



Worker, Employer rights and responsibility

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The employment relationship is one which is complex and has the proclivity to vary significantly because of differing personalities, operational requirements, family situations and other impactful factors. It is through the employment relationship, however defined, that reciprocal rights and obligations are created between the employee and the employer. In Barbados, the Employment Rights Act (ERA) has provided a base from which employee and management rights can be clearly referenced. This article will examine the rights and responsibilities of both parties of the employment relationship. There are several sources of rights and duties in the employment relationship under two categories such as formal and voluntary. These areas capture the following:

Formal

- International Law
- National Law
- Common Law / Case Law
- Employment Contract

Voluntary

- Company Rules & Regulations
- Collective Agreements
- Custom & Practice

Employment Rights are entitlements derived from law or formal agreements (contract of employment, collective agreement) e.g. right to a safe working environment and there are basic fundamental rights to which each party is entitled. In fact, employment rights preceded the ERA. They are embodied in Common Law principles; one such example is the Duty of Care which forms the basis of Health and Safety legislation. ILO Conventions are also a source of Employment Rights and the eight (8) core fundamental Principles of Rights at Work offer the following provisions and protections:

- Elimination of forced and compulsory labour
- Abolition of child labour
- Elimination of discrimination in respect of employment and occupation
- Freedom of association and collective bargaining

Additionally, the law makes a distinction between a contract of service and a contract for service. Basically, a contract of service applies to an employee-employer relationship, while a contract for service applies in the case of an independent sub-contractor. The ERA outlines a contract of employment as whether expressed or implied.

The terms of a contract are the rights and obligations which bind the employer and employee to the agreement. These terms may be:

- **Expressed** – those which are explicitly agreed whether orally or in writing. These can be established by referencing the written statement of particulars (to which employees are entitled under Section 13 and 14 of the Employment Rights Act), any confirmation of employment letter issued, individual contracts, employee manuals, collective agreements and other issued policy documents or memorandum.
- **Implied** – those which were not spelt out, but each party understood its involvement in the contract. For example: those necessary to make the contract workable and adherence to the organizations' custom and practice such as loyalty and honesty.
- **Statutory** – those imposed or implied by an Act of Parliament or statutory instrument.

An existing individual contract can only be varied through agreement with both parties. However, if you are in a unionized environment, the collective agreement will contain workplace policies which can only be amended through the collective bargaining process. Companies establish rules and regulations for effective operation, these are most often found in a company manual or handbook. Companies will normally provide these to the employee when he/she is hired. Once presented and signed for, it is deemed to be accepted as part of the employment relationship. It explains company procedures and often the consequences of failure to follow them. Company handbooks also make reference, if applicable, to collective agreements, another important source of rights/duties.

In Barbados, collective agreements are recognised as important sources of information related to the rights, responsibilities, interests and expectations of employees and employers. However, collective agreements are not legally binding documents. Their contents often relate to sensitive social and economic issues not yet adequately covered by law. The collective agreement also contains the expressed management rights of the employer and their representatives.

It is important to note that, management reserves the rights to alter, amend, modify, withdraw, terminate or revoke any terms in this Collective Agreement by giving the Union the appropriate notice, consultation and reaching an agreement. You may ask the question what are rights, interest, responsibilities, and expectations? Rights are entitlements derived from law or formal agreements (contract of employment, collective agreement) e.g: right to a safe working environment. However, the term "interests" is relating to a new term or condition which is not currently covered in the substantive agreement in existence. This is a claim for something new or different.

Whereas with responsibilities, these are expressed or implied duties which must be performed to preserve the relationship e.g: to report unsafe activity. Additionally, the term expectations relate to norms anticipated but not guaranteed e.g: Full pay while on certified sick leave. Both employers and employees should understand these terms as they are implied in the contract of employment but interest and expectations will vary depending on the nature of the contract of employment. Basic rights for employees are to join a Union, to equal pay, to safe & healthy work conditions, to work free of any harassment, to natural justice and to choose their work.

The employer has the right to join a Union, to expect loyalty from employees, to alter operations to preserve the business, to direct their employees and to expect diligence from their employees. The basic responsibilities of the employee are to exercise skill, exercise reasonable care, obey lawful orders, duty of fidelity, confidentiality, and duty of Account.

On the other hand, the employer's responsibility is a duty of readiness and willingness to work, to provide a safe system of work and a healthy environment, to employ competent employees, to compensate employees, to give lawful orders and to have a duty of mutual respect.

There are other statutory duties to be upheld by the employer such as:

- Remuneration
- Holiday with pay
- NIS/PAYE deductions
- Employment particulars
- Pay statement

In retrospect, both employers & employees have rights and responsibilities and both employers & employees have interests and expectations. The rules provide a framework for the smooth operation of business/work which ultimately is how wealth is created in a society.

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. It is extremely critical for both the employer and employee to understand their rights, roles and responsibilities. If you are not knowledgeable about the Barbados labour laws, join us on September 9th as we discuss Labour Laws vs. Custom and Practice visit our website to register at www.barbadosemployers.com. Select calendar for events. Do not let unawareness stop you from effectively managing your staff complement. Know your rights.

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