

EMPLOYMENT RIGHTS ACT, 2012 - 9

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BARBADOS

I assent
ELLIOTT F. BELGRAVE
Acting Governor-General
18th May, 2012.

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An Act to make new provision for the rights of employed persons and for related matters.

(By Proclamation.) Commence-
ment.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

1. This Act may be cited as the *Employment Rights Act, 2012*. Short title.

Interpreta-
tion.

2. (1) In this Act,

“business” includes any trade or profession and any activity carried on by a body of persons, whether corporate or unincorporated;

“Chief Labour Officer” means the person so appointed in the Public Service, and any person authorized in writing by the Chief Labour Officer to act on his behalf;

Cap. 308.

“company” means a body corporate that is incorporated or continued under the *Companies Act*;

“complaint” means a complaint made to the Tribunal under this Act by way of the Chief Labour Officer;

“continuous employment” has the meaning given by section 4;

“contract of employment” has the meaning given by section 3;

“disability”, in relation to an individual, means a physical or mental impairment of the individual that has a substantial and long-term adverse effect on his ability to carry on normal day-to-day activities;

“effective date of termination” has the meaning given by section 28;

“employee” means an individual who has entered into or works under, or, where the employment has ended, worked under, a contract of employment;

“employer”, in relation to an employee, means the person by whom the employee is, or, in a case where the employment has ended, was, employed;

“employment” means employment under a contract of employment;

“family member”, in relation to an individual, means the spouse, father, mother, uncle, aunt, grandfather, grandmother, great-uncle, great-aunt, stepfather, stepmother, son, daughter, nephew, niece, grandson, granddaughter, great-nephew, great-niece, stepson, stepdaughter, brother, sister, brother of the half-blood or sister of the half-blood of the individual;

“job”, in relation to an employee, means the nature of the work which he is employed to do in accordance with his contract of employment and the capacity and place in which he is so employed;

“lay off” and “lay-off” are to be construed in accordance with section 38(2);

“lock-out” means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms or conditions of or affecting employment;

“medical practitioner” has the meaning given by section 2 of the *Medical Profession Act*; Act 2011-1.

“normal working hours” has the meaning given by section 13(3);

“position”, in relation to an employee, means the following matters taken as a whole:

- (a) his status as an employee;
- (b) the nature of his work; and
- (c) his terms and conditions of employment;

“redundancy” is to be construed in accordance with section 31(2) and (3);

“short-time” is to be construed in accordance with section 38(3);

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“spouse” includes a party to a union other than marriage within the meaning of section 39 of the *Family Law Act*;

Cap. 214.

“strike” means the cessation of work by a body of persons employed, acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons employed, to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other employees in compelling their employer or any person or body of persons employed, to accept or not to accept terms or conditions of or affecting employment;

“successor”, in relation to the employer of an employee, means, subject to subsection (2), a person who, in consequence of a change occurring, whether by virtue of a sale or other disposition or by operation of law, in the ownership of the business for the purposes of which the employee was employed, has become the owner of the business or a part of the business;

“trade union” has the meaning given by section 2 of the *Trade Unions Act*;

Cap. 361.

“Tribunal” means the Employment Rights Tribunal established by section 6;

“wages” means remuneration or earnings, however designated or calculated, which are capable of being expressed in terms of money, are fixed by mutual agreement or by law and are payable by an employer to an employee by virtue of a contract of employment;

“week” means a period of 7 consecutive days;

“workplace” means any place where persons work or are employed under a contract of employment.

(2) The definition of "successor" in subsection (1) has effect, subject to the necessary modifications, in relation to a case where

- (a) the person by whom a business or part of a business is owned immediately before a change is one of the persons by whom, whether as partners, trustees or otherwise, it is owned immediately after the change; or
- (b) the persons by whom a business or part of a business is owned immediately before a change, whether as partners, trustees or otherwise, include the persons or one or more of the persons by whom it is owned immediately after the change,

as it has effect where the previous owner and the new owner are wholly different persons.

3. (1) For the purposes of this Act "contract of employment" means a contract of service or apprenticeship, whether express or implied and if it is expressed, whether oral or in writing. Contract of employment.

(2) The factors set out in the *First Schedule* shall be considered in determining, in any particular case, whether a contract of employment exists. First Schedule.

4. (1) The period of continuous employment of an employee shall begin from and include the first day on which he begins to work for an employer, including any probationary period, and shall continue up to and include the date of termination of his employment. Continuous employment.

(2) It shall be presumed, unless the contrary is shown, that the employment of an employee with the same employer is continuous, whether or not the employee remains in the same job throughout the employment.

(3) The absence of an employee from work is not to be treated as an interruption of his continuity of employment where the absence from work occurred for any of the following reasons:

- (a) that he was granted and took holiday with pay, or any other leave to which he is entitled under any enactment or under a contract or agreement binding on him and his employer;
- (b) that he was
 - (i) for not more than 2 consecutive working days, on sick leave that was not certified by a medical practitioner provided that he had, on each day, notified the employer of his absence;
 - (ii) on sick leave certified by a medical practitioner provided that he submitted to his employer, the certificate of the medical practitioner; or
 - (iii) on a combination of both types of sick leave described in sub-paragraphs (i) and (ii);
- (c) that he was suspended, with or without pay, in accordance with an enactment or with a contract or agreement binding on him and his employer;
- (d) that after his contract had been terminated, he was reinstated;
- (e) that after his contract had been terminated he was re-engaged under this Act or another enactment or under a contract or agreement binding on him and his employer, unless and to the extent that this Act or that enactment or contract or agreement provides to the contrary;
- (f) that he was laid off by his employer;
- (g) that he was unable to work on account of an occupational disease or a work-related accident;

- (h) that there was a lock-out by his employer;
- (i) that the agreement of his employer was given;
- (j) that he was required to perform a national duty described in section 30(2),

and any period of time that elapsed in the circumstances described in paragraphs (a) to (j) counts for the purpose of calculating his period of continuous employment.

(4) A period of time during which an employee is absent from work because of his participation in a strike is not to be treated as an interruption of his continuity of employment.

(5) Short-term contracts granted to an employee in succession at intervals of less than 42 days count for the purpose of calculating his period of continuous employment.

(6) Where

- (a) a transfer from a previous employer to a successor occurs, whether by virtue of a sale or other disposition or by operation of law, in the ownership of the business for the purposes of which an employee is employed;
- (b) the employment of the employee is not expressly terminated by the previous employer nor is any severance payment paid or payable under the *Severance Payments Act* in connection with the transfer; and Cap. 355A.
- (c) the successor, without interruption, employs the employee for the purposes of the business,

then the employment of the employee with the successor, beginning on the date of the transfer, shall be deemed to be continuous with his employment with the previous employer immediately before that date, and the 2 periods of employment shall be deemed to be a single period of continuous employment with the successor.

PART II

ADMINISTRATION

Functions
of Chief
Labour
Officer.

5. (1) The Chief Labour Officer shall be responsible for the application, administration and enforcement of this Act and for such other matters relating to employment rights as the Minister may direct.

(2) The functions of the Chief Labour Officer are to

- (a) receive and investigate all representations made to him concerning this Act;
- (b) provide information and advice to employers and employees on the application of this Act or any other enactment relating to employment rights;
- (c) make periodic inspections of places of employment to ensure that there is full compliance with all laws relating to employment rights, conditions of employment and the protection of employees in their occupation and where necessary, provide information and advice as to the means of and time frame for, compliance with such laws; and
- (d) prepare such reports on matters of employment rights as may be required under this Act.

