits Act 1985, the provisions of the collective agreement shall apply.

In other cases, the minimum severance benefits payable by an employer are as follows:

- (a) where the worker has had continuous service with the employer for more than one year but less than five, severance pay of two weeks' basic pay per year of service is due if the worker is an hourly, daily or weekly rated worker, or one half month's pay per year of service at the basic rate if the worker is a monthly rated worker; and
- (b) where the worker has served the employer without break for five years or more, the worker is, in addition to the entitlement described above in subparagraph (a), entitled for the fifth year and for each succeeding completed year of service, to three weeks' pay at the basic rate if they are hourly, daily or weekly rated, or three quarters of a month's pay at the basic rate if they are monthly-rated.<sup>210</sup>

## Avenues for Redress

An unresolved trade dispute may be reported to the Minister of Labour only by the employer, the recognized majority trade union, or where there is no recognized majority union, any trade union of which the worker is a member in good standing.

Where the conciliation of the Ministry of Labour fails to settle the matter, the Minister may refer the matter to the Industrial Court for adjudication. The Industrial Court may order the re-employment or reinstatement (in their

former or a similar position) of any worker, subject to such conditions as the Court thinks fit to impose, or the payment of compensation or damages regardless of such re-employment or reinstatement, or the payment of exemplary damages in lieu of such re-employment or reinstatement.

### **Winding Up**

In the event of a winding up of a business or undertaking or the appointment of a receiver, all severance benefits, including terminal benefits, due to a worker shall enjoy the same priority as wages or salary due to any clerk or servant.<sup>211</sup> The Companies Act 1995 confers second priority ranking to wages and salaries after payment of taxes and National Insurance payments.

### **Useful links**

[www.legalaffairs.gov.tt](http://www.legalaffairs.gov.tt)

This is the website of the Ministry of Legal Affairs of Trinidad and Tobago and includes the revised laws of Trinidad and Tobago.

[www.ilo.org](http://www.ilo.org)

This is the website of the International Labour Organization (ILO).

[www.ilocarib.org.tt](http://www.ilocarib.org.tt)

This is the website of the ILOs Subregional Office for the Caribbean.

[www.caricomlaw.org](http://www.caricomlaw.org)

This is the website of the Caribbean Community (CARICOM) Secretariat dedicated to the presentation and discussion of Caribbean legal materials.

<sup>211</sup> Retrenchment and Severance Benefits Act 1985 s24.



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# ANNEX I

## Termination of Employment Convention, 1982 (No. 158)

### Convention Concerning Termination of Employment at the Initiative of the Employer

(Note: Date of coming into force: 23 November 1985)

#### The General Conference of the International Labour Organisation

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Noting the existing international standards contained in the Termination of Employment Recommendation, 1963, and

Noting that since the adoption of the Termination of Employment Recommendation, 1963, significant developments have occurred in the law and practice of many member States on the questions covered by that Recommendation, and

Considering that these developments have made it appropriate to adopt new international standards on the subject, particularly having regard to the serious problems in this field resulting from the economic difficulties and technological changes experienced in recent years in many countries,

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two the following Convention, which may be cited as the Termination of Employment Convention, 1982:

#### Part I - Methods of Implementation, Scope and Definitions

##### Article 1

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations.

##### Article 2

1. This Convention applies to all branches of economic activity and to all employed persons.
2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:

- (a) workers engaged under a contract of employment for a specified period of time or a specified task;
- (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under Article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

### **Article 3**

For the purpose of this Convention the terms “termination” and “termination of employment” mean termination of employment at the initiative of the employer.

## **Part II - Standards of General Application**

### **Division A. Justification for Termination**

#### **Article 4**

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

## **Article 5**

The following, inter alia, shall not constitute valid reasons for termination:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (e) absence from work during maternity leave.

## **Article 6**

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

### **Division B. Procedure Prior to or at the Time of Termination**

## **Article 7**

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

### **Division C. Procedure of Appeal against Termination**

## **Article 8**

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

## **Article 9**

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances



relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

- (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
- (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

#### **Article 10**

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

#### **Division D. Period of Notice**

#### **Article 11**

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

#### **Division E. Severance Allowance and other Income Protection**

#### **Article 12**

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to:

- (a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

### **Part III - Supplementary Provisions concerning Terminations of Employment for Economic, Technological, Structural or Similar Reasons**

#### **Division A. Consultation of Workers' Representatives**

##### **Article 13**

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

- (a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
- (b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term "the workers' representatives concerned" means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

## Division B. Notification to the Competent Authority

### Article 14

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.
2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.
3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

## Part IV - Final Provisions

### Article 15

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

### Article 16

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

### Article 17

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for

in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

#### **Article 18**

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

#### **Article 19**

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

#### **Article 20**

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

#### **Article 21**

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

#### **Article 22**

The English and French versions of the text of this Convention are equally authoritative.

## ANNEX II

### Termination of Employment Recommendation, 1982 (No.166)

#### Recommendation Concerning Termination of Employment at the Initiative of the Employer

##### The General Conference of the International Labour Organisation

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Termination of Employment Convention, 1982;

adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two, the following Recommendation, which may be cited as the Termination of Employment Recommendation, 1982:

#### Part I. Methods of Implementation, Scope and Definitions

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, work rules, arbitration awards or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions.

2 (1) This Recommendation applies to all branches of economic activity and to all employed persons.

(2) A Member may exclude the following categories of employed persons from all or some of the provisions of this Recommendation:

- (a) workers engaged under a contract of employment for a specified period of time or a specified task;
- (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

(3) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements, which as a

whole provide protection that is at least equivalent to the protection afforded under the Recommendation.

(4) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

3. (1) Adequate safeguards should be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention, 1982, and this Recommendation.

(2) To this end, for example, provision may be made for one or more of the following:

- (a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot be of indeterminate duration;
- (b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;
- (c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.

4. For the purpose of this Recommendation the terms “termination” and “termination of employment” mean termination of employment at the initiative of the employer.

## **Part II. Standards of General Application**

### **Justification for Termination**

5. In addition to the grounds referred to in Article 5 of the Termination of Employment Convention, 1982, the following should not constitute valid reasons for termination:

- (a) age, subject to national law and practice regarding retirement;
- (b) absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice.

6. (1) Temporary absence from work because of illness or injury should not constitute a valid reason for termination.

(2) The definition of what constitutes temporary absence from work, the extent to which medical certification should be required and possible limitations to the application of subparagraph (1) of this Paragraph should be determined in accordance with the methods of implementation referred to in Paragraph 1 of this Recommendation.

