



An Open Letter to Employers

BARBADOS EMPLOYERS' CONFEDERATION

There are many pieces of legislation which govern or give guidance to the employment relationship between employers and employees. Most notable and frequently referenced of these are the Shops Act, Holiday with Pay, Employment of Women (Maternity Leave) Act, Employment Sexual Harassment (Prevention) Act, Safety and Health at Work and the Employment Rights Act (ERA). The Employment Rights Act, which governs major elements of the employment relationship; has been in place since 2012 and for some time prior to its enactment was circulated in the form of a Bill. Thus, many employers were aware of the pending legislation long before its proclamation date. While we can debate the need for changes to legislation, as the BEC has made various submissions on the need to amend the Act and enact regulations, the fact remains that the Act must be complied with.

As this letter is being written and as the number of judgments against employers given by the Employment Rights Tribunal validate, many employers either do not have a good grasp and understanding of this piece of legislation, choose to disregard or remain willfully unaware to the provisions of the Act.

In recent days, the closure of three high-end restaurants by Chaps Restaurants Limited, has brought this glaringly to the forefront, especially when comments suggest that the ERA only makes provisions for payment in lieu of notice in a redundancy situation. Section 31 of the Act speaks specifically to redundancy and the parameters in which employers are expected to operate.

The Act particularly speaks to the consultation period of six weeks to be held with the employee(s) and the representative(s) of the employee(s), if there will be a reduction of 10% or more of the employee count. These consultations should identify the number of employees, the method of selecting which employees are to be made redundant, the period over which the dismissals are to take place and any reasonable measures that the employer can take to find alternative employment for the proposed affected persons.

There is also a provision in Section 31 (6)(C) where in special circumstances e.g. increasing financial difficulties leading to an unsustainable business; an employer can make appeal to the Chief Labour Officer advising of said circumstances and take any other reasonable actions to comply with the legislation.

Of note there have been many sessions geared towards informing employers of the provision of this Act, by the Barbados Employers' Confederation and other informed sources such as the Labour Department. As recent as November of 2019, the BEC held a session with the members of the Employment Rights Tribunal, titled 'Lessons from the Tribunal'. Although this session was well subscribed as we had to change the venue twice to accommodate numbers, we noted that the attendees were persons or Companies who normally engage the BEC for advice, and there was minimal participation from the small business sector.

There is a wealth of information regarding employment practices and labour legislation. Therefore, we urge employers of all sizes to seek guidance where there is uncertainty in employment matters.

In recent judgement of Theresa Foster and Sinclair T/A Blettens Restaurant, Christopher Blackman Esq, GCM; Q.C. – Chairman of the Employment Rights Tribunal noted, "Employers, particularly small employers, are urged to seek guidance from employers' representatives before taking decisions in anger. There is an old saying that has relevance, notwithstanding its age: Haste makes waste."

The BEC remains committed to continuously sensitizing Barbadian employers to adhere to the legislation governing labour, make sound business decisions and uphold good employment practices. Aligning your organizational practices with the governing Acts is paramount and any size organization seeking additional information may contact us.

Barbados Employers' Confederation

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