(3) The Chief Labour Officer shall have the power to

- (a) enter, examine or inspect at any reasonable time, whether by day or night, with or without previous notice, any premises or place in which he has reasonable cause to believe that any person may be employed, or which he believes to be liable to inspection;
- (b) take with him any other person, including a member of the Police Force, to enable him to carry out or to assist him in carrying out his functions;

- (c) carry out any examination, test or enquiry which he considers necessary in order to satisfy himself that the laws relating to employment are being strictly observed;
- (d) question, alone or in the presence of witnesses, the employer or his employees on any matter concerning the application of any law relating to employment in so far as it affects them;
- (e) require an employer to provide any information requested by him as to the wages, hours of work or other conditions of employment of his employees;
- (f) apply to any other person for information where he considers the information necessary in the discharge of his functions;
- (g) require the production of any books, registers or other documents, the keeping of which is required by any law relating to employment, in order to determine whether they are in conformity with such law;
- (h) copy or take extracts from such books, registers or other documents or, where he considers it necessary or expedient to do so, remove such books, registers or documents;
- (i) take or remove for the purpose of analysis, samples of materials or substances used or handled by employees in the course of their employment; and
- (j) direct the posting of notices required by this Act or any other enactment relating to employment.

(4) The Chief Labour Officer shall notify the employer or his representative of his presence before carrying out an inspection pursuant to subsection (3), unless he considers that such notification would be prejudicial to the performance of his functions.

(5) Where the Chief Labour Officer takes or removes any article pursuant to subsection (3)(h) or (i), he shall give to the employer or his representative, written notification of the article taken or removed and shall provide for the safe custody of the article until such time as the article may be returned or where appropriate, discarded.

(6) Any person who

- (a) wilfully obstructs, hinders or delays the Chief Labour Officer in the exercise of any of his functions under this Act;
- (b) without reasonable cause, fails to comply with any lawful direction given or made by the Chief Labour Officer under this Act;
- (c) without reasonable cause, fails to produce any book, register or other document which he is required to produce under this Act;
- (d) conceals any employee who is required to appear before or be questioned by the Chief Labour Officer, or who otherwise prevents any such employee from so appearing or being questioned;
- (e) wilfully or without reasonable cause, refuses or neglects to supply within the specified time, information required by the Chief Labour Officer under subsection (3);
- (f) wilfully supplies or causes to be supplied to the Chief Labour Officer any false information; or
- (g) refuses to answer any question lawfully put by the Chief Labour Officer for the purposes of this Act,

is guilty of an offence and is liable on summary conviction to a fine of \$20 000 or to imprisonment for 6 months or to both.

(7) Notwithstanding subsection (6), a person who fails or refuses to answer any question or make any statement that may incriminate him is not guilty of an offence under that subsection.

(8) The Chief Labour Officer may institute proceedings in his own name against any person for any contravention of, or offence committed under, this Act, and may appear in and conduct any such proceedings.

(9) No prosecution for any offence under this Act shall be instituted after the expiration of one year from the date of the commission of the offence.

PART III

EMPLOYMENT RIGHTS TRIBUNAL

6. (1) There is established a tribunal called the Employment Rights Tribunal.

Establishment of Employment Rights Tribunal. Second Schedule.

(2) The *Second Schedule* has effect as to the constitution of the Tribunal and otherwise in relation to the Tribunal.

(3) Subject to this Act, the Tribunal shall regulate its own procedure and may make Rules for that purpose.

7. (1) The function of the Tribunal is to enforce the rights conferred upon persons by this Act and for that purpose to exercise the jurisdiction specified in subsection (2).

Function of Tribunal.

(2) The jurisdiction of the Tribunal is to determine complaints made to it under this Act and, subject to section 48, to make awards and other decisions in relation to those complaints in accordance with its powers under this Act.

(3) Subject to subsection (4), sections 11, 12, 13, 14, 15 and 21 of the *Commissions of Inquiry Act* apply in respect of the determination of complaints by the Tribunal, with such modifications and adaptations as may be necessary, as those sections apply in relation to an investigation by a commission under that Act.

Cap. 112.

Cap. 112. (4) Where there is a conflict between this Act and the *Commissions of Inquiry Act*, this Act shall prevail.

Exclusive jurisdiction of Tribunal in certain cases and manner of making complaints.

8. (1) The remedy of a person for infringement of a right conferred on him by this Act, where provision is made for a complaint to the Tribunal, is by way of a complaint to the Tribunal and not otherwise.

(2) A complaint to be made to the Tribunal shall, subject to sections 42 to 44, be made through the Chief Labour Officer.

(3) A complaint shall be taken to have been made to the Tribunal on the date that it is presented to the Chief Labour Officer pursuant to section 42.

Form of summons.

9. A summons to be issued by the Tribunal pursuant to its function in section 7 shall be

Third Schedule.

(a) in the form prescribed in the *Third Schedule*; and

(b) signed by the Chairman of the Tribunal.

Appearance before Tribunal.

10. A person may appear before the Tribunal in person or may be represented by

(a) legal counsel;

(b) a representative of a trade union or an employer's association;
or

(c) any other person whom he desires to represent him.

Tribunal hearings to be open to public except in certain cases.

11. Except in cases where sexual harassment is alleged, which shall be held *in camera*, hearings of the Tribunal shall be open to the public.

12. Every member of the Tribunal and the Secretary of the Tribunal shall have the like protection and privileges in case of any action or suit brought against him for any act done as is by law given to any magistrate in the execution of his office.

Immunity
of Tribunal.

PART IV

EMPLOYMENT PARTICULARS

Right to statement of employment particulars

13. (1) Where a contract of employment is contemplated, the employer shall, prior to or forthwith upon the commencement of the contract, give the employee a written statement of the particulars of the employment.

Statement of
employment
particulars.

- (2) The statement shall contain
- (a) the name of the employee and the name and address of the employer;
 - (b) the date when the employment begins or began, as the case may be;
 - (c) the date on which the period of continuous employment of the employee begins or began, as the case may be, taking into account any employment with a previous employer which counts towards that period;
 - (d) the title of the job which the employee is employed to do;
 - (e) a description of the work for which he is employed;
 - (f) the scale or rate of wages, or the method of calculating wages;
 - (g) the intervals at which wages are paid;
 - (h) the normal working hours;
 - (i) the period of probation, if any;

- (j) the length of notice which the employee is obliged to give and entitled to receive in respect of termination of his contract of employment;
- (k) the period for which the employment is expected to continue where the employment is not intended to be permanent; or the date when the employment is to end, where it is for a fixed term;
- (l) the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer;
- (m) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the persons by whom the collective agreements were made; and
- (n) any terms and conditions relating to any of the following:
 - (i) entitlement to holidays and holiday pay, the particulars given being sufficient to enable the entitlement of the employee, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated;
 - (ii) incapacity for work owing to sickness or injury, including any provision for sick pay or a health scheme;
 - (iii) pensions and pension schemes.

(3) The expression "normal working hours", in relation to an employee, means those hours which are stated in his contract of employment to be his normal working hours.

14. (1) A statement under section 13 shall include a note that specifies

Note on disciplinary procedures.

(a) any disciplinary rules applicable to the employee, or refers the employee to a document specifying those rules including a reference to the Standard Disciplinary Procedures set out in the *Fourth Schedule*; and

Fourth Schedule.

(b) by description or otherwise

(i) a person to whom the employee can apply where the employee is dissatisfied with any disciplinary decision relating to him;

(ii) a person to whom the employee can apply for the purpose of seeking redress of any grievance relating to his employment.

(2) The note in subsection (1) shall

(a) indicate the manner in which the application should be made; and

(b) where there are any further steps to be taken as a consequence of the application, explain the steps or refer to a document explaining the steps.

(3) An employer shall ensure that the documents referred to in subsection (1) are reasonably accessible to his employee.

15. (1) Where, after a statement under section 13 is given, there is a change in any of the matters, particulars of which are required by sections 13 and 14 to be included or referred to in a statement under section 13, the employer shall give to the employee a written statement containing particulars of the change.

Statement of changes.

(2) A statement under subsection (1) shall be given at the earliest opportunity and, in any event, not later than 30 days after the change.

Power to require employment particulars of further matters.