#### Procedure Prior to or at the Time of Termination

7. The employment of a worker should not be terminated for misconduct of a kind that under national law or practice would justify termination only if repeated on one or more occasions, unless the employer has given the worker appropriate written warning.

8. The employment of a worker should not be terminated for unsatisfactory performance, unless the employer has given the worker appropriate instructions and written warning and the worker continues to perform his duties unsatisfactorily after a reasonable period of time for improvement has elapsed.

9. A worker should be entitled to be assisted by another person when defending himself, in accordance with Article 7 of the Termination of Employment Convention, 1982, against allegations regarding his conduct or performance liable to result in the termination of his employment; this right may be specified by the methods of implementation referred to in Paragraph 1 of this Recommendation.

10. The employer should be deemed to have waived his right to terminate the employment of a worker for misconduct if he has failed to do so within a reasonable period of time after he has knowledge of the misconduct.

11. The employer may consult workers' representatives before a final decision is taken on individual cases of termination of employment.

12. The employer should notify a worker in writing of a decision to terminate his employment.

13. (1) A worker who has been notified of termination of employment or whose employment has been terminated should be entitled to receive, on request, a written statement from his employer of the reason or reasons for the termination.

(2) Subparagraph (1) of this Paragraph need not be applied in the case of collective termination for the reasons referred to in Articles 13 and 14 of the Termination of Employment Convention, 1982, if the procedure provided for therein is followed.

#### Procedure of Appeal against Termination

14. Provision may be made for recourse to a procedure of conciliation before or during appeal proceedings against termination of employment.

15. Efforts should be made by public authorities, workers' representatives and organisations of workers to ensure that workers are fully informed of the possibilities of appeal at their disposal.

#### Time off from Work during the Period of Notice

16. During the period of notice referred to in Article 11 of the Termination of Employment Convention, 1982, the worker should, for the purpose of seeking other employment, be entitled to a reasonable amount of time off without loss of pay, taken at times that are convenient to both parties.

#### Certificate of Employment

17. A worker whose employment has been terminated should be entitled to receive, on request, a certificate from the employer specifying only the dates of his engagement and termination of his employment and the type or types of work on which he was employed; nevertheless, and at the request of the worker, an evaluation of his conduct and performance may be given in this certificate or in a separate certificate.

#### Severance Allowance and Other Income Protection

18. (1) A worker whose employment has been terminated should be entitled, in accordance with national law and practice, to:

- (a) a severance allowance or other separation benefits, the amount of which should be based, inter alia, on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance and benefits.

(2) A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in subparagraph (1) (a) of this Paragraph solely because he is not receiving an unemployment benefit under subparagraph (1) (b).

(3) Provision may be made by the methods of implementation referred to in Paragraph 1 of this Recommendation for loss of entitlement to the allowance or benefits referred to in subparagraph (1) (a) of this Paragraph in the event of termination for serious misconduct.

### **III. Supplementary Provisions concerning Terminations of Employment for Economic, Technological, Structural or Similar Reasons**

19. (1) All parties concerned should seek to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of



any termination of employment for these reasons on the worker or workers concerned.

(2) Where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated.

#### Consultations on Major Changes in the Undertaking

20. (1) When the employer contemplates the introduction of major changes in production, programme, organisation, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned as early as possible on, inter alia, the introduction of such changes, the effects they are likely to have and the measures for averting or mitigating the adverse effects of such changes.

(2) To enable the workers' representatives concerned to participate effectively in the consultations referred to in subparagraph (1) of this Paragraph, the employer should supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have.

(3) For the purposes of this Paragraph the term "the workers' representatives concerned" means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

#### Measures to Avert or Minimise Termination

21. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.

22. Where it is considered that a temporary reduction of normal hours of work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, financed by methods appropriate under national law and practice.

#### Criteria for Selection for Termination

23. (1) The selection by the employer of workers whose employment is to be terminated for reasons of an economic, technological, structural or similar nature should be made according to criteria, established wherever possible in advance, which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria, their order of priority and their relative weight, should be determined by the methods of implementation referred to in Paragraph 1

of this Recommendation.

#### Priority of Rehiring

24. (1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given a certain priority of rehiring if the employer again hires workers with comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.

(2) Such priority of rehiring may be limited to a specified period of time.

(3) The criteria for the priority of rehiring, the question of retention of rights-particularly seniority rights - in the event of rehiring, as well as the terms governing the wages of rehired workers, should be determined according to the methods of implementation referred to in Paragraph 1 of this Recommendation.

#### Mitigating the Effects of Termination

25. (1) In the event of termination of employment for reasons of an economic, technological, structural or similar nature, the placement of the workers affected in suitable alternative employment as soon as possible, with training or retraining where appropriate, should be promoted by measures suitable to national circumstances, to be taken by the competent authority, where possible with the collaboration of the employer and the workers' representatives concerned.

(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.

(3) In assisting the workers affected in obtaining suitable alternative employment or training or retraining, regard may be had to the Human Resources Development Convention and Recommendation, 1975.

#### Resources Development Convention and Recommendation, 1975.

26. (1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.

(2) The competent authority should consider providing financial resources to support in full or in part the measures referred to in subparagraph (1) of this Paragraph, in accordance with national law and practice.

#### IV. Effect on Earlier Recommendation

27. This Recommendation and the Termination of Employment Convention, 1982, supersede the Termination of Employment Recommendation, 1963.

## **ANNEX III**

### **CARICOM Model Harmonisation Act Regarding Termination of Employment**

#### **Arrangement of Sections**

##### **Part I - Preliminary**

1. Objectives
2. Interpretation
3. Higher standards permitted

##### **Part II - Employment contract**

4. Types of contracts
5. Employment contracts
6. Delivery of contracts
7. Contents of contracts
8. Amendment of contract
9. Capacity to contract
10. Exemptions
11. Public contracts

##### **Part III - Continuity of Employment**

12. Continuity
13. Successor employer

##### **Part IV - Termination of Employment**

14. Termination of employment
15. Probationary period
16. Unfair dismissal
17. Constructive dismissal
18. Summary dismissal for serious misconduct
19. Termination for misconduct, breach of contract, unsatisfactory performance
20. Termination due to redundancy
21. Effect of sale that is not bona fide
22. Lay offs and suspensions
23. Preference to former employee
24. Winding up
25. Death of employer
26. Notice periods
27. Payment in lieu of notice
28. Certificate of termination
29. Disciplinary action
30. Complaints of unfair dismissal
31. Burden of proof
32. Remedies

##### **Part V - Severance Pay**

33. Severance or redundancy allowance

## Part I – Preliminary

### Objectives

1. The objectives of this Act are:
  - (a) to give effect to the provisions of the ILO Convention concerning Termination of Employment No. 158 (1982);
  - (b) to confer upon employees the right to continuity of employment and protection against unfair dismissals;
  - (c) to establish procedures for employees and employers to follow to terminate an employment relationship in a fair and equitable manner.

