

LESSON 12

LO4.3 Consider the legal and regulatory framework on employment cessation arrangements.

Objectives

Students should be able to:

1. Recognize correct procedures in the termination of employment
2. Understand the possible consequences of termination of employment under improper circumstances.

Local regulatory framework

DEFINITIONS

A Seasonal Worker is employed by the same employer in seasonal work beginning at the same time each year for two (2) or more consecutive years

Normal Wages are the wages/ commission or bonus regularly paid to an employee and excludes overtime as well as any premium or special allowance.

The Normal Work Week is the number of days in a week during which an employee is normally required to work for his/ her employer.

THE PERIOD OF NOTICE

The minimum period of notice needed for an employer to end the contract of employment of an employee who has been continuously employed

for four (4) weeks or more

- (a) two (2) weeks, if the employee has been working for less than five (5) years;
- (b) four (4) weeks, if the employee has been working for five (5) but less than ten (10) years;
- (c) six (6) weeks, if the employee has been working for ten (10) but less than fifteen (15) years;
- (d) eight (8) weeks, if the employee has been working for fifteen (15) but less than twenty (20) years;
- (e) twelve (12) weeks, if the employee has been working for twenty (20) years or more.

- One employee or more who has been continuously
- employed for four (4) weeks or more is required to give
- his employer at least two (2) weeks notice to end the
- contract of employment.
- The notice to end employment should be in writing unless
- given in the presence of a 'credible witness'

PAYMENT IN LIEU OF NOTICE

Either party to an employment contract can:

- (a) give up his/ her right to notice at the time of termination or
- (b) accept a payment in lieu of notice; or
- (c) accept notice of longer duration than specified by law.

- **DISSMAL WITHOUT NOTICE**

The employment contract may be ended without notice by either party during the first (90) days of a period of probation.

The contract of employment may be ended without notice by either party, where the conduct of one party justifies the termination.

If an employer intends to end a contract based on the behaviour of an employee, he must do so within four (4) weeks of becoming aware of the employee's behaviour.

After that period the employer cannot terminate by reason of that behaviour without notice.

- Employment contracts which are for a fixed
- duration may be ended without notice when the
- contract period expires
- N.B. If a fixed- term contract of
- employment continues for a further four (4)
- weeks after the expiry date, then either party is
- entitled to periods of notice as if the contract
- was for an indefinite period.

- **REDUNDANCY**

1. An employee who has been continuously employed for at least 104 weeks is considered to be dismissed by reason of redundancy if:-

- (a) the employer ceases to carry out work that he/ she was hired to do;
- (b) the kind of work that he/ she was hired to do has been reduced;
- (c) the employer's business has been shut down;
- (d) he/ she has suffered personal injury as a result of an accident or developed a disease because of the nature of the job.

2. A seasonal worker who has worked with an employer for not less than 90 days in each season for two or more consecutive seasons may be dismissed by redundancy:

- (a) for the reason stated at (1);
- (b) if the employer fails to provide him with employment in any season

EMPLOYEE'S RIGHTS

If an employee is dismissed by redundancy, he/ she is entitled to a written statement indicating how the redundancy payment has been calculated.

An employee, who has been laid off without pay for more than 120 days, may give notice in writing to his/ her employer that he/ she chooses to be regarded as dismissed by reason of redundancy. The effective date should be specified and should not be less than fourteen (14) days or more than sixty (60) days after that date of the notice.

WHO IS LIABLE TO MAKE REDUNDANCY PAYMENTS

Redundancy payments are to be made to an employee by his/ her employer or any person to whom ownership of the business is transferred within twelve (12) months of the date of dismissal

AN EMPLOYEE IS NOT ENTITLED TO REDUNDANCY:

if he/ she ends the contract. however, if the employee is forced to end the contract without notice by reason of the employer's conduct then he/ she is entitled to redundancy payment; or

where termination is by reason of retirement in circumstances where he/ she is entitled to

pension, superannuation or other retirement benefits than benefits under the National Insurance Act: or

where his/ her employer terminates his contract of employment without notice because of the employee's conduct; or if he/ she unreasonably refuses a contract in writing, offering renewal or re-engagement in the same place, position and under the same term and conditions of employment, effective within two (2) weeks of the termination date; or

if he/ she unreasonably refuses a contract in writing offering suitable employment not more than 10 miles from the previous place of employment within two (2) weeks of the terminal date.

if an employee who has a contract of employment for a fixed term of two (2) or more years agrees in writing before the contract expires, to exclude any right to redundancy payment.

AN EMPLOYEE IS NOT ENTITLED TO REDUNDANCY PAYMENT UNLESS:

Within six months after his/her dismissal:

- (a) the payment is agreed to by his/her employer; or
- (b) he gives written notice of his redundancy payment claims to his employer ;or
- (c) proceedings have begun to determine his/her right to redundancy payment or the amount of payment.

CALCULATION OF REDUNDANCY PAYMENT

An employee (except a seasonal employee) is entitled to two (2) weeks pay for each of the first ten (10) years of employment and three (3) weeks pay for each year over ten (10) years. Remember that this is for continuous years of service and “two (2) weeks pay” refers to twice the normal pay earned in the last normal week of employment

or $\frac{2}{13}$ of the total normal wages earned by him in respect of the last 13 normal working weeks, whichever is greater.

Three (3) weeks pay refers to three (3) times the normal pay earned in the last normal week of employment or $3/13$ of the total normal wages earned by him in respect of the last 13 normal working weeks.

Seasonal employees – for the first ten (10) consecutive years – are entitled to two (2) weeks pay multiplied by each year of employment. Here “2 weeks pay” refers to $2/104$ of the total normal wages earned by the employee during the last two (2) consecutive years of seasonal employment. After ten (10) consecutive years of service the employee is entitled to three (3) weeks pay for each year worked over ten (10) years.

CALCULATION OF NOTICE PAY

The remuneration for each week of notice for:

- (a) a worker who was employed at time rate shall be the normal wages earned by him/her in the last week of his/her employment
- (b) an employee who was engaged at piece or task rate or on a commission basis shall be $\frac{1}{4}$ of the total normal wages earned by him/ her last four (4) weeks of employment.

Source: The Employment (Termination and Redundancy Payments) Act, 1974 The Employment (Termination and Redundancy Payments), Regulation (Under section 18)

References

- Employment Termination. 2014. [ONLINE]
Available
at:<http://www.mlss.gov.jm/download/EmploymentTermination.pdf>. [Accessed 31 October 2014].