

Guidance for Employers

Employment of Women (Maternity Leave) Act, Section 3.1

Based on comments recently made and reported in the media regarding the application of the Employment of Women (Maternity Leave) Act, we have received some calls for clarity on Section 3.1 (3)(b) and therefore seek to provide the following guidance to our members and employers generally.

The Employment of Women (Maternity Leave) Act section 3.1 (3)(b) states '*An employee is not entitled to maternity leave by the same employer on more than three occasions.*' This means that if an employee leaves her current employer and joins another company, she becomes entitled to further maternity leave up to three (3) occasions.

This section has been interpreted to suggest that an employer can terminate should an employee become pregnant for more than three (3) occasions with that same employer. However, we must highlight that Section 6 of the same Act also states that no employer is entitled to terminate or give notice of termination for the sole reason of pregnancy, during pregnancy and maternity leave. The exceptions being those of fixed term employment, gross misconduct/negligence, or redundancy.

Additionally, in many instances, Barbadian employment legislation cannot be looked at individually and is the main reason, we at the BEC have repeatedly advocated for a comprehensive employment code. We can take further guidance from The Employment Rights Act 2012, and Employment (Prevention of Discrimination) Act 2020.

Both pieces of legislation seek to deter termination and discrimination on the basis of being pregnant. Section 30 (1) (c) of the ERA advises that dismissal based on pregnancy is unfair dismissal, while the Employment (Prevention of Discrimination) Act, 2020 Section 3(2)(l)(m) and (n) specifically deters discrimination because of pregnancy, maternity, and family responsibility.

As such any employer who dismisses on the sole ground of pregnancy or maternity leave can find themselves liable for breaches under these Acts and which may entitle the dismissed employee to seek available remedies which include compensation.



Custom and Practice

1. It is customary for many employers to grant employees maternity leave on more than 3 occasions.
2. Grant the employee personal leave.

*Compensation for maternity leave can be acquired through the NIS scheme and employees are expected to claim such benefit unless otherwise directed by company policy.

3. The employee is medically certified as unable to work.

Please remember that an employee guilty of gross misconduct, or who has a fixed term contract which expires or is the subject of redundancy, can be terminated following the correct procedure, regardless of if pregnant.