



By Dale Palmer

Termination of Employment

The **Employment (Termination and Redundancy Payments) Act** ("the Act"), outlines the several rights and obligations of both the employee and employer in Jamaica, and provides guidelines as to the conduct of either party in instances of dismissal.

Where notice is required to be given under the Act, the period of notice is determined by the period of employment. For an individual who is employed for a period of more than four weeks, the minimum period of notice is not less than two weeks' notice if continuously employed for less than 5 years; not less than four weeks if continuously employed between 5 – 10 years; not less than six weeks if continuously employed between 10 – 15 years; not less than eight weeks if continuously employed between 15 – 20 years; and not less than twelve weeks if continuously employed for over 20 years.

Notice ought to be in writing, but can be oral if done in the presence of a credible witness. The minimum time that an employee ought to give to an employer is two weeks, but both parties can agree in writing to increase the

period of notice to be given by either employee or employer. The employee can also agree to accept pay in lieu of the notice to which they are entitled. It does not appear that an employee who leaves without giving his employer any notice is entitled to any notice pay or payment in lieu of notice, as that employee would have breached the requirements of the Act.

In instances where there is a probationary period given to an employee, an employer may terminate the employment contract without notice during the probation period. Where this probation period is longer than 90 days the employer may only terminate during the first 90 days but beyond that the requirement for notice applies.

No notice is required where the employee is dismissed for reasons of conduct, but termination for conduct must take place within 4 weeks of the employer becoming aware of the conduct, after which the requisite contractual or statutory notice is required. Therefore even if the employee has been engaged in conduct for years that would merit dismissal, but the employer becomes aware of it today, the employer has 4 weeks to terminate employment if he is to terminate without notice.

Where a party was employed under a contract for fixed period and their employment continues after that fixed term without a renewal of the contract, the employee continues as someone employed for an indefinite period, and the statutory obligations as it relates to notice applies.

One may be dismissed for in the course of a redundancy exercise. To qualify for redundancy that employee must have been continuously employed for at least 104 weeks at the time of the redundancy. Important to determining whether one is subject to a redundancy exercise is the reason for the dismissal. For example, if employer has ceased or intends to cease the business for which you were employed, either entirely or in circumstances of relocation, you may qualify for redundancy. Redundancy may also occur where the business continues but the

purpose for which you are employed ceases or. Redundancy may also occur on medical grounds where an employee is injured or contracts a disease during the course of their duties on the job.

Though it is generally the position that the considerations of the Act apply to persons continuously employed for the requisite periods as stated, persons who have continuous seasonal employment also may qualify under the Act. Therefore persons who are employed seasonally for a continuous period in the tourist industry or in the reaping of seasonal crops, may also qualify. If the employer indicates that that person may not be needed for a particular season, the employee presents himself for employment at the beginning of the season or in accordance with the employer's instructions or established procedure, but is not offered employment, he may be entitled to a redundancy payment.

Dismissal under the Act usually occurs where the employment contract is terminated either with or without notice by the employer but includes instances where there is a fixed term contract and the contract expires without renewal and case where the employee is forced to terminate the contract due to the conduct of the employer. The mere fact of dismissal in these circumstances do not amount by themselves to an entitlement to redundancy, as the other criteria as to the reasons for dismissal and minimum period of employment must be met. Where a person is laid-off without pay for a period in excess of 120 days this may be treated as dismissal under the Act that may qualify that person for an entitlement for redundancy. If the reason that the employee has been asked to stop working relates to disciplinary reasons, such as suspension, then this provision does not apply.

An employee does not qualify for redundancy in the following reason:

1. Where the employee terminates the employment contract for a reason other than due to the conduct of his employer;
2. Where the employee retires and has a pension or other retirement benefits to receive;

3. Where the employer has a right under the contract to terminate the contract without notice due to the employee's conduct;
4. An unreasonable refusal of re-engagement or a renewal of the contract by the employee. The Act outlines several criteria that ought to be considered in determining what a reasonable offer is, to include the general terms of the contract in relation to the old contract and whether the re-engagement requires relocation outside of 10 miles from the original place of employment.

The employer must give an employee a statement of his redundancy entitlements and a failure to do so is a criminal offence under the Act. Though the fine for such an offence is a maximum of \$250,000.00 a party suing for his entitlement under the Act can sue in the Resident Magistrate Court for amounts up to \$1 million.

One has up to 6 months to have the amount of redundancy agreed with his employer or to give written notice to his employer of his claim to redundancy or commence proceedings to have the extent of that entitlement determined. If the employee dies within 6 months of dismissal without any of the stated options being taken, the matter can be pursued by his estate for a period of up to one year after the period of dismissal.

Due to the sometimes technical nature of the Act and the multiplicity of issues to which it may be applied, it is always advisable to seek legal advice before seeking to take action under the Act.

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