16. The Minister may by Order provide that section 13 shall have effect as if particulars of such further matters as may be specified in the Order were included in the particulars required by that section; and, for that purpose, the Order may include such provisions amending section 13 as appear to the Minister to be expedient.

Right to itemised pay statement

Itemised pay statement.

17. (1) An employee has the right to receive from his employer, at or before the time at which any payment of wages is made to him, a written, itemised pay statement.

(2) The statement shall include particulars of

(a) the gross amount of wages;

(b) the amounts of any variable or fixed deductions from the gross amount, and the purposes for which those deductions are made;

(c) the net amount of wages payable; and

(d) the date of payment and the dates of the pay period.

Power to require pay statement particulars of further matters.

18. The Minister may by Order provide that section 17 shall have effect as if particulars of such further matters as may be specified in the Order were included in the particulars required by that section; and, for that purpose, the Order may include such provisions amending section 17 as appear to the Minister to be expedient.

Enforcement in respect of statements of particulars, changes and pay

Complaints to Tribunal in respect of statement of employment particulars, changes and pay.

19. (1) Where an employer does not give an employee a statement as required by section 13, 15 or 17 or the statement he gives does not comply with what is required, the employee may make a complaint to the Tribunal asking it to determine what particulars ought to have been included or referred to in a statement so as to comply with the requirements of the section concerned.

- (2) Where
- (a) a statement purporting to be a statement under section 13 or 15, or a pay statement purporting to comply with section 17, has been given to an employee; and
 - (b) a question arises as to the particulars which ought to have been included or referred to in the statement so as to comply with the requirements of this Part,

either the employer or the employee may make a complaint to the Tribunal asking it to determine the question.

20. (1) Where, on a complaint under section 19(1), the Tribunal determines particulars as being those which ought to have been included or referred to in a statement given under section 13 or 15, the employer shall be deemed to have given to the employee a statement in which those particulars were included, or referred to, as specified in the decision of the Tribunal.

Determina-
tion of
complaints.

(2) On determining a complaint under section 19(2) relating to a statement purporting to be a statement under section 13 or 15, the Tribunal may

- (a) confirm the particulars included or referred to in the statement given by the employer;
- (b) amend the particulars; or
- (c) substitute other particulars for them,

as the Tribunal may determine to be appropriate; and the statement shall be deemed to have been given by the employer to the employee in accordance with the decision of the Tribunal.

- (3) Where on a complaint under section 19 the Tribunal finds that
- (a) an employer has failed to give an employee a pay statement in accordance with section 17; or
 - (b) a pay statement does not, in relation to a deduction, contain the particulars required to be included in that statement by section 17,

the Tribunal shall make a declaration to that effect.

(4) Where, on a complaint in the case of which subsection (3) applies, the Tribunal further finds that any unnotified deductions have been made from the wages of the employee during the period of 26 weeks immediately preceding the date of the complaint, whether or not the deductions were made in breach of the contract of employment, the Tribunal may order the employer to pay the employee a sum not exceeding the aggregate of the unnotified deductions so made.

(5) For the purposes of subsection (4), a deduction is an unnotified deduction if it is made without the employer giving the employee in any pay statement, the particulars of the deduction required by section 17.

Time limit
for section 19
complaints.

21. The Tribunal shall not consider a complaint under section 19 in a case where the employment to which the complaint relates has ended, unless the complaint is made to the Tribunal

- (a) before the end of the period of 3 months beginning with the date on which the employment ended; or
- (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be made before the end of that period of 3 months.

PART V

TERMINATION OF EMPLOYMENT

Minimum period of notice

22. (1) The notice required to be given by an employer to terminate the contract of employment of an hourly, daily or weekly paid employee who has been continuously employed for one year or more is not less than

Rights of employer and employee to minimum notice.

- (a) one week's notice where the period of continuous employment of the employee is less than 2 years;
- (b) 2 weeks' notice where the period of continuous employment of the employee is 2 years or more but less than 5 years;
- (c) 4 weeks' notice where the period of continuous employment of the employee is 5 years or more but less than 10 years;
- (d) 6 weeks' notice where the period of continuous employment of the employee is 10 years or more but less than 15 years; and
- (e) 10 weeks' notice where the period of continuous employment of the employee is 15 years or more.

(2) The notice required to be given by an employer to terminate the contract of employment of a fortnightly-paid employee who has been continuously employed for one year or more is not less than

- (a) 2 weeks' notice where the period of continuous employment of the employee is less than 5 years;
- (b) 4 weeks' notice where the period of continuous employment of the employee is 5 years or more but less than 10 years;

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- (c) 6 weeks' notice where the period of continuous employment of the employee is 10 years or more but less than 15 years; and
- (d) 10 weeks' notice where the period of continuous employment of the employee is 15 years or more.

(3) The notice required to be given by an employer to terminate the contract of employment of a monthly-paid employee who has been continuously employed for one year or more is not less than

- (a) one month's notice where the period of continuous employment of the employee is less than 10 years;
- (b) 1½ months' notice where the period of continuous employment of the employee is 10 years or more but less than 15 years; and
- (c) 2½ months' notice where the period of continuous employment of the employee is 15 years or more.

(4) The notice required to be given by an employee who has been continuously employed for one year or more to terminate his contract of employment is not less than

- (a) one week's notice in the case of an hourly, daily or weekly paid employee;
- (b) 2 weeks' notice in the case of a fortnightly-paid employee; and
- (c) one month's notice in the case of a monthly-paid employee.

(5) Where the contract of employment of an employee who has been continuously employed for one year or more contains a provision for a shorter period of notice than that required under subsections (1) to (4), the provision is, from the commencement of this Act, invalid.

(6) This section does not prevent either party to a contract of employment from giving a longer period of notice where this is the practice, given the nature and functions of the work performed; or from waiving his right to notice on any occasion, or from accepting a payment in lieu of notice.

(7) A payment to an employee in lieu of notice does not satisfy subsection (6) where the amount tendered by the employer is less than the sum, net of any tax or other deductions lawfully made, that the employee would have been entitled to receive from the employer if the employee had worked throughout the period of notice instead of opting for a payment in lieu of notice.

(8) This section does not affect any right of a party to a contract of employment to treat the contract as terminable without notice, whether on the ground that the principle known as summary dismissal or that known as constructive dismissal applies or on any other ground, by reason of the conduct of the other party.

Certificate of employment record

23. (1) Where a contract of employment has ended, the employer shall, within 14 days of the end of the employment, provide the employee with a certificate of employment record giving the following particulars:

Right of
employee to
certificate of
employment
record.

- (a) the name and address of the employer;
- (b) the nature of the business of the employer in which the employee was employed;
- (c) his period of continuous employment with the employer; and
- (d) the capacity in which he was employed immediately before the end of the employment.

(2) An employer shall, on the request of an employee, provide the employee with written particulars of the reasons for his dismissal where

- (a) the employer gives the employee notice of termination of the contract of employment;
- (b) the employer terminates the contract of employment of the employee without notice; or
- (c) the employee is employed under a contract for a fixed term and that term expires without being renewed under the same contract.

(3) A written statement under this section is admissible in evidence in any proceedings.

*Enforcement in respect of minimum period
of notice of termination*

Complaints
to Tribunal
in respect
of notice.

24. (1) An employee may make a complaint to the Tribunal on the ground that

- (a) his employer unreasonably refused to give the notice required under section 22; or
- (b) the notice given in purported compliance with section 22 was inadequate.

(2) Where the Tribunal finds that a complaint under subsection (1) is well founded, the Tribunal shall

- (a) order the employer to pay the employee
 - (i) for any outstanding notice; and
 - (ii) a sum equal to 2 weeks' wages; and

(b) further order that if the employer fails to comply with the order made under paragraph (a), the employer shall pay to the employee a sum equal to 4 weeks' wages for each month or part of a month during which he fails to comply with the order.

