



## Process for triggering severance explained

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At the Barbados Employers' Confederation (BEC) we have been receiving queries regarding the Severance Payment legislation especially as it relates to the threshold where employees can trigger their severance. Therefore, I am seeking to provide some clarity and to do this, we must refer to both the original Severance Payment Act as well as the amendment made this year commonly referred to as the "Sunset Legislation".

Under the original Severance Payment Act an employee could give notice to their employer in writing to claim their severance after thirteen (13) or more consecutive weeks or sixteen (16) or more with a twenty-six (26)- week period. While under the Sunset Legislation the aforementioned periods were extended to twenty-two (22) consecutive weeks or eighteen (18) or more weeks within a twenty-four (24)-week period.

Therefore, it must be noted that the Sunset Legislation says twenty-two (22) consecutive weeks ONLY and NOT twenty-two (22) or more weeks. Which means employees who are eligible for this extension under the Act will be expected to give their employers notice of their intention to claim severance within the stipulated four (4) week period in accordance with Section 6, Subsection (1) of the Severance Payment Act.

Meanwhile, with the other legislated timeframes (13, 16 under the original Act or 18 weeks in the Sunset legislation) an employee can make a claim for their severance beyond the four (4) week period given the timeframe is flexible because of the provision of "or more". For Example – eighteen (18) or more weeks within a twenty-four (24) week period means that an employee can make a claim at week twenty-three (23) where the layoff period was broken because this is considered more than 18 within the twenty-four (24)-week period.

Additionally, we have been receiving queries on the recent information circulating in the public domain, stating an employee no longer has twelve (12) months to claim their severance based on the Sunset legislation.

Notably, no amendments were made to Section 37 of the Severance Payment Act which clearly stipulates that an employee shall not be entitled to a severance payment unless, before the end of the period of twelve (12) months beginning with the relevant date:

1. The payment has been agreed and paid; or
2. The employee has made a claim for the payment by notice in writing given to the employer; or
3. A question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to a tribunal.

For the purpose of Section 6 and 37 of the Severance Payment Act, "the relevant date" in relation to a notice of intention to claim a severance payment means the date on which the stipulated timeframes of thirteen (13) or more consecutive weeks, twenty-two (22) consecutive weeks, sixteen (16) within a twenty-six (26) week period or eighteen (18) within a twenty-four (24) week period came to an end. Therefore, an employee still has the rights to make a claim to the Tribunal within twelve (12) months to determine eligibility for severance.

Additionally, if an employee intends to trigger their severance, the employee must terminate his/her contract of employment by giving one (1) week notice. Where the contract stipulates a longer notice period, one (1) week is accepted as the minimum required notice period. However, if an employer can provide work within four (4) weeks of receiving the notice of severance claim, the employer must advise the employee in writing of this, within seven (7) days.

Employers are reminded that once an employee resumes duties, he/she must be employed for at least twenty-six consecutive (26) weeks based on the original Severance Payment Act or twenty-four consecutive weeks (24) based on the Sunset Legislation and cannot be placed on lay-off or short-time during that period. If not, then the employee will once again be entitled to claim their severance entitlement.

Therefore, where an employee triggers severance and it is accepted, the severance payment should be paid within two (2) months of the date of termination. Remember, employers are eligible to claim a rebate of 25% of the severance payment from the Severance Fund. If an employer is unable to pay severance or only make part payment of severance, the facility of the severance fund remains available to employers.

In the event an employer is contemplating the route of the severance fund, the employer would be expected to give the appropriate documentation detailing:

- The reason(s) why the company is unable to pay severance
- The employee's employment details such as
  - o date of employment,
  - o termination date,
  - o National Insurance and National Registration number
  - o The Company's consent to be liable for the severance payment

Once an employer has determined that they need to reduce the number of employees, they should make the employees redundant following the provisions of the Employment Rights Act. Knowledge is always power, therefore, both employers and employees should familiarise themselves with the relevant legislation before making any decisions. At the BEC, we are always here to answer any questions employers may have and offer advice on any labour relations topics.

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