

AN ACT TO AMEND THE EMPLOYMENT (TERMINATION AND REDUNDANCY PAYMENTS) ACT.



On July 4th 2008 an Act to amend the **Employment (Termination and Redundancy Payments) Act** (the Act) was passed. The Act amends the principal Act and the Regulations to that Act in the following manner:

1. Increase in Monetary Penalties

- It increases the penalty for a failure to provide written particulars of the manner in which a Redundancy Payment is calculated, to an Employee from \$100 to \$250,000.
- It increases the penalty for failure to keep proper records for each employee from \$300 to \$250,000.

2. Increase the jurisdiction of the Resident Magistrate's Court

It increases the jurisdiction of the Resident's Magistrate's Court for claims in respect of redundancy payments from \$7,000 to \$1,000,000.

The increase in the jurisdiction of the Resident Magistrates' Court may result in a greater number of claims being brought against employers by employees for breaches of the Employment Act. Claims which, due to the fact that their monetary limits exceeded the jurisdiction of the Resident Magistrate's Court, and would normally fall under the jurisdiction of the Supreme Court, may now be brought in the Resident Magistrates' Court.

Due to its simplified procedure, the Resident Magistrate's Court is much more attractive to unrepresented litigants, as versus the Supreme Court claim which

is difficult for an unrepresented claimant to pursue due to the number of procedural requirements applicable to Supreme Court cases.

3. Enlarge the Powers of the Minister of Labour & Social Security

It allows the Minister to increase penalties and the jurisdiction of the Resident Magistrates' Court without an Act of Parliament. This presumably will allow the Minister to increase penalties to an amount which he considers to be a sufficient incentive to compliance from year to year.

5. The Duty to Notify the Ministry of Labour & Social Security

One of the most important amendments is the addition of a new Regulation 11 to the Employment (Termination and Redundancy Payments) Act Regulations requiring an employer who dismisses or proposes to dismiss an employee by reason of redundancy to provide written notification to the Minister setting out-

- the effective date of dismissal;
- the name and address of the employee;
- the amount payable to the employee;
- the name, description and type of the employee's post; and
- A statement as to whether the employee is a member of a union and if so the name of the union with which the employee is affiliated.

This written notice must be submitted to the Minister within twenty-one days of the date the decision was made. The penalty for failing to comply with this section is a fine of \$250,000 or 3 months in prison.

Conclusion

The addition of this regulation would seem to suggest that the Ministry intends to supervise every redundancy in Jamaica, to presumably ensure that each employee who is made redundant receives the total sum payable to them. It is worth noting however, that the amendments to the legislation do not require the Ministry of Labour to actively approve every redundancy, meaning that, in essence, silence would amount to consent. If written approval had been required, it is possible that the Ministry of Labour and Social Security would have become a 'bottleneck' when redundancy exercises are being carried out. Nevertheless, the requirement to notify the Ministry combined with the increase in the applicable fines to keep proper records now gives the Ministry quite a “big stick” to ensure that employees receive the proper sums payable to them.

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