(3) The Tribunal shall not consider a complaint under this section unless the complaint is made to the Tribunal

(a) before the end of the period of 6 months beginning with the date on which the employment ended; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be made before the end of that period of 6 months.

25. (1) An employee may make a complaint to the Tribunal on the ground that

Complaints to Tribunal in respect of certificate of employment record.

(a) his employer unreasonably refused to provide a certificate under section 23; or

(b) the particulars of reasons given in purported compliance with subsection (2) of that section are inadequate or untrue.

(2) Where the Tribunal finds that a complaint under subsection (1)(a) is well founded, the Tribunal shall

(a) order the employer to

(i) provide the statement; and

(ii) pay to the employee a sum equal to 2 weeks' wages; and

(b) further order that, if the employer fails to comply with the order under paragraph (a), the employer shall pay to the employee a sum equal to 4 weeks' wages for each month or part of a month during which he fails to comply with the order.

(3) Where the Tribunal finds that a complaint under subsection (1)(b) is well founded, the Tribunal shall make

(a) a declaration as to what it finds to be the reasons of the employer for dismissing the employee; and

(b) an award that the employer pay to the employee a sum equal to 2 weeks' wages.

(4) The Tribunal shall not consider a complaint under this section unless the complaint is made to the Tribunal

(a) before the end of the period of 3 months beginning with the date on which the employment ended; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be made before the end of that period of 3 months.

PART VI

UNFAIR DISMISSAL

Dismissal

Circumstances in which an employee is dismissed.

26. (1) For the purposes of this Part an employee is dismissed by his employer where

(a) the contract under which he is employed is terminated by the employer, whether with or without notice;

(b) he is employed under a contract for a fixed term and that term expires without being renewed under the same contract; or

(c) the employee terminates the contract under which he is employed with or without notice in circumstances in which he is entitled so to terminate it by reason of the conduct of the employer.

(2) An employee shall be taken to have been dismissed by his employer for the purposes of this Part where

- (a) the employer gives notice to the employee to terminate his contract of employment; and
- (b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the notice of the employer is due to expire,

and the reason for the dismissal is to be taken to be the reason for which the notice of the employer is given.

The right not to be unfairly dismissed

27. (1) An employee has the right not to be unfairly dismissed by his employer. The right.

(2) Subsection (1) has effect subject to the following provisions of this Part.

(3) Subsection (1) does not apply to the dismissal of an employee unless he has been continuously employed for a period of not less than one year ending with the effective date of termination.

28. (1) Subject to the following provisions of this section, the expression "the effective date of termination" in relation to an employee Effective date of termination.

- (a) whose contract of employment is terminated by notice, whether given by his employer or by the employee, means the date on which the notice expires;
- (b) whose contract of employment is terminated without notice, means the date on which the termination takes effect;

(c) who is employed under a contract for a fixed term which expires without being renewed under the same contract, means the date on which the term expires.

(2) For the purposes of section 27(3) where

(a) the contract of employment is terminated by the employer; and

(b) the notice required by section 22 to be given by an employer would, if duly given on the material date, expire on a date later than the effective date of termination as defined by subsection (1),

the later date is the effective date of termination.

(3) In subsection (2)(b) "the material date" means

(a) the date when notice of termination was given by the employer; or

(b) where no notice was given, the date when the contract of employment was terminated by the employer.

(4) For the purposes of section 27(3), where in the circumstances described in section 26(1)(c)

(a) the contract of employment is terminated by the employee;

(b) the material date does not fall during a period of notice given by the employer to terminate the contract; and

(c) had the contract been terminated not by the employee but by notice given on the material date by the employer, that notice would have been required by section 22 to expire on a date later than the effective date of termination as defined by subsection (1),

the later date is the effective date of termination.

- (5) In subsection (4) "the material date" means
- (a) the date when notice of termination was given by the employee; or
 - (b) where no notice was given, the date when the contract of employment was terminated by the employee.

Fairness

29. (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show Fairness generally.

- (a) the reason, or, if more than one, the principal reason, for the dismissal; and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) An employer shall have the right to dismiss an employee for a reason which falls within this subsection if it
- (a) relates to the capability of the employee to perform work of the kind which he was employed by the employer to do;
 - (b) relates to the conduct of the employee;
 - (c) is that the employee was redundant, but subject to section 31; or
 - (d) is that the employee could not continue to work in the position which he held without contravention, either on his part or on that of his employer, of a duty or restriction imposed by law.
- (3) In subsection (2)(a), "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality.

(4) Where the employer has fulfilled the requirements of subsection (1), the question whether the dismissal was fair or unfair, having regard to the reason shown by the employer, shall depend on whether

- (a) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
- (b) the employer complied with the rules set out in Part A of the *Fourth Schedule*.

Fourth
Schedule.

(5) Notwithstanding subsection (1), an employer is not entitled to dismiss an employee for any reason related to

- (a) the capability of the employee to perform any work; or
- (b) the conduct of the employee,

without informing the employee of the accusation against him and giving him an opportunity to state his case, subject to the Standard Disciplinary Procedures and the Modified Disciplinary Procedures set out in Parts B and C, respectively of the *Fourth Schedule*.

Fourth
Schedule.

Contravention of the right

Unfair
dismissal.

30. (1) A dismissal of an employee contravenes the right conferred on him by section 27 where

- (a) the dismissal took place while the employee was absent from work for a period of not more than one year, although he was certified by a medical practitioner to be incapable of work throughout the entire period of the absence as a result of an occupational disease or a work-related accident;
- (b) the dismissal took place while the employee was absent from work for not more than either
 - (i) a period of 12 consecutive months; or

- (ii) periods amounting to 12 months in any one period of 24 consecutive months,

although he was certified by a medical practitioner to be incapable of work throughout the period, or, as the case may be, the periods, of the absence as a result of sickness, not being sickness within paragraph (a); or

- (c) the reason for the dismissal is
 - (i) that the employee was or proposed to become an officer, a shop steward or a safety and health representative or a delegate or member of a trade union;
 - (ii) that the employee participated in trade union activities outside, or with the consent of the employer during, working hours;
 - (iii) that the employee sought office, or was acting, or acted, as a workers' representative;
 - (iv) that the employee made a complaint or participated in proceedings, being a complaint or proceedings which involved an allegation of a violation of a law, contract of employment or practice by the employer;
 - (v) that the employee had, or was believed to have, the human immunodeficiency virus or acquired immune deficiency syndrome commonly known as HIV/AIDS, or any other life-threatening illness or disease;
 - (vi) that the employee refused to carry out tasks assigned to him in the circumstances set out in section 104 of the *Safety and Health at Work Act, 2005*;
 - (vii) that the employee is or was a disabled person, whether or not the disability resulted from an occupational disease or a work-related accident, in circumstances where the employer could reasonably have been expected to offer the employee alternative employment;

- (viii) that the employee was absent from work as a result of the performance of a national duty;
- (ix) that the employee refused to carry out an unlawful instruction given him by the employer;
- (x) in the case of a female employee, her pregnancy or a reason connected with her pregnancy, in contravention of her rights under the *Employment of Women (Maternity Leave) Act*; or
- (xi) a reason that relates to
 - (A) the race, colour, gender, age, marital status, religion, political opinion or affiliation, national extraction, social origin or indigenous origin of the employee; or
 - (B) the responsibility of the employee for the care and welfare of a child or a dependent family member with a disability under the immediate control of the employee, being a responsibility associated with an emergency affecting the child or dependent family member with the disability.

