LABOUR LAWS
- FROM LEGAL CONCEPTS TO PRACTICE

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TO PRACTICE

Implications for the HR Practitioner or
HR Layperson

Vanessa Thomas Williams
May 2012
Convention 2012 Theme

“Execute, Grow, Sustain”
Regional Labour Laws

CARICOM Countries

JAMAICA

TRINIDAD AND TOBAGO

GUYANA

BARBADOS

Similar legislative provisions

- Recruitment of certain persons and Termination of employment
- Minimum Wages
- Leave & other benefits
- Workmen’s Compensation & Occupational Safety and Health
- Equal Opportunity and equal treatment
- Trade Unions
Jamaica

- Employment Agencies Regulation Act
- Employment (Equal Pay For Men and Women) Act
- Employment (Termination and Redundancy Payments) Act
- Employment (Termination and Redundancy Payments) Regulations, 1974
- Factories Act
Jamaica

- Factories Act: Docks (Safety, Health and Welfare) Regulations
- Factories Regulations, 1961
- Factories Act: Rules
- Foreign Nationals and Commonwealth Citizens (Employment) Act
- Holidays with Pay Act
- Labour Officers (Powers) Act
- Labour Relations and Industrial Disputes Act
Jamaica

• Labour Relations and Industrial Disputes: Labour Relations Code
• Labour Relations and Industrial Disputes Regulations, 1975
• Maternity Leave Act
• Minimum Wage Act
• Minimum Wage Act Orders
• Women (Employment of) Act
• Workmen’s Compensation Act
Trinidad and Tobago

- Equal Opportunity Act 2000, as amended
- Industrial Relations Act
- The Maternity Protection Act, 1998
- National Insurance Act
- Occupational Safety and Health Act 2004, as amended
- Retrenchment and Severance Benefits Act
- Trade Unions Act
- Workmen’s Compensation Act
Guyana

- Accidental Deaths and Workmen’s Injuries (Compensation) Act
- Bakeries (Hours of Work) Act
- Employment Exchange Act
- Employment of Young Persons and Children Act
- Equal Right Act 1990
- Essential Services Act
- Factories (Hours and Holidays) Act
Guyana

- Holidays with Pay Act
- Household Service Workers (Hours of Work) Act
- Housing of Labour Workers on Sugar Estates Act
- Labour Act
- Labour (Conditions of Employment of certain workers) Act
- Leave With Pay Act
- Licensed Premises Act
- National Insurance and Social Security Act
Guyana

- Occupational Safety and Health Act, 1997
- Prevention of Discrimination Act
- Public Utility Undertakings and Public Health Services Arbitration Act
- Shops (Consolidation) Act
- Steam Boilers Regulations Act
- Termination of Employment and Severance Pay Act
- The Recruitment of Workers Act
- Trade Unions Act & Trade Unions Recognition Act
- Wages Councils Act
Barbados

• Accidents and Occupational Diseases (Notification) Act
• Better Security Act
• Domestic Employees Act
• Employment Exchanges Act
• Employment (Miscellaneous Provisions) Act
• Employment (Miscellaneous Provisions) (Amendment) Act
• Employment of Women (Maternity Leave) Act
• Factories Act
Barbados

- Holiday with Pay Act
- Labour Clauses (Public Contracts) Act
- Labour Department Act
- National Insurance and Social Security Act, Subsidiary Legislation A1-T1
- National Productivity Council Act
- Occupational Training Act, Subsidiary Legislation A1
- Protection of Wages Act
- Radiation Protection Act
Barbados

- Recruiting of Workers Act
- Severance Payments Act
- Shop Act
- Sugar Workers (Minimum Wages and Guaranteed Employment) Act
- Trade Union Act
- Trade Disputes (Arbitration and Enquiry) Act
- Wages Councils Act
Common HR issues

• Remuneration
• Termination of Employment
• Leave and Absence Management Systems
• Implications of Collective Bargaining
Remuneration

Industrial Relations principles and human resource management practices that govern wage determination are influenced by:

1. Minimum wages laws
2. Overall economic conditions including labour supply and labour demand
3. Industry practices on pay structure
4. Absence from work and time off work
Remuneration

Minimum wages laws

Regional Minimum wages legislation generally do not define ‘wages.’ The significance of a description is critical for purpose of the levy of taxes, calculation of the payment of wages, and even profit sharing schemes.

