

# Dismissal in the Employment Rights Act

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This week as we take a look at the Employment Rights Act (ERA), our focus will be on dismissal.

Dismissal and Termination are used interchangeably in the Act, and refer to any situation where the employer ends the employment relationship. In the past, and under common law, a wrongful dismissal claim could only be made if the employer breached the terms of the contract of employment (e.g failure to give required notice). However, the recently proclaimed ERA has introduced the concept of Unfair Dismissal into Barbadian law.

Unfair dismissal is a dismissal which contravenes the provisions of the statute which created it, and **Section 30 of** the ERA has listed reasons that would be considered as unfair, such as:

- The dismissal took place as a direct result of the employee being an officer, shop steward or a safety and health representative or a delegate or member of a trade union.
- That reason relates to: the race, colour, gender, age, marital status, religion, political opinion or affiliation, national extraction, social origin or indigenous origin of the employee.
- The dismissal occurred while the employee was on certified sick leave for less than 12 consecutive months or less than 12 months in any one period of 24 months.

Further, the onus is on the employer to prove that there was good and sufficient reason to dismiss an employee and the employer must act fairly in terminating the employee. This means that the employer must evaluate the reason for the dismissal, and **Section 29(2)** states that an employer shall have the right to dismiss an employee for a reason which relates to:

- the capability of the employee to perform the work he/she was employed to do,
- the conduct of the employee,
- if the employee is made redundant,

- if the employee could not continue to work without either party contravening the law.

Beyond the reason for the dismissal, fairness in the dismissal process will also be determined by examining if the employer acted reasonably and complied with the Disciplinary Rules stated in the **Fourth Schedule** of the Act. Therefore, to guarantee compliance, employers must also ensure that proper procedures are followed and adequate documentation is maintained. The principles of natural justice (freedom from bias and the right to a fair hearing) should be adhered to at all times.

It must be noted that to claim for unfair dismissal under the act, the following must apply:

- The employee has in fact been dismissed
- Complaints are directed through the Chief Labour Officer
- No complaint for unfair dismissal can be made unless the person was employed for at least 12 months

If a dismissal is unfair, there is no legal justification for it and therefore the legislation provides not only monetary compensation as a potential remedy, but the Tribunal has the power to order reinstatement or re-engagement as remedies to an employee. The decision(s) of the tribunal are final and not privy to appeal, except on points of law.

The ERA also includes a provision on redundancy. Although such a dismissal does not contravene an employees' right, the act does stipulate that an employer must give redundant employees first option to return within six (6) months if the company is rehiring in the same posts. Further provisions mandate that consultations be held six (6) weeks prior to dismissal, with employees or their representatives, where the workforce is expected to be reduced by ten percent (10%) or any other significant number.

The ERA also requires an additional document to be prepared at termination. Regardless of the reason for termination, employers must issue an employee with a Certificate of Employment Record within fourteen (14) days of termination. Employers and employees alike should

familiarize themselves with these provisions and be guided accordingly if a situation or circumstance arises.

Over the past four (4) weeks, through this column, we at the BEC were able to address some of the salient points of the ERA and how it affects the employment relationship and companies should make good use of the six (6) month window, which ends October 14, 2013, to become compliant with the **Sections 13 to 16** of the Act which relates to Employment Particulars and Disciplinary Procedures. The BEC urges organizations to familiarize themselves with this piece of legislation and we will continue to work with employers in this regard. We encourage you to visit our website [www.barbadosemployers.com](http://www.barbadosemployers.com) for a copy of the legislation as well as other important information on employment related matters.