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(2) For the purpose of subsection (1)(c)(viii) "national duty" includes the following:

- (a) performance by the employee of jury duty or any other civic duty imposed by law;

(b) selection or endorsement of the employee by a relevant, locally recognised organisation to participate in

- (i) a sporting event; or
- (ii) an event of a voluntary or non-profit organisation to which the employee belongs such as the Barbados Boy Scouts Association, the Girl Guides Association of Barbados, the Barbados Cadet Corps, the Barbados Red Cross Society, the St. John Ambulance Association of Barbados or a similar organisation,

at the regional or international level, provided that the employee so participated;

(c) performance of service by the employee where he is a member of the Barbados Defence Force Reserve or the Barbados Cadet Corps and has been called out for such service pursuant to section 198 or 219, respectively of the *Defence Act*; and

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(d) participation by the employee in a voluntary emergency management activity where all of the following apply:

- (i) the activity dealt with an emergency or natural disaster;
- (ii) the employee engages in such activity on a voluntary basis;
- (iii) the employee is a member of, or has a member-like association with, a recognised emergency management organisation such as a District Emergency Organisation; and
- (iv) the organisation requested the employee to engage in the activity, or it would have been reasonable to expect that such a request would have been made had the circumstances permitted.

Redundancy. 31. (1) A dismissal of an employee does not contravene the right conferred on him by section 27 where

- (a) the reason for his dismissal is that he was redundant; and
- (b) the requirements of subsections (4), (5) and (6) were complied with in relation to his dismissal for redundancy.

(2) An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to the fact that

- (a) 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 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 the employee was so employed, have ceased or diminished or are expected to cease or diminish.

(3) In subsection (2), "cease" means cease either permanently or temporarily and from whatever cause, and "diminish" has a corresponding meaning.

(4) Where it is contemplated that the workforce of the business of an employer will be reduced by 10 per cent or any other significant number, before dismissing an employee, the employer shall

- (a) carry out the consultations required by subsection (6)(b); and
- (b) supply the employee or the trade union recognised for the purpose of bargaining on behalf of the employee (if there is one) and the Chief Labour Officer with a written statement of the reasons for and other particulars of, the dismissal.

(5) The statement referred to in subsection (4)(b) shall contain particulars of

- (a) the facts referred to in subsection (2) relevant to the dismissal; and
- (b) the number and categories of affected employees and the period during which their dismissals are likely to be carried out, where any employees, in addition to the employee in question, are affected by those facts.

(6) The consultations referred to in subsection (4)(a) are consultations with the affected employees or their representative, being consultations conducted in accordance with the following requirements:

- (a) the consultations shall commence not later than 6 weeks before any of the affected employees is dismissed and shall be completed within a reasonable time;
- (b) the consultations shall be in respect of
 - (i) the proposed method of selecting the employees who are to be dismissed;
 - (ii) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take place; and
 - (iii) any measures that the employer might be able to take to find alternative employment for those who are to be dismissed and to mitigate for them the adverse effects of the dismissals; and
- (c) where, in any case, there are special circumstances which render it not reasonably practicable for the employer to comply with any of the requirements of paragraphs (a) and (b), the employer shall immediately consult with the Chief Labour Officer and take all such steps towards compliance with the requirement as are reasonably practicable in all the circumstances.

(7) In subsections (5)(b) and (6) "affected employees" means all the employees affected by the facts mentioned in subsection (5)(a).

Enforcement and remedies in respect of unfair dismissal

Complaints
to Tribunal
in respect of
unfair
dismissal.

32. (1) An employee may make a complaint to the Tribunal on the ground that he was unfairly dismissed by his employer.

(2) The Tribunal shall not consider a complaint under subsection (1) unless the complaint is made to the Tribunal

(a) before the end of the period of 3 months beginning with the effective date of termination; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

Remedies
generally.

33. (1) Where the Tribunal finds that a complaint under section 32 is well founded, the Tribunal shall

(a) explain to the employee the orders that the Tribunal may make under subsection (2) and the circumstances in which the orders may be made; and

(b) inquire of the employee whether he wishes the Tribunal to make such an order.

(2) Where an employee indicates that he wishes to have an order made pursuant to this subsection, the Tribunal may, subject to subsections (3), (4) and (5), make an order for

(a) the reinstatement of the employee in accordance with section 34; or

(b) the re-engagement of the employee in accordance with section 35.

(3) In exercising its discretion under subsection (2), the Tribunal shall first determine whether to make an order for the reinstatement of the employee and, where the Tribunal determines that it is not appropriate to make such an order, the Tribunal shall determine whether to make an order for his re-engagement.

(4) In determining whether to make an order for the reinstatement of the employee or for his re-engagement and, if the latter, on what terms, the Tribunal shall take into account

- (a) whether the employee wishes to be reinstated or, in the case of re-engagement, any wish expressed by the employee as to the nature of the order to be made;
- (b) whether it is practicable for the employer, or his successor, to comply with an order for reinstatement or re-engagement, as the case may be; and
- (c) where the employee caused or contributed to some extent to the dismissal, whether it would be just to order his reinstatement or re-engagement, as the case may be, and if the latter, on what terms.

(5) Where neither an order for the reinstatement of an employee nor for his re-engagement is made, the Tribunal shall, in accordance with section 37, make an award of compensation for unfair dismissal to be paid by the employer to the employee.

34. (1) For the purposes of this Act, an order for reinstatement is an order that an employer treat an employee in all respects as if he had not been dismissed.

Order for
reinstatement.

(2) On making an order for the reinstatement of an employee the Tribunal shall specify

- (a) an amount payable by the employer in respect of any benefit which the employee might reasonably be expected to have had but for the dismissal (including arrears of wages) for the period from the date of termination of employment to the date of reinstatement;

- (b) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
- (c) the date by which there must be compliance with the order.

Order for
re-engagem-
ent.

35. (1) For the purposes of this Act, an order for the re-engagement of an employee is an order, on such terms as the Tribunal may determine, that the employee be engaged by the employer, or by a successor of the employer, in employment comparable to that from which the employee was dismissed or in other suitable employment.

(2) On making an order for the re-engagement of an employee the Tribunal shall specify the terms on which the re-engagement shall take place, including

- (a) the identity of the employer;
- (b) the nature of the employment;
- (c) the remuneration for the employment;
- (d) any amount payable by the employer in respect of any benefit which the employee might reasonably be expected to have had but for the dismissal (including arrears of wages) for the period from the date of termination of employment to the date of re-engagement;
- (e) any rights and privileges, including seniority and pension rights, which must be restored to the employee; and
- (f) the date by which there must be compliance with the order.

36. In calculating for the purposes of section 34 or 35 any amount payable by an employer, the Tribunal shall take into account, so as to reduce the liability of the employer

Reduction of employer's liability under section 34 or 35.

(a) any sums received by the employee in respect of the period from the date of termination of employment to the date of reinstatement or re-engagement by way of wages

(i) in lieu of notice or *ex gratia* payments paid by the employer; or

(ii) paid in respect of employment with another employer,

and such other benefits as the Tribunal thinks appropriate in the circumstances; and

(b) any other mitigating circumstances.

37. (1) Where

(a) neither an order for the reinstatement of an employee nor for his re-engagement is made pursuant to this Part;

(b) an order for the reinstatement of an employee or for his re-engagement is made and the employee is reinstated or re-engaged but the order is not fully complied with; or

(c) an order for the reinstatement of an employee or for his re-engagement is made but the employee is not reinstated or re-engaged,

Award where order for reinstatement or re-engagement not made or not complied with.

the Tribunal shall make an award of compensation, determined in accordance with this section, to be paid by the employer to the employee.

(2) The amount of compensation to be awarded under

(a) subsection (1)(a), shall be calculated in accordance with the *Fifth Schedule*;

Fifth Schedule.

(b) subsection (1)(b), shall be such amount as the Tribunal thinks fit having regard to the loss sustained by the employee as a result of the failure to comply fully with the order; and

(c) subsection (1)(c), shall consist of

Fifth
Schedule.

(i) an amount calculated in accordance with the *Fifth Schedule*; and

(ii) except where this sub-paragraph does not apply, additional compensation in the appropriate amount.

(3) Subsection (2)(c)(ii) does not apply where the employer satisfies the Tribunal that it was not practicable for him to comply with the order for reinstatement or re-engagement.

