

Employers Have Rights Too!

*By Siobhan Robinson-Morris
Industrial Relations Officer, BEC*

As published in the Barbados Business Authority Aug 26th, 2013.

In our last column, my colleague would have written on the topic of employee rights, that is, those things entrenched by employment legislation and reinforced by custom and practice. Whenever we discuss the rights of employees, managers and business owners always ask, so do we as employers have any rights or do our employees have all? Have we been left out to sea? However, legislation and common law have conferred a set of rights to employers, and I will undertake to discuss them within this article.

The Constitution of Barbados has given all persons in Barbados Freedom of Association; as employees are free to join a trade union or employees' association, employers are free to do the same. This question, 'can we stop this person from joining?' tends to arise when someone in the management or supervisory team seeks to join a union or association, the answer is no, as this would be depriving that individual of their rights. The employer can however insist that the individuals be part of a separate bargaining unit. It is important to note that the Barbados Employers' Confederation is a registered trade union, and that employers can exercise their right of association by becoming a member of the Confederation.

Employers also have the right to loyalty from their employees. With loyalty also comes the corresponding right to confidentiality of employees. Therefore, employees caught divulging company secrets or bad mouthing their employers are in breach of their implied, contractual obligation of loyalty and confidentiality, and can be terminated. It must be noted and understood that these rights to loyalty and confidentiality do not apply in those situations where the employee is reporting illegal or inhumane activities to the relevant authorities.

The right to direct the internal operations of the organization lies with the employer, therefore you are the one who leads, operates, delegates and

ensures the financial viability of your organization. While you may discuss certain aspects of the operations with employees or their representatives, ultimately the authority rests with you. Therefore, you, as owner, or manager have the right to alter operations to preserve the business, and contrary to what some persons believe the Employment Rights Act (ERA) has not taken that right away. The ERA acknowledges the right, but has stipulated the treatment which should be given to employees when you are exercising those rights. The major aim of any business is to be profitable, and to remain viable. In order to do this, it becomes necessary to be flexible and innovative. At times, it may become necessary to change operating hours, reduce or increase the staff compliment, or innovative the systems within your organization. All of these measures are at the discretion of management. The legislation outlines acceptable timelines, but does not prohibit an organization from utilizing any of these methods to remain viable and preserve the business.

The other rights of employers include the right to direct employees, i.e. to assign tasks, institute targets and provide feedback and discipline where necessary. And in doing so, employers have the right to diligence from their employees. When an organization hires an employee, they are agreeing to be bound by the organization's rules and procedures. Therefore, you have the right to demand and expect their diligence.

As can be seen from the foregoing, while legislation, especially the ERA can be seen to be defending and protecting the rights of employees, it does not remove or negate the rights of the employer in the employment relationship. It ensures that both parties are not treated unfairly or disadvantaged in the relationship. Employers must ensure that they do not waive their rights by ignoring the timelines or documentation requirements as set out in the legislation, but they are still free to, at times, make the tough decisions to ensure the longevity of their businesses. You are also within your rights as an employer to demand loyalty, confidentiality and diligence from your employees, and lead and direct the business as required. It is hoped that this article has clarified some of the myths as it relates to the employment relationship, and employers can feel more comfortable knowing what rights they possess.