### Interpretation

2. In this Act:

“collective agreement” means a written agreement between an employer, or an employers’ organisation authorized by the employer, and a trade union concerning terms and conditions of employment and any other matter of mutual interest;

“commission agent” means an agent or employee who is remunerated by commission;

“continuous employment” means an employee’s period of uninterrupted employment with the same employer or the successor employer;

“contract worker” means a person who performs work for another person pursuant to a contract between the employer of the first-mentioned person and that other person;

“dependent contractor” means a person, whether or not employed under a contract of employment, who performs work or services for another person for compensation or reward on such terms and conditions that he or she is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor;

“disabled person” means an individual whose prospects of securing, retaining, and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment;

“employer” means any person or undertaking, corporation, company, public authority or body of persons who or which employs any person under a contract of employment or uses the services of a dependent contractor, commission agent or a contract worker, and includes the heirs, successors and assigns of an employer;

“employment” includes (a) part time employment and employment under an employment contract; (b) employment under a contract for services; (c) engagement as a commission agent;

“employment agency” means any person who, whether for payment or not, assists persons to find employment or assists employers to find employees;

“employment contract” or “contract of employment” means any contract, whether expressed or implied and whether written in accordance with this Act or oral, whereupon it is agreed that one person (the employee) will perform certain services or labour for another (the employer); and the term shall include any contract of apprenticeship or probation;

“family responsibilities” means any responsibilities in respect of any dependent family member;

“functions” includes powers, authorities and duties;

“lockout” means an employer’s closing of an enterprise or place of business, his or her suspension of work, or refusal to continue to employ any number of employees, with a view toward inducing or compelling employees directly or indirectly, through their bargaining agent, to accept conditions of employment which have been offered to the employees, and which have been rejected by them; and the term includes such action designed to induce or compel acceptance by the employees, or their bargaining agent, of another employer, of conditions of employment so offered and rejected;

“managerial employee” means an individual who works has managerial responsibilities and who works under a contract of employment;

“marital status” means the status or condition of being (a) single; (b) married; (c) married but living separately and apart from one’s spouse; (d) divorced; (e) widowed; or (f) the de facto spouse of another person;

“principal” means (a) in relation to a commission agent, a person for whom work is done by that commission agent; (b) in relation to a contract worker, a person for whom a contract worker performs work otherwise than under a contract of employment;

“probationary period” means the period that may be designated as such during the three (3) months following the date on which the employment of an employee by an employer commences, or such shorter (or longer up to six months total) period of time following that date as may be agreed upon between an employer and an employee;

“redundancy” means the loss of employment as defined in section 20 of this Act;

“redundancy benefit” means the amount of money that an employee whose employment has been terminated on account of redundancy is entitled to receive from his employer pursuant to this Act;

“serious misconduct” means misconduct that is such that the employer cannot reasonably be expected to take any course other than to terminate the employment of the employee;

“strike” means a partial or total withdrawal of services from an employer by two or more employees, in concert or pursuant to a common understanding, or at the request or upon the order of their bargaining agent, either (a) as a protest against a condition of work or employer action related thereto, or (b) as a device to induce or compel the employer, or his or her bargaining agent, to accept conditions of employment which they have requested and which request has been refused; and the term may include such action designed to induce or compel the acceptance by another employer, or his or her bargaining agent, of conditions of employment which his or her employees have requested and which request has been refused; and the term further includes picketing related to working conditions and/or labour relations, generally, whether by the employees or non-employees and whether or not signs are carried or posted and whether or not literature is being distributed;

“summary dismissal” means termination of the contract of employment by the employer without notice or with less than that to which the employee is entitled by any statutory provision or contractual agreement.

### **Higher standards permitted**

3. (1) Nothing in this Act precludes higher standards than those set out in the Act being agreed upon through collective bargaining or other forms of negotiation or agreement or arbitration award.

(2) Any provision in an agreement shall be void in so far as it excludes or in any way limits the operation of any provision of the Act to the detriment of the employee.

## **Part II - Contracts of Employment**

### **Types of contracts**

4. (1) Unless otherwise provided by this Act, the provisions of this Part apply to all contracts of employment, and each person who provides services to an employer shall be employed under a separate contract of employment.

(2) A contract of employment may take one of the following forms:

- (a) a contract without reference to limit of time;
- (b) a contract for a specified period of time;
- (c) a contract for a specific task;
- (d) a contract for a probationary period of not more than 3 months.

(3) A contract without reference to limit of time may be terminated by either party, subject to the provisions of this Act concerning unfair dismissal and notice of termination.

(4) A contract for a specified period of time shall automatically terminate on the date specified for its termination and no notice shall be required for its termination at that time, but termination at any other time shall be subject to the provisions of this Act concerning unfair dismissal.

(5) A contract to perform a specific task shall terminate on the completion of the task required and no notice of termination shall be required by either party.

(6) Where the purpose or effect of a contract that is purportedly for a specified period of time or for a specific task is the filling of a post connected with the normal and permanent activity of the undertaking, establishment or service for a period of over 2 years of continuous employment as defined in Part III of this Act, it shall be deemed a contract for an unspecified period of time.

(7) A contract of employment may provide for a probationary period.

(a) The probationary period shall be for a period of 3 months following the date on which the employment of an employee by an employer commences, or such shorter period of time following that date as may be agreed upon between an employer and an employee.

(b) During the probationary period an assessment of the employee shall be undertaken and such assessment shall be communicated to the employee prior to the end of the probationary period.

(c) The probationary period may be extended upon agreement of an employer and an employee for a period not to exceed 6 months in total.

(d) The probationary period may be terminated at any time by either party without notice pursuant to section 15 of this Act.

(8) A contract which purports to be one for a probationary period but is not genuinely for that purpose, or which does not comply with subsection (7) above, shall be deemed to be a contract for an unspecified period of time.

### **Employment Contract**

5. Every person who employs another shall, not later than 14 days from the date on which the employment commences, prepare an employment contract in writing correctly describing the terms and conditions of employment that have been agreed upon by the employer and employee.