(4) In subsection (2)(c)(ii) "the appropriate amount" means not more than 52 weeks' wages as the Tribunal thinks fit having regard to the circumstances of the case.

PART VII

OTHER RIGHTS

Rights in relation to lay-off and short-time

Protection in
relation to
lay-off and
short-time.

38. (1) Except where there is an agreement to the contrary in a contract of employment, an employer shall not lay off an employee, or place an employee on short-time,

(a) except for one or other of the reasons specified in subsection (4); and

(b) unless the requirements of subsections (5), (6) and (7) are complied with in relation to the laying off of the employee or the placement of the employee on short-time, as the case may be.

(2) An employee shall be taken to have been laid off for a week where

- (a) he is employed under a contract on terms and conditions such that his remuneration under the contract depends on his being provided by the employer with work of the kind which he is employed to do; but
- (b) he is not entitled to any remuneration under the contract in respect of the week because the employer does not provide work of that kind for him.

(3) An employee shall be taken to have been placed on short-time for a week if by reason of a diminution in the work provided for the employee by the employer, being work of a kind which under his contract the employee is employed to do, the remuneration of the employee for the week is less than half a week's wages.

(4) The reasons referred to in subsection (1)(a) are that:

- (a) the employer has temporarily ceased, or intends temporarily to cease, to carry on the business for the purposes of which the employee was employed by him, or has temporarily ceased, or intends temporarily to cease, to carry on that business in the place where the employee was so employed;
- (b) the requirements of the 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 the employee was so employed, have temporarily ceased or diminished, or are expected temporarily to cease or diminish.

(5) Before laying off the employee or placing him on short-time, the employer shall

(a) carry out the consultations required under subsection (7)(b);
and

(b) supply the employee, the trade union recognised for purposes of bargaining on behalf of the employee (if there is one) and the Chief Labour Officer with a written statement of the facts that require the employer to lay off the employee or place him on short-time.

(6) The statement referred to in subsection (5)(b) shall contain particulars of

(a) the facts referred to in subsection (4) relevant to the lay-off or short-time action; and

(b) the number and categories of affected employees and the period during which the lay-off or short-time action is to be carried out, where any employees, in addition to the employee in question, are affected by those facts.

(7) The consultations referred to in subsection (5)(a) are consultations with the affected employees or their representative, being consultations conducted in accordance with the following requirements:

(a) the consultations shall commence not later than 6 weeks before any of the affected employees is laid off or placed on short-time and shall be completed within a reasonable time;

(b) the consultations shall be in respect of

(i) the proposed method of selecting the employees who are to be laid off or placed on short-time;

- (ii) the proposed method of carrying out the lay-off or short-time action, with due regard to any agreed procedure, including the period over which the lay-off or short-time action is to take place; and
 - (iii) any measures that the employer might be able to take to find alternative employment for those who are to be laid off or placed on short-time and to mitigate for them the adverse effects of being laid off or placed on short-time;
- (c) where, in any case, there are special circumstances which render it not reasonably practicable for the employer to comply with any of the requirements of paragraphs (a) and (b), the employer shall immediately consult with the Chief Labour Officer and take all such steps towards compliance with that requirement as are reasonably practicable in all the circumstances.

(8) In subsections (6)(b) and (7) "affected employees" means all the employees affected by the facts mentioned in subsection (6)(a).

(9) For the avoidance of doubt, nothing in this section affects the operation of sections 6 and 7 of the *Severance Payments Act*.

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39. (1) An employee may make a complaint to the Tribunal on the ground that his employer has contravened section 38(1) in relation to him, stating the particulars of his complaint.

Complaint to Tribunal in respect of lay-off or short-time.

(2) Where the Tribunal finds that a complaint made to it under subsection (1) is well founded, it shall

- (a) make a declaration to that effect; and
- (b) order the employer to pay the employee a sum that is fair and just in the circumstances.

(3) The Tribunal shall not consider a complaint under subsection (1) unless the complaint is made to the Tribunal

- (a) before the end of the period of 3 months beginning with the date on which the employee was laid off or placed on short-time, as the case may be; or
- (b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be made before the end of that period of 3 months.

Priority in hiring in certain cases.

40. Where

- (a) as a result of a fall-off in demand for the goods and services of the business of an employer, employees are made redundant; and
- (b) within 6 months from the date of the first redundancy, there is an increase in demand for such goods and services and the employer has to recruit employees for the purposes of the business,

all things being equal, the employees who were made redundant shall be given priority in recruitment; provided that the employees met, during their employment with the employer, such performance standards as may have been agreed upon prior to having been made redundant.

Complaint to the Tribunal in respect of priority in hiring.

41. (1) An employee may make a complaint to the Tribunal on the ground that his former employer has contravened the duty specified in section 40, stating the particulars of his complaint.

(2) Where the Tribunal finds that a complaint made to it under subsection (1) is well founded, it shall

- (a) make a declaration to that effect; and
- (b) order the employer to pay the employee a sum that is fair and just in the circumstances.

(3) The Tribunal shall not consider a complaint under subsection (1) unless the complaint is made to the Tribunal

(a) before the end of the period of 3 months beginning with the date on which a new employee commences employment in the business of the employer; or

(b) within such further period as the Tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of 3 months.

(4) In subsection (3)(a) "new employee" means any employee other than an employee made redundant in the circumstances described in section 40.

PART VIII

DISPUTE SETTLEMENT PROCEDURE

42. (1) Where an employee believes that there is a dispute concerning an infringement of any right conferred on him by this Act, he may present a complaint to the Chief Labour Officer.

Complaints
to be
referred to
Chief
Labour
Officer in
first
instance.

(2) A complaint may be made under this section by an employee, or a trade union or another representative group on behalf of the employee.

(3) Where a group of employees, having the same or substantially the same interests, has a complaint, one complaint may be made in a representative capacity.

43. (1) Where the Chief Labour Officer receives a complaint under section 42, he shall as soon as practicable inquire into the matter and process the complaint for conciliation and referral to the Tribunal.

Settlement
of com-
plaints by
Chief
Labour
Officer.

(2) After making such inquiries as he considers necessary in the circumstances, the Chief Labour Officer shall use his best endeavours to achieve, by means of conciliation, a settlement of the matters raised by the complaint.

(3) The Chief Labour Officer shall not attempt to settle the complaint unless there has been a failure to obtain a settlement by means of any other procedure, apart from legal proceedings, applicable and available to the employee for the settlement of disputes, whether the procedure is statutory, contractual or otherwise.

Proceedings
by Tribunal
where
settlement
not
achieved.

44. (1) Where the Chief Labour Officer is unable, within 42 days of the making of a complaint, except in extenuating circumstances, to effect a settlement of the complaint under section 43, he shall make a report to that effect to the Tribunal.

(2) The Tribunal shall, upon receipt of a report under subsection (1), proceed forthwith to consider the complaint.

Action by
Chief
Labour
Officer in
respect of
non-
compliance.

45. (1) Nothing in this Act shall prevent the Chief Labour Officer, where he has reasonable grounds to believe that an employer has failed to comply with any provision of this Act, from inquiring into the matter.

(2) Where, in any case, the Chief Labour Officer is unable to effect compliance with any provision of this Act, he shall immediately make a report to that effect to the Tribunal.

(3) The Tribunal shall, upon receipt of a report under subsection (2), proceed forthwith to consider the matter.

PART IX

MISCELLANEOUS

46. Subject to section 48, an award, order or other decision made by the Tribunal in exercise of its powers under this Act is final and is not subject to appeal.

Tribunal's
decisions
final on
matters
other than
law.

47. (1) Where

(a) the Tribunal makes an order or award in respect of the payment of a sum; and

Enforcement
of Tribunal's
decisions.

(b) the Chairman or Deputy Chairman of the Tribunal certifies that the order or award has been so made, and specifies the terms of the order or award in the certificate,

the order or award is enforceable as if it were an order made by a magistrate's court in civil proceedings.

