



Emile Leiba

### **AM I ENTITLED TO A REDUNDANCY PAYMENT?**

Many persons claim a redundancy payment when they are not entitled to do so and believe that as soon as they are dismissed from their job that they should receive a redundancy payment.

This article seeks to give a brief overview of the main instances in which an employee is entitled to redundancy payment to assist employers in determining when they are obliged to make a redundancy payment and employees or former employees in determining whether they are entitled to a redundancy payment and is not intended to be exhaustive. It should be noted that it is a position and not a person who is made redundant.

Under Section 5 (1) of **The Employment (Termination and Redundancy Payments) Act**, (the Act) where an employee who has been continuously employed for the period of one hundred and four weeks (two years) ending on the relevant date (the date of dismissal) is dismissed by his employer by reason of redundancy, the employer and any other person to whom the ownership of his business is transferred during the period of twelve months after such dismissal shall, subject to the provisions of Section 5 of the Act, be liable to pay to the employee a sum referred to as a "redundancy payment."

An employee who is dismissed is taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or partly to -

*(a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed; or*

*(b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish; or*

*(c) the fact that he has suffered personal injury which was caused by an accident arising out of and in the course of his employment, or has developed any disease, prescribed under this Act, being a disease due to the nature of his employment.*

The meaning of Section 5 (1) (a) is fairly straightforward. If the business is closing or is going into a different area where there is unlikely to be any need to retain the employees of the company, those positions would be redundant.

Difficulties arise in relation to Section 5 (1) (b). Under Section 5 (1) (b), a redundancy generally occurs when an employer terminates an employee on the basis that the employee's position is no longer necessary to the organisation and does not hire another person to fill the vacant position.

To illustrate this point I will use the example of a supermarket.

If there are five (5) cashiers employed to the owners/operators of supermarket and a decision is taken by the owners/operators that the supermarket only needs four (4) cashiers and terminates the employment of one of the cashiers without replacing her that cashier's position has been made redundant.

The prescribed diseases in respect of Section 5 (1) (c) are very limited and deal primarily with conditions caused by exposure to hazardous substances, which are likely to arise in certain factory environments. What are more common are instances where an employee is injured on the job. This normally arises where an employee's position requires him/her to engage in manual labour of some kind and during the course of that labour the employee is injured. Please note that in order for you to claim an entitlement to a redundancy payment under this heading it must arise in the course of your employment. This means that if you are employed on a construction site as a brick layer and you decide to climb on top of the roof and lay shingles, without being instructed to do so by your supervisor and you are injured with the result that you can no longer work as a brick layer, you would not be entitled to a redundancy payment.

If you think that you have been made redundant based on any of the above reasons you should also be aware that, under Section 10 of the Act you have to give your former employer notice in writing within 6 months of the termination of your employment, of a claim for redundancy payment. If you fail to do so, an employer will have a statutory defence to any claim which an employee may bring.

### **General exclusion from right to redundancy payment**

An employee is not entitled to a redundancy payment where he resigns, he is terminated for cause without notice (e.g. for fraud, theft, abandonment of job etc), if he is on a fixed term contract of under two years, or, if over two years the employee has agreed that he is not entitled to redundancy.

An employee may also not be entitled to a redundancy payment where an offer is made in writing, which fulfills certain conditions, re-employing him on the same basis as he was previously employed or better. If the employee unreasonably refuses the offer, this will exclude the employee from a right to redundancy payment.

### **Conclusion**

In determining whether an employee is entitled to a redundancy payment consideration must be given to all the facts of the case. Both the employer and the employee should carefully examine the criteria set out in Section 5 (1) (a) to (c) of the Act to determine whether the employee is entitled to a redundancy payment.

Emile Leiba

*Emile Leiba is an Associate at Myers, Fletcher & Gordon and is a member of the firm's Litigation Department and Labour & Maritime Practice Groups; he may be contacted at [emile.leiba@mfg.com.jm](mailto:emile.leiba@mfg.com.jm)*