### **Delivery of Contract**

6. Where, pursuant to Section 5 above, an employment contract has been prepared;

(a) a copy of the contract shall be delivered forthwith to the employee for his or her inspection;

(b) the employer and employee shall sign the employment contract including any amendments agreed upon; and,

(c) the employer shall give the employee a signed copy of the employment contract.

### **Contents of Contract**

7. An employment contract between an employer and employee shall set out:

- (a) the names of the employee and employer;
- (b) the date of commencement of the contract;
- (c) a description of the duties to be performed;
- (d) the rate of remuneration, or the method to be used for calculating the remuneration;
- (e) the intervals at which remuneration is paid;
- (f) normal hours of work;
- (g) leave entitlement, including maternity leave and pay;
- (h) any provision for the termination of the contract other than those provided by the Act;
- (i) any other term or condition of employment that has been agreed upon.

### **Amendment of Contract**

8. An employment contract between an employer and an employee may be amended from time to time as the employer and employee may agree.

### **Capacity to Contract**

9. (1) Every person of the age of 16 years or more shall have the capacity to enter into an employment contract pursuant to this Act.

(2) A person under the age of 16 years may enter into an employment contract only with the written consent of the parent or guardian of the person, or if none exist, with the written consent of the appropriate labour officer, and only in accordance with national law governing the employment of children.

(3) A person who is a party to an employment contract pursuant to this Act is entitled to receive directly the wages and benefits payable pursuant to the employment contract, and may sue or be sued in respect of the employment contract.

### **Exemptions**

10. This Part shall not apply to an employee:

(1) who is employed for a specified period of less than 6 weeks or a fixed task to be performed within 6 weeks;

(2) who is a family member of the employer;

(3) whose contract of employment is regulated by a collective agreement which contains terms affording the particulars specified in Section 7 above, provided that the employee is given a copy of the collective agreement or it is posted at the place of employment.

### **Public sector contracts**

11. (1) Every public contract for employment shall include the provisions set out in this Part.



(2) If the public contract for employment does not include the provisions set out in this Part, such provisions shall be deemed to be included in the public contract for employment.

### **Part III - Continuity of Employment**

#### **Continuity of employment**

12 (1) Continuous employment shall begin from and include the first day on which an employee begins to work for an employer and shall continue up to and including the date of termination.

(2) It shall be presumed, unless the contrary is shown, that the employment of an employee with an employer is continuous whether or not the employee remains in the same job.

(3) An employee's continuous employment shall not be treated as interrupted if the employee is absent from work:

- (a) due to taking annual leave, maternity leave or sick leave or any other leave in accordance with national law or contract or agreement;
- (b) due to his or her suspension, with or without pay, in accordance with the provisions of national law or any other contract or agreement;
- (c) due to the termination of his or her employment prior to being reinstated or re-engaged in accordance with this Act or national law or reinstatement or re-engagement takes place or is made effective within 6 months of the date of termination;
- (d) due to having been temporarily laid off by the employer;
- (e) due to an inability to work on account of an occupational disease or accident;
- (f) in accordance with the agreement of his or her employer.

(4) Any periods of time elapsing in the circumstances referred to in subsection (3) shall count for the purpose of calculating the continuous period of employment;

(5) Any period of time elapsing between the end of a probationary period and the commencement of employment with the same employer shall count for the purpose of calculating the continuous period of employment;

(6) Any period during which an employee is absent from work because of his or her participation in a lawful strike shall not interrupt the continuity of employment, but shall not count for the purposes of calculating length of continuous employment;

(7) Periods of short-term contracts granted in succession with less than thirty (30) day intervals shall count for the purpose of calculating the continuous period of employment;

(8) Acceptance of severance pay by an employee shall terminate the continuous period of employment.

### **Successor employer**

13. Where a business or part of it is sold, leased, transferred or otherwise disposed of, the periods of employment with the successive employers shall be deemed to constitute a single period of continuous employment with the successor employer if the employment was not terminated and severance pay was not paid pursuant to this Act.

## **PART IV - Termination of Employment**

### **Termination of Employment**

14. (1) The employment of an employee for an unspecified period of time shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the enterprise pursuant to sections 18, 19 and 20 of this Part and unless the notice requirements in section 26 are complied with.

(2) The provisions of subsection (1) above shall apply to the employment of an employee for a specified period of time during the contract period prior to the date of the specified expiry of the contract.

(3) The employment relationship may be terminated by an employee for any reason in accordance with the notice requirements set out in Section 26.

### **Probationary Period**

15. A new employee may be required to serve a probationary period of not more than 3 months or for a period of time agreed to between the employer and the employee not to exceed 6 months total. The employer or employee may terminate the employment of an employee at any time during the probationary period for any reason and without notice.

### **Unfair Dismissal**

16. (1) The following reasons do not constitute valid reasons for dismissal or for imposition of disciplinary action:

- (a) an employee's race, sex, religion, colour, ethnic origin, national extraction, indigenous population, social origin, political opinion, disability, family responsibilities, or marital status;
- (b) an employee's age, subject to national law or collective bargaining provisions regarding retirement;
- (c) a female employee's pregnancy or a reason connected with her pregnancy;
- (d) an employee's exercise of any of the rights specified in Part II of the Harmonisation Act on Registration, Status and Recognition of Trade Unions and Employers' Organisations;

- (e) an employee's temporary absence from work because of sickness or injury unless it occurs frequently and exceeds allocated leave entitlement;
- (f) an employee's being diagnosed with the HIV virus unless the employee is engaged in health care work;
- (g) an employee's absence from work due to compulsory military service or other civic obligation in accordance with national law;
- (h) an employee's exercise or proposed exercise of the right to remove himself or herself from a work situation which he or she reasonably believes presents an imminent or serious danger to life or health;
- (i) an employee's participation, or proposed participation in industrial action which takes place including strikes in conformity with the provisions of national labour relations law;
- (j) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of laws or regulations.

(2) A dismissal is unfair if it is based on any of the grounds contained in subsection (1) above or constitutes constructive dismissal pursuant to section 17 below.

#### **Constructive Dismissal**

17. (1) An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term, where the employer's conduct has made it unreasonable to expect the worker to continue the employment relationship.

(2) Where the contract of employment is terminated by the employee pursuant to subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer for purposes of this Act.

#### **Summary Dismissal for Serious Misconduct**

18. (1) An employer is entitled to dismiss summarily without notice or payment of any severance payment or terminal benefits an employee who is guilty of serious misconduct based on the operational requirements of the enterprise of such a nature that it would be unreasonable to require the employer to continue the employment relationship.