(2) A certificate of the Chairman or Deputy Chairman under subsection (1) is conclusive evidence of the matters specified in the certificate.

48. An appeal lies to the Court of Appeal in accordance with rules of court on a question of law from any decision of, or arising in any proceedings before, the Tribunal under or by virtue of this Act.

Appeal from
Tribunal on
questions of
law.

49. (1) The Minister may make regulations generally for giving effect to this Act.

Regulations
and Orders.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations prescribing any fee to be paid in respect of

(a) the settlement of complaints by the Chief Labour Officer; and

(b) the determination of complaints by the Tribunal,

under this Act.

(3) Regulations under this section are subject to affirmative resolution.

Fourth
Schedule.
Fifth
Schedule.
Sixth
Schedule.

(4) The Minister may by Order amend the *Fourth, Fifth and Sixth Schedules*.

Calculation
of a week's
wages.
Sixth
Schedule.

50. The *Sixth Schedule* has effect where the amount of a week's wages of an employee is to be calculated for the purposes of this Act.

Exemptions.

51. This Act does not bind the Crown but applies to statutory corporations.

Commence-
ment.

52. (1) Subject to subsection (2), this Act comes into operation on a day to be fixed by Proclamation.

(2) Sections 13 to 16, and sections 19 to 21 in so far as they relate to sections 13 to 16, come into force on the expiration of 6 months beginning on the day fixed under subsection (1), or such longer period as may be fixed by Proclamation.

FIRST SCHEDULE

(Section 3)

FACTORS TO BE CONSIDERED IN DETERMINING THE
EXISTENCE OF A CONTRACT OF EMPLOYMENT

In determining whether a contract of employment exists, consideration shall be given to whether

- (a) there is an obligation on the part of the employee to give personal and exclusive service;
- (b) the work is done according to the instructions of the employer, and the manner in which the work is carried out is subject to the control and direction of the employer;
- (c) the work has continuity, and such continuity creates for the employee an economic dependence upon the employer, without there being any financial risk to the employee;
- (d) the work is carried out within fixed hours or at a workplace or workplaces specified or agreed by the employer;
- (e) the work involves the integration of the employee in the organisation of the business, including his subjection to its policies;
- (f) the employee is subject to the procedures of the business for addressing grievances and disciplinary matters;
- (g) the employee is in receipt of periodic remuneration payable on a stipulated basis, for example, at hourly, weekly or monthly intervals, and all such payments are subject to statutory deductions;
- (h) the employee is entitled to holidays with pay; and
- (i) the employee makes no, or only nominal, investment in tools and equipment.

Note: This list is not exhaustive, and the factors outlined are all elements in a balancing exercise to determine the nature of the contract. No one factor, therefore, is by itself conclusive, and the weight to be attached to any one of the factors is a matter for adjudication.

SECOND SCHEDULE

(Section 6)

THE EMPLOYMENT RIGHTS TRIBUNAL

Constitution of the Tribunal

1. (1) The Tribunal shall consist of 9 members appointed in writing by the Minister.

(2) Every member of the Tribunal shall have experience in either industrial relations or law, and the Tribunal shall include as members, persons with experience as representatives of employers and persons with experience as representatives of employees.

(3) Three persons shall be appointed by the Minister in his own discretion.

(4) Three persons shall be nominated for appointment by the Minister by the most representative organisation of employers.

(5) Three persons shall be nominated for appointment by the Minister by the most representative organisation of employees.

(6) The Minister shall appoint a member as Chairman and may appoint a member as Deputy Chairman or one or more members as Deputy Chairmen, and may consult the Chief Labour Officer before making such an appointment.

(7) The Chairman and the Deputy Chairman shall be attorneys-at-law.

2. (1) Subject to the following provisions of this paragraph, the members of the Tribunal shall hold and vacate office in accordance with the terms of their appointment.

(2) A person shall not be appointed for a term exceeding 3 years, but previous membership shall not affect eligibility for re-appointment.

(3) A member may at any time resign his membership by notice in writing addressed to the Minister.

SECOND SCHEDULE – *Cont'd*

- (4) Where the Minister is satisfied that a member
- (a) has been incapacitated by physical or mental illness; or
 - (b) is otherwise unable or unfit to discharge the functions of a member,

the Minister may by notice published in the *Official Gazette* declare his office as a member to be vacant; and thereupon the office shall become vacant.

(5) Where the Chairman or a Deputy Chairman ceases to be a member for any reason, he shall also cease to be Chairman or, as the case may be, Deputy Chairman.

(6) Nothing in this paragraph shall prevent a Chairman or Deputy Chairman whose term of office has expired from continuing to hear and determine complaints brought before him prior to the expiration of his term.

3. In the event of the temporary absence or inability to act of a member, the Minister may appoint in writing a suitable person to act in the place of the member; but in so doing the Minister shall comply with the requirements of paragraphs 1(4) and (5) that are relevant in the circumstances.

4. The Minister shall cause to be published in the *Official Gazette*, in addition to any notice pursuant to paragraph 2(4), notice of any appointment, including any temporary appointment, and resignation of a member.

5. (1) The Minister responsible for Finance may direct what sums, if any, shall be paid by way of remuneration to any member of the Tribunal or to any person appointed under this Schedule to assist the Tribunal, and may direct payment of any other expenses attendant upon the discharge of the functions of the Tribunal.

(2) Payments directed to be made under sub-paragraph (1) shall be made out of moneys voted for the purpose by Parliament.

SECOND SCHEDULE - *Concl'd**Proceedings of the Tribunal*

6. For the purpose of exercising its jurisdiction in relation to any particular complaint, the Tribunal shall consist of a panel of 3 members, namely

- (a) a presiding officer who shall be either the Chairman or a Deputy Chairman of the Tribunal;
- (b) a member with experience as a representative of employees; and
- (c) a member with experience as a representative of employers.

7. Notwithstanding paragraph 3, where the Chairman or the Deputy Chairman is absent or otherwise unable to act, such member of the Tribunal as the Minister may direct may perform any of the functions of the Chairman.

8. The validity of any proceedings of the Tribunal shall not be affected by any vacancy on the panel of members, or by any defect in the appointment of a member to that panel.

THIRD SCHEDULE

(Section 9)

EMPLOYMENT RIGHTS TRIBUNAL

SUMMONS

In the matter of

.....
.....

To: (Name)

(Occupation)

(Address)

You are hereby summoned to attend before the Employment Rights Tribunal to inquire into the (*subject matter*) to be held at (*place*) on the day of 20..... at (*time*), and to give evidence concerning the matter specified herein; and to bring with you and produce (*documents*) at that time and place.

Dated this day of 20.....

.....
Chairman
Employment Rights Tribunal

WARNING: If you fail to obey this summons in any respect without reasonable excuse, you are liable to punishment in the same manner as for contempt of the High Court.

FOURTH SCHEDULE

(Sections 14 and 29)

DISMISSAL AND DISCIPLINARY PROCEDURES

PART A

RULES TO BE TAKEN INTO ACCOUNT
UNDER SECTION 29(4)(b)

The following are the rules which are to be taken into account under section 29(4)(b):

- (a) disciplinary action must be applied progressively in relation to a breach of discipline;
- (b) except in the case of gross misconduct, an employee should not be dismissed for his first breach of discipline;
- (c) in relation to breaches of discipline not amounting to gross misconduct
 - (i) an employee should be warned and given a reasonable opportunity to make correction; and
 - (ii) oral or written warnings or both should be utilised before stronger forms of disciplinary action are implemented; and
- (d) where a period of 12 months or more elapses after a written warning is given, any breach of discipline committed before the commencement of that period shall be treated as expunged from the record of the employee.