(2) The serious misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment relationship and has a detrimental effect on the business.

#### **Termination for Misconduct, Breach of Contract, Unsatisfactory Performance**

19. (1) Where the employee is guilty of an offence in breach of his or her condition of employment or any misconduct such that the employer cannot

reasonably be expected to continue to employ him or her if it is repeated, the employer may give the employee a written warning.

(2) If the employee after being warned pursuant to subsection (1) is guilty of the same or similar offence or misconduct in the following 6 months, the employer may terminate the employee's employment.

(3) The employer shall be deemed to have waived his or her right to terminate the employment of an employee for misconduct if he or she has failed to do so within a reasonable period of time after having knowledge of the misconduct.

(4) Where the employee is not performing his or her duties in a satisfactory manner, the employer may give him or her a written warning.

(5) If the employee after being warned pursuant to subsection (4) above and in compliance with subsection (6) below does not, during the following 3 month period demonstrate that he or she is able to perform and has performed duties in a satisfactory manner, the employer may terminate the employee's employment.

(6) The employment of an employee should not be terminated for unsatisfactory performance unless the employer has given the worker written warning pursuant to subsection (4) above and appropriate instructions to correct the unsatisfactory performance and the employee continues to perform his or her duties unsatisfactorily for a period of 3 months.

### **Termination Due to Redundancy**

20. (1) The employer may terminate the employment of the employee because the employee was redundant pursuant to the provisions in subsection (2).

(2) The employee is redundant under subsection (1) where the termination is or is part of a reduction in the work force that is a direct result of:

- (a) the employer has modernised, automated, or mechanised all or part of the business;
- (b) the employer has discontinued to carry on all or part of the business;
- (c) the employer has sold or otherwise disposed of part of the business;
- (d) the employer has reorganised the business to improve efficiency;
- (e) it has become impossible or impracticable for the employer to carry on the business at its usual rate or level or at all due to:
  - (i) a shortage of materials;
  - (ii) a mechanical breakdown;
  - (iii) force majeure; or
  - (iv) an act of God; or

- (f) a reduced operation in the employer's business has been made necessary by economic conditions, including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.
- (3) Prior to terminating the employment of any employee pursuant to this section, the employer shall:
- (a) inform the recognised trade union, or if none exists, the employees' representative, with relevant information as early as possible on, inter alia:
    - (i) the existence of the situation described under subsection (2);
    - (ii) the reasons for the terminations contemplated;
    - (iii) the number and categories of the persons likely to be affected; and
    - (iv) the period over which such terminations are likely to be carried out.
  - (b) consult as early as possible with the recognised trade union or if none exists, the employees' representative, on:
    - (i) the possible measures that could be taken to avert or minimise the adverse effects of such situations on employment; and
    - (ii) the possible measures that could be taken to mitigate the adverse effects of any terminations on the employees concerned.

**Effect of Sale that is Not Bona Fide**

21. (1) Where one of the purposes of a sale or other disposition of a business is to enable an employer to avoid any of his or her obligations under this Act or to deprive any employee of any right under this Act, all of the obligations under this Act of the person seller or otherwise disposing of the business are binding on the person acquiring the business.

(2) Nothing in subsection (1) should be interpreted as restricting an employer from making a bona fide sale of his or her business.

**Lay-offs and Suspensions**

22 (1) No employer shall lay off and/or suspend an employee except where the employer is entitled pursuant to this Act.

(2) No employer shall suspend an employee from work without pay except where the employer is entitled pursuant to this Act.

(3) An employer may lay-off an employee, where the conditions of redundancy exist pursuant to section 20, subsection (2), for a continuous period not to exceed 3 months at which time the lay-off will be deemed a termination due to redundancy pursuant to section 20 of this Act.

(4) An employee shall not be entitled to severance pay by reason of being laid off unless he or she gives notice in writing to the employer indicating his

or her intention to claim severance pay in respect of lay-off and, that he or she has been laid off for a period of 8 consecutive weeks.

(5) Where an employee is employed under a contract on such terms and conditions that his or her remuneration thereunder depends on being provided by the employer with work of the kind which he or she is employed to do, the employee shall be taken to be laid off for any week in respect of which, by reason that the employer does not provide such work for him or her, the employee is not entitled to full remuneration under the contract.

### **Preference to Former Employee**

23 (1) Where an employer has terminated the employment of an employee or has laid off an employee pursuant to sections 20 and 22, and subsequently intends, within a period of 6 months following the date of termination, to hire a person to perform duties that are the same or substantially the same as those that were formerly performed by the employee, the employer shall give first preference to the laid-off employee and second preference to the employee who had been terminated.

(2) Where an employer to whom subsection (1) applies intends to hire a person, the employer shall make every reasonable effort to notify the employee who is entitled to preference under subsection (1).

### **Winding Up**

24 (1) The winding up (or insolvency) of an employer's business shall cause the contract of employment of any employee to terminate one month from the date of winding up or the appointment of a receiver, unless it is otherwise terminated pursuant to sections 14, 15, 18, or 19 this Act within that period.

(2) This section shall not apply where, notwithstanding the winding up (or insolvency), the business continues to operate or has been transformed.

(3) On the winding up or appointment of a receiver of an employers business the claim of an employee or those legally entitled to claim on his or her behalf to wages and other payments to which he or she is entitled under the Act or any contract shall have priority over all other creditors, including the State and the social security system for the following amounts:

- (a) wages, overtime pay, commissions, and other forms of remuneration relating to work performed during the 26 weeks preceding the date of the opening or winding up or appointment of the receiver;
- (b) holiday pay due as a result of work performed during the two years preceding the date of the opening of winding up or appointment of the receiver;
- (c) amounts due in respect of other types of paid absence accrued during the 12 months preceding the date of the opening or winding up or appointment of the receiver;
- (d) severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment.

### **Death of Employer**

25. When an employer's personal or legal position formed the basis of the contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless it is otherwise terminated in accordance with sections 14, 15, 18 or 19 of this Part.

### **Notice Periods**

26 (1) Where a valid reason for termination exists in accordance with this Act, a contract for an unspecified period of time, except during the probationary period, shall be terminated by the employer upon giving the following minimum periods of notice in writing:

- (a) one working day, where the employee has been employed by the employer for less than one month;
- (b) two weeks, where the employee has been employed by the employer for one month or more, but less than one year;
- (c) one month, where the employee has been employed by the employer for one year or more, but less than five years;
- (d) two months, where the employee has been employed by the employer for five years or more.

(2) The periods of notice under subsection (1) shall not apply where the giving of longer periods of notice are common given the nature and functions of the work performed by the employee.

(3) The periods of notice under subsection (1) shall not apply where periods of notice are regulated by a collective agreement.

(4) The periods of notice under subsection (1) shall not apply where the employer is entitled to summarily dismiss an employee under this Part.

(5) A notice of termination under subsection (1) shall not be given by an employer during an employee's period of absence on any leave (paid annual leave, sick leave, maternity leave, family leave, etc.) granted under national employment laws.

(6) An employee should give an employer two weeks' notice to terminate the employment contract unless due to the nature and the functions of the work to be performed a longer notice is commonly given.

- (7) Nothing in this section shall prevent:
- (a) the parties to a contract from agreeing to a longer period of notice of termination than is provided for in this section;
  - (b) an employer waiving the right to receive notice.

### **Payment in Lieu of Notice**

27 (1) In lieu of providing notice of termination, the employer may, at his or her discretion, pay the employee a sum equal to the wages and other remuneration and confer on the employee all other benefits that would have been due to the employee up to the expiry of any required period of notice.

(2) Where the employee terminates the contract without notice in circumstances in which notice was required, and the employer has not waived the right to notice, the employee shall be entitled only to be paid such wages and other remuneration and to receive such other benefits which accrued at the date of termination.

### **Certificate of Termination**

28 (1) On the termination of a contract of employment an employer, if so requested by the employee, shall provide the employee with a certificate of employment in accordance with national law and indicating:

- (a) the name and address of the employer;
- (b) the nature of the employer's business;
- (c) the length of the employee's continuous service;
- (d) the capacity in which the employee was employed prior to termination;
- (e) the wages and other remuneration payable at the date of termination of the contract; and
- (f) where the employee so requests, the reason for the termination of employment.

(2) The certificate required by subsection (1) shall not contain any evaluation of the employee's work unless this is requested by the employee.

### **Disciplinary Action**

29 (1) An employer shall be entitled to take disciplinary action other than dismissal when it is reasonable to do so under the circumstances.

(2) For purposes of this section "disciplinary action" includes in order of severity:

- (a) a written warning;
- (b) suspension.

(3) No employer may impose a fine or other monetary penalty on an employee, except in cases where a requirement of restitution would be appropriate and where agreed upon between the employer and employee.

(4) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard for the nature of the violation, the terms of the employment contract, the employee's duties, the penalty imposed by the employer, the pattern and practice of the employer in similar situations, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

(5) A complaint that disciplinary action is unreasonable may be made to the appropriate national judicial body for determination.

### **Complaints of Unfair Dismissal**

30 (1) Within 6 months of the date of dismissal, an employee shall have the right to complain to the appropriate national judicial body that he or she has been unfairly dismissed, whether notice has been given or not.



(2) The right of an employee to make a complaint under this section shall be without prejudice to any right the employee may enjoy under a collective agreement.

### **Burden of Proof**

31 (1) In any claim or complaint arising out of the dismissal of an employee it shall be for the employer to prove the reason for the dismissal, and if the employer fails to do so there shall be a conclusive presumption that the dismissal was unfair.

(2) In the circumstances mentioned in section 17 it shall be for the employee to prove the reason which made the continuation of the employment relationship unreasonable.

### **Remedies**

32 (1) If the employee's complaint of unfair dismissal is found to be proven to the satisfaction of the court it shall award the employee one or more of the following remedies:

- (a) an order for reinstatement whereby the employee is to be treated in all respects as if he or she had never been dismissed;
- (b) an order for re-engagement whereby the employee is to be engaged in work comparable to that in which he or she was engaged prior to his or her dismissal, or other reasonable suitable work, from such date and on such terms of employment as may be specified in the order or agreed by the parties;
- (c) an award of compensation as specified in subsection (4);
- (d) or such other remedies as the judicial body may order.

(2) The judicial authority shall, in deciding which remedy to award, first consider the possibility of making an award of reinstatement or re-engagement, taking into account in particular the wishes of the employee and employer and the circumstances in which the dismissal took place, including the extent, if any, to which the employee caused or contributed to the dismissal.

(3) Where the judicial authority finds that the employee engaged in misconduct notwithstanding the unlawful nature of the dismissal, it may include a disciplinary penalty as a term of the order for reinstatement or re-engagement.

(4) An award of compensation shall be such amount as the judicial authority considers just and equitable in all the circumstances having regard to the loss sustained by the employee in consequence of the dismissal in so far as that loss is attributable to action taken by the employer, and the extent, if any, to which the employee caused or contributed to the dismissal. The amount awarded shall not be less than 2 weeks' pay for each year of service, and one month's pay for each year of service for workers with more than 2 years of service of seniority. An additional amount to such loss should be awarded where the dismissal was based on any of the reasons under section 16.

## Part V - Severance Pay

### Severance or Redundancy Pay

33 (1) On termination of employment, an employee who has completed no less than one (1) year or more of continuous employment with his or her employer shall be entitled to be paid by the employer a severance or redundancy allowance equivalent to:

- (a) two weeks' wages for each completed year of service up to the first ten years, including the entitlement year;
- (b) three weeks' wages for each completed year of service in excess of ten years.

(2) For the purposes of subsection (1) termination includes termination by reason of redundancy pursuant to section 20, by reason of lay-off pursuant to section 22 (4), winding up or insolvency pursuant to section 24, or death of the employer pursuant to section 25 of this Act.

(3) The payment of a severance allowance under subsection (1) shall not affect the employee's entitlement, if any, to payment in lieu of notice under section 27 or to a compensatory or special award under section 32 of this Act.

- (4) Subsection (1) shall not apply where the employee :
- (a) is fairly dismissed pursuant to sections 14 and 15;
  - (b) unreasonably refuses to accept an offer of re-employment by the employer at the same place of work, under no less favourable terms than he or she was employed immediately prior to the termination;
  - (c) is employed by a partnership and his or her employment ceases on the dissolution of the partnership, and he or she either enters into employment with one or more of the partners immediately after such dissolution, or unreasonably refuses to accept an offer of employment by any such person on no less favourable terms than he or she was employed immediately prior to the dissolution;
  - (d) is employed by an employer who dies, and the employee either enters into the employment of the personal representative, widow, or any heir of the deceased employer immediately after such death, or he or she unreasonably refuses to accept an offer of employment by any such person on no less favourable terms than he or she was employed immediately prior to the death.

(5) Where the contract of employment is terminated by reason of death of the employee, the severance allowance shall be paid to the surviving spouse of the deceased employee or, in the absence of such a spouse, to such other dependent relative as the appropriate national judicial body may decide.