FOURTH SCHEDULE - *Cont'd*

PART B

STANDARD DISCIPLINARY PROCEDURES

Step 1: Statement of grounds for action and invitation to meeting

1. The employer must
 - (a) set out in writing the alleged conduct or characteristics of the employee, or other circumstances, which lead him to contemplate taking disciplinary action against the employee; and
 - (b) send the statement or a copy of it to the employee and invite the employee, along with his representative, if any, to attend a meeting to discuss the matter.

Step 2: Meeting

2. (1) The meeting must take place
 - (a) before disciplinary action is taken; and
 - (b) where reasonably practicable, within 7 working days of the transmission to the employee of the statement or copy of the statement referred to in paragraph 1(b).
- (2) The meeting must not take place unless
 - (a) the employer has informed the employee of
 - (i) his right to have a friend or a shop steward, if he is a member of a trade union, present during the proceedings; and
 - (ii) the basis for including in the statement referred to in paragraph 1, the ground or grounds set out therein; and
 - (b) the employee has had a reasonable opportunity to consider his response to the information referred to in paragraph (a)(ii).
- (3) The employee must take all reasonable steps to attend the meeting.
- (4) After the meeting, the employer must inform the employee in writing of his decision and notify him of the right to appeal against the decision if he is not satisfied with it.

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FOURTH SCHEDULE - *Cont'd*PART B - *Cont'd*STANDARD DISCIPLINARY PROCEDURES - *Cont'd**Step 3: Appeal*

3. (1) Where the employee wishes to appeal, he must so inform the employer in writing, and follow the established disciplinary procedure of the workplace.

(2) Where the matter is not settled under sub-paragraph (1), the employee or his trade union, if he is a member, may refer the matter to the Chief Labour Officer for conciliation.

(3) A meeting in respect of an appeal need not take place before the dismissal or disciplinary action takes effect.

Note on Steps

4. Where an employee is suspended with full pay pending an investigation, steps 1 and 2 do not apply until the employer contemplates taking disciplinary action against the employee.

PART C

MODIFIED DISCIPLINARY PROCEDURES

Step 1: Statement of grounds for action

1. The employer must

(a) set out in writing

(i) the alleged misconduct of the employee which led to the dismissal;

(ii) the basis for thinking at the time of the dismissal that the employee was guilty of the alleged misconduct; and

(iii) the right of the employee to appeal against dismissal; and

(b) send the statement or a copy of the statement referred to in paragraph (a) to the employee.

FOURTH SCHEDULE - *Concl'd*

PART C - *Cont'd*

MODIFIED DISCIPLINARY PROCEDURES - *Cont'd*

Step 2: Appeal

2. (1) Where the employee wishes to appeal, he must so inform the employer in writing, and follow the established disciplinary procedure of the workplace.

(2) Where the matter is not settled under sub-paragraph (1), the employee or his trade union, if he is a member, may refer the matter to the Chief Labour Officer for conciliation.

FIFTH SCHEDULE

(Section 37)

COMPENSATION

1. In a case to which section 37(1)(a) or (c) applies, the Tribunal shall make an award of compensation, to be paid by the employer to the employee, consisting of the aggregate of the following amounts:

- (a) a basic award determined in accordance with the rules set forth in paragraph 2;
- (b) an amount such as the Tribunal thinks fit in respect of any benefit which the employee might reasonably be expected to have had but for the dismissal;
- (c) an amount, not exceeding 52 weeks' wages, where the dismissal was for a reason specified in section 30(1)(c) or, where there was more than one reason for the dismissal, one of those reasons was a reason so specified.

2. (1) The rules set out in sub-paragraphs (2) to (5) have effect for the purpose of determining the basic award referred to in paragraph 1(a):

(2) The basic award shall be calculated in accordance with the following table, and in that table "period" means the period of continuous employment of the employee:

Period	Amount
(a) where the period is less than 2 years, but subject to section 27(3):	5 weeks' wages;
(b) where the period is 2 years or more but less than 10 years:	2½ weeks' wages for each year of that period;
(c) where the period is 10 years or more but less than 20 years:	3 weeks' wages for each year of that period;
(d) where the period is 20 years or more but less than 33 years:	3½ weeks' wages for each year of that period.

FIFTH SCHEDULE - *Cont'd*

COMPENSATION - *Cont'd*

- (3) For the purposes of sub-paragraph (2)(b), (c) and (d), parts of a year not amounting to a complete year shall not be counted.
- (4) Any continuous employment beyond 33 years shall not be counted.
- (5) The amount determined in accordance with the rules set out in sub-paragraphs (2) to (4) shall be reduced by the amount of
- (a) any severance payment paid by the employer to the employee under the *Severance Payments Act* in respect of the same dismissal; or Cap. 355A.
 - (b) any payment made by the employer to the employee, whether in pursuance of the *Severance Payments Act* or otherwise, on the ground Cap. 355A that the dismissal was by reason of redundancy.

SIXTH SCHEDULE

(Section 50)

A WEEK'S WAGES

Method of calculation.

1. Except where paragraph 8 applies, the calculation of a week's wages shall be done in accordance with paragraphs 2 to 7, starting with the calculation date and counting backwards.

Where there are normal working hours and the wages do not vary.

2. Where under a contract of employment in force on the calculation date an employee has normal working hours and the wages paid to him do not vary with the amount of the work done by him, the amount of a week's wages is the amount which is payable by the employer under the contract of employment if the employee works throughout his normal working hours in a week.

Where there are normal working hours but the wages vary.

3. Where under a contract of employment in force on the calculation date an employee has normal working hours but the wages paid to him vary with the amount of the work done by him, the amount of a week's wages is the amount of the employee's average weekly wages in the period of 12 weeks

(a) where the calculation date is the last day of a week, ending with that week;

(b) in any other case, ending with the last complete week before the calculation date.

Where there are no normal working hours.

4. Where under a contract of employment in force on the calculation date an employee has no normal working hours, the amount of a week's wages is the amount of the employee's average weekly wages in the period of 12 weeks

(a) where the calculation date is the last day of a week, ending with that week; and

(b) in any other case, ending with the last complete week before the calculation date.

Averaging under paragraphs 3 and 4.

5. In arriving at the average weekly wages for the purposes of paragraphs 3 and 4, no account shall be taken of a week in which no wages were payable by the employer to the employee, and wages in earlier weeks shall be brought in so as to bring up to 12 the number of weeks of which account is taken.

SIXTH SCHEDULE – *Cont'd*

A WEEK'S WAGES – *Cont'd*

6. Where the calculation is for the purposes of
- (a) section 24(2)(a)(ii) or (b) or section 25(2)(a)(ii) or (b) or (3)(b) and the order of the Tribunal relates to the dismissal of an employee on the ground of redundancy; or
 - (b) section 37(2)(b) or paragraphs 1 and 2 of the *Fifth Schedule*,

The calculation date in termination cases.

the calculation date is the effective date of termination, but so that, if the effective date of termination did not occur on the last day of the week in question, then the last day of the week in question shall be taken as the effective date of termination.

7. Where the calculation is for the purposes of section 38(3), the calculation date is the day immediately preceding the day on which the employee was placed on short-time.

The calculation date for short-time.

8. (1) In any case in which an employee has not been employed in circumstances enabling a calculation to be made under paragraphs 2 to 7, the amount of a week's wages is the amount which fairly represents a week's wages.

Special cases.

- (2) In determining the amount under sub-paragraph (1), the Tribunal
- (a) shall apply as nearly as may be such of the provisions of paragraphs 2 to 7 as it considers appropriate; and
 - (b) may have regard to such of the considerations specified in sub-paragraph (3) as it thinks fit.

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SIXTH SCHEDULE - *Concl'd*A WEEK'S WAGES - *Concl'd*

- (3) The considerations referred to in sub-paragraph (2)(b) are
- (a) any wages received by the employee in respect of the employment in question;
 - (b) the amount offered to the employee as wages in respect of the employment in question;
 - (c) the wages received by other persons engaged in relevant, comparable employment with the same employer; and
 - (d) the wages received by other persons engaged in relevant, comparable employment with other employers.