(6) A complaint that a severance allowance has not been paid within two weeks from the date of termination may be presented to the appropriate national judicial body, and if the complaint is found to be proven to the satisfaction of the court, it shall order payment of the amount due.

# ANNEX IV

## Comparative Tables

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**Table 1**

<b>Individual Termination: Statutory Regulation of Unfair/Unjustified Dismissal</b>			
	<b>Termination of Employment Convention (No.158) and Recommendation (No.166)</b>	<b>CARICOM Model Harmonisation Act regarding Termination of Employment</b>	<b>Antigua and Barbuda</b>
Are any categories of employees excluded from the provisions for termination of employment?	No	Yes	Yes
Is the burden of proof to justify a dismissal on the employer?	Yes	Yes	Yes
Is consultation with the employee representative required before dismissal?	No	No	No
Is administrative authorization required?	No	No	No
Is there statutory compensation for unfair and/or unjustified dismissal?	Yes	Yes	Yes
Is there recourse to reinstatement?	Yes	Yes	Yes

**Individual Termination: Statutory Regulation of Unfair/Unjustified Dismissal**

	The Bahamas	Barbados	Belize	Dominica	Grenada	Guyana	Jamaica	Saint Kitts and Nevis	Saint Lucia	Saint Vincent and the Grenadines	Suriname	Trinidad and Tobago
	Yes	There are no statutory regulations regarding termination.	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Yes	There are no statutory regulations regarding termination.	Yes	Yes	Yes	No	Yes	Yes	No Except where dismissal is related to trade union functions.	Yes	Yes	No
	No	There are no statutory regulations regarding termination.	No	No	No	No	No	No	No	No	No	No
	No	There are no statutory regulations regarding termination.	No	No	No	No	No	No	No	Yes In some limited cases.	Yes	No
	Yes	There are no statutory regulations regarding termination.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Yes	There are no statutory regulations regarding termination.	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes By industrial court.

**Table 2**

<b>Statutory Notice Periods and Compensation in Lieu of Notice (Contract of employment for indefinite period)</b>			
	<b>Termination of Employment Convention (No.158) and Recommendation (No.166)</b>	<b>CARICOM Model Harmonisation Act regarding Termination of Employment</b>	<b>Antigua and Barbuda</b>
What is the statutory notice period?	Reasonable notice required but does not provide any specific periods.	<ul style="list-style-type: none"> <li>• 1 day for service of less than 1 month</li> <li>• 2 weeks for service of more than 1 month but less than 1 year</li> <li>• 1 month for service between 1 and 5 years</li> <li>• 2 months for service of 5 years or more</li> </ul>	<ul style="list-style-type: none"> <li>• 0 days for service of less than one week</li> <li>• 24 hours during the probation period</li> <li>• time between paydays for all others</li> </ul>
Is payment in lieu of notice allowed?	Yes	Yes	Yes

**Statutory Notice Periods and Compensation in Lieu of Notice  
(Contract of employment for indefinite period)**

	The Bahamas	Barbados	Belize	Dominica	Grenada	Guyana	Jamaica	Saint Kitts and Nevis	Saint Lucia	Saint Vincent and the Grenadines	Suriname	Trinidad and Tobago
	<p><b>Management &amp; supervisory posts:</b></p> <ul style="list-style-type: none"> <li>1 month's notice plus 1 month's basic pay for each year of service</li> </ul> <p><b>All others:</b></p> <ul style="list-style-type: none"> <li>1 week's notice plus 1 week's basic pay for service of 6 months or more but less than 12 months</li> <li>2 weeks' notice plus 2 weeks' basic pay for each year of service for service of 12 months or more</li> </ul>	<ul style="list-style-type: none"> <li>at least 2 weeks for service between 2 and 5 years</li> <li>at least 4 weeks for service of 5 or more years</li> </ul>	<ul style="list-style-type: none"> <li>at least 7 days for service of 1 month or less</li> <li>at least 14 days for service of more than 1 month</li> </ul>	<p><b>For monthly paid employees:</b></p> <ul style="list-style-type: none"> <li>at least 1 month for service of less than 10 years</li> <li>at least 2 months for service of more than 10 years</li> </ul> <p><b>Other employees:</b></p> <ul style="list-style-type: none"> <li>at least 1 week for service of less than 2 years</li> <li>at least 2 weeks for service between 2 and 5 years</li> <li>at least 4 weeks for service of more than 5 years</li> </ul>	<ul style="list-style-type: none"> <li>1 day for service of less than 1 month</li> <li>1 week for service between 1 and 3 months</li> <li>2 weeks for service between 3 months and 1 year</li> <li>1 month for service between 1 and 5 years</li> <li>2 months for service of 5 years or more</li> </ul>	<ul style="list-style-type: none"> <li>at least 2 weeks for service less than 1 year</li> <li>at least 1 month for service of 1 year or more</li> </ul>	<ul style="list-style-type: none"> <li>at least 2 weeks for less than 5 years' service</li> <li>at least 4 weeks for 5 to 10 years' service</li> <li>at least 6 weeks for 10 to 15 years' service</li> <li>at least 8 weeks for 15 to 20 years' service</li> <li>at least 12 weeks for 20 years' or more service</li> </ul>	<p><b>For monthly paid employees:</b></p> <ul style="list-style-type: none"> <li>1 month for service over 3 months but less than 5 years</li> <li>2 months for service over 5 years but less than 10 years</li> <li>3 months for service of 10 years or more</li> </ul> <p><b>Other employees:</b></p> <ul style="list-style-type: none"> <li>1 week for service over 3 months but less than 1 year</li> <li>2 weeks for service over 1 year but less than 3 years</li> <li>3 weeks for service over 3 years but less than 5 years</li> <li>4 weeks for service over 5 years but less than 7 years</li> <li>5 weeks for service over 7 years but less than 10 years</li> <li>6 weeks for service over 10 years but less than 15 years</li> <li>10 weeks for service over 15 years</li> </ul>	<ul style="list-style-type: none"> <li>at least 1 week for service of more than 12 weeks but less than 2 years</li> <li>at least 2 weeks for service of 2 years or more but less than 5 years</li> <li>at least 4 weeks for service of 5 years or more but less than 10 years</li> <li>at least 6 weeks for service of more than 10 years</li> </ul>	<p><b>For weekly paid employees:</b></p> <ul style="list-style-type: none"> <li>1 week for service of less than one year</li> <li>2 weeks for service of more than one year but less than three years</li> <li>3 weeks for service of more than three years but less than six years</li> <li>4 weeks for service of more than six years</li> </ul> <p><b>For fortnightly paid employees:</b></p> <ul style="list-style-type: none"> <li>2 weeks for service under two years</li> <li>3 weeks for service of more than two years but less than six years</li> <li>4 weeks for service over six years</li> </ul> <p><b>For monthly paid employees:</b></p> <ul style="list-style-type: none"> <li>4 weeks</li> </ul>	None mentioned	None mentioned
	Yes	There are no statutory regulations regarding termination.	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	None mentioned	None mentioned

**Table 3**

Is there Statutory Protection against Dismissal of Workers in Special Situations?			
	Termination of Employment Convention (No.158) and Recommendation (No.166)	CARICOM Model Harmonisation Act regarding Termination of Employment	Antigua and Barbuda
Protection of trade union members and other worker representatives?	Yes	Yes	Not expressly mentioned in relation to termination except during the probationary period.
Maternity protection?	Yes	Yes	Not expressly mentioned in relation to termination.
What are the prohibited grounds for discrimination and other protected situations?	<p>Convention: Race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, trade union membership, exercise of trade union rights, filing of complaint against the employer.</p> <p>Recommendation (additional grounds): Age, absence due to compulsory military or civil obligations and temporary absence due to illness or injury.</p>	<p>Race, sex, religion, colour, ethnic origin, national extraction, indigenous status, social origin, political opinion, disability, family responsibilities, marital status, age, pregnancy or a connected reason, trade union membership, temporary absence due to illness or injury, diagnosis of HIV, absence due to military or civil obligations, an employee's removal from a work situation which he or she reasonably believes presents an imminent or serious danger to life or health, exercise of industrial rights, and filing of a complaint or participation in proceedings against the employer.</p>	<p>Race, colour, creed, sex, age and political beliefs.</p>



**Is there Statutory Protection against Dismissal of Workers in Special Situations?**

	The Bahamas	Barbados	Belize	Dominica	Grenada	Guyana	Jamaica	Saint Kitts and Nevis	Saint Lucia	Saint Vincent and the Grenadines	Suriname	Trinidad and Tobago
	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No Not within the Contracts of Service Act, 1970.	Yes	Yes	Yes
	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Trade union activity or membership, pregnancy or a connected reason, race, creed, sex, marital status, political opinion, age and HIV status.	There are no statutory regulations regarding termination.	There are no statutory regulations regarding termination.	Trade union activity or membership, race, colour, sex, marital status, religion, political opinion, national extraction or social origin, filing of a complaint or participating in proceedings against the employer and absence on Saturdays or Sundays to take part in religious worship.	Race, colour, national extraction, social origin, religion, political opinion, sex, marital status, family responsibilities, disability, pregnancy or a connected reason, exercise of trade union rights, temporary absence due to sickness or injury, an employee's removal from a work situation which he or she reasonably believes presents an imminent or serious danger to life or health, employee participation in industrial action, an employee's refusal to do any work normally done by an employee who is engaged in industrial action, filing of a complaint or participation in proceedings against the employer.	Race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, family responsibility, marital status, age, pregnancy or a connected reason, absence from work because of sickness or injury certified by medical doctor, absence from work due to military or civil obligations, participation in industrial action, an employee's refusal to do work normally done by a worker on industrial action, filing of a complaint or participation in proceedings against the employer.	Trade union membership, race, place of origin, political opinion, colour, creed, pregnancy, taking maternity leave.	Race, place of origin, birth out of wedlock, political opinion or affiliations, colour, sex, creed, marital status, family responsibilities, trade union activity or membership, seeking office as or acting in the capacity of a workers' representative, making a complaint or participating in proceedings against the employer, certified maternity leave, temporary absence from work due to certified illness or injury, jury service to attend a court hearing.	Race, sex, religion, colour, ethnic origin, family responsibilities, pregnancy, marital status, or age (except for retirement purposes and restrictions on work and employment of minors or for the protection of minors) or any characteristic which appertains generally or is generally imputed to persons who belong to the above mentioned categories.	Race, colour, sex, marital status, pregnancy, religion, political opinion, nationality, social origin, trade union activity or membership, seeking office as or acting in the capacity of a workers' representative, making a complaint or participating in proceedings against the employer, reasonable absence from work due to family responsibilities, certified maternity leave, absence due to certified illness or injury and jury service.	None	None	

**Table4**

<b>Collective Redundancies: Statutory Requirements</b>			
	<b>Termination of Employment Convention (No.158) and Recommendation (No.166)</b>	<b>CARICOM Model Harmonisation Act regarding Termination of Employment</b>	<b>Antigua and Barbuda</b>
Is consultation with employee representative required?	Yes	Yes	No
Is advance notice to labour administration required?	Yes	No	No
Is administrative authorization required?	No	No	No
Is there statutory redundancy payment?	Severance payment	<p>Yes</p> <p>For employees with at least 1 year's service:</p> <ul style="list-style-type: none"> <li>• 2 weeks' wages per year for first 10 years of service</li> <li>• 3 weeks' wages for each subsequent year</li> </ul>	<p>Yes</p> <p>After 1 year of service.</p>
Is a social plan required?	No	No	No

Collective Redundancies: Statutory Requirements

	The Bahamas	Barbados	Belize	Dominica	Grenada	Guyana	Jamaica	Saint Kitts and Nevis	Saint Lucia	Saint Vincent and the Grenadines	Suriname	Trinidad and Tobago
	No	No Unless indicated in the collective agreement.	No	No	No	Yes	No	No	No	Yes	Not applicable	Yes
	No	No	No	No	No	Yes	No	Yes	No	Yes	Yes	Yes
	No	No	No	No	No	No	No	No	No	No	Yes	No
	Yes After 1 year of service.	Yes	Yes	Yes	Yes	Yes <ul style="list-style-type: none"> <li>1 week's wages for each year for first 5 years of service</li> <li>2 weeks' wages for each completed year between 5 and 10 years</li> <li>3 weeks' wages for each completed year over 10 years</li> </ul>	Yes After 2-year qualification period: <ul style="list-style-type: none"> <li>2 weeks per year for first 10 years</li> <li>3 weeks per year for each year thereafter</li> </ul>	Yes <ul style="list-style-type: none"> <li>2 weeks per year for the first five years of employment</li> <li>3 weeks per year for five to ten years of employment</li> <li>4 weeks per year for any period in excess of ten years</li> </ul>	Yes	Yes	Yes	Yes
	No	No	No	No	No	No	No	No	No	No	No	No