Maxim: A worker’s salary is his/her property.
s. 2 Protection of Wages Act [Barbados]

[“wages” means remuneration or earnings however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law, which are payable by virtue of a contract of employment either expressed or implied by an employer to an employee for work done or to be done or for services rendered or to be rendered]
Remuneration

Risk Cycle: Potential Trade Dispute

- Inaccurate calculations
- Reporting of a grievance
- Undetermined grievance becomes litigious
- Unsuccessful lawsuit may result in the award of DAMAGES
Remuneration

Industry practices

The variety of industries and sectors in any economy often offer diverse standards (complex and simple) for setting salaries. Benchmarking salaries invariably considers a mixture of tools including:

- Compensation survey
- Collective bargaining
- Job evaluation
- Pay Scale and salary range setting
Remuneration

Holidays

Public holidays commonly attract the usual rates of pay (for a normal work day), unless actual work is performed on such days. Variation in the rate of pay is determined by law (in some industries), collective agreements, contracts, and human resource management policies.
Absence due to illness or disease

Approved absence from work and time off work may be considered either with pay or without pay, based on the reason for the absence from work and the duration of such absence. In the case of injury and illness, the employer is usually only under an obligation to pay for a compensable work-related injury or occupational disease, or only for that period of sick/injury leave which is allocated by law, practice or policy.
Remuneration

The determination as to whether a disease is compensable is usually based on if-

• The employee is exposed to the disease by reason of his/her employment,

• The disease is causally related to the employee's industry or occupation, or

• The incidence of the disease is considerably higher in that industry or occupation than it is in the general population.
Remuneration

In order to ensure that all staff are remunerated and rewarded fairly and are treated according to standard practices, Remuneration Policies must be crafted in such a way that they incorporate among other things the rationale and procedures for -
Remuneration

- Components of Remuneration (including fixed remuneration, performance-based remuneration, pension schemes, other benefits, severance payment etc);
  - Original salary offers;
  - Changes to salary by reason of successful probation and performance management systems;
  - Changes to salary by reason of promotion and acting appointments; and
  - Absence and time off work with and without pay.
Termination of employment

Termination for cause

‘Cause’ includes but is not limited to:

a) Misconduct

b) Breach of Contract

c) Medical grounds

Termination without cause

‘Without cause’ includes but is not limited to:

a) Voluntary Separation of Employment & Redundancy

b) Efflux of time

c) Mediated termination
Termination of employment

Misconduct

Where the disciplinary offence of misconduct has been committed, and the employee has been charged, the right to a fair hearing requires that an the employee must not be penalized by a decision affecting his/her rights or legitimate expectations unless he/she has been given –

- prior notice of the case against him/her,
- a fair opportunity to answer the case, and
- the opportunity to present his own case.
Termination of employment

Medical grounds

[An employer] is entitled to consider and take into account the nature of the worker’s illness (if any), the likely length of the continuing absence, the need of the Company to have done the work which the worker was engaged to do and all the other circumstances of the case.

Oilfields Workers’ Trade Union v. Nestle Caribbean Incorporate, Nestle Trinidad and Tobago Limited (Trade Dispute No. 57 of 2002.)
Termination of employment

Medical grounds

The five C’s to follow-

• Compile all relevant employee data

• Consider laws, employment contracts, policies, collective agreement

• Communicate with absent injured/ill worker

• Consult relevant parties (registered medical practitioner, insurer etc.)

• Capture decisive action in writing
Termination of employment

Redundancy

Retrenchment is governed by legislative provisions*, and other stipulations in policy manuals and collective agreements. Those documents prescribe the procedure to be followed in the event of redundancy and to provide for severance payments to retrenched workers.

*Jamaica Flour Mills Limited v. The Industrial Disputes Tribunal and National Workers Union [Privy Council Appeal No. 69 of 2003]
Termination of employment

Redundancy

Factors to be taken into consideration prior to embarking upon a retrenchment exercise include employment history, job classification, requirements for the position (including academic & job experience), updated qualifications, possible alternative job placement or re-assignment and disciplinary and other records.
<table>
<thead>
<tr>
<th>Name of Employee</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Employment</td>
<td>Consider date of hire, nature of employment (temporary &amp; permanent) probationary periods &amp; successor employer implications</td>
</tr>
<tr>
<td>Current Position</td>
<td></td>
</tr>
<tr>
<td>Requirements for the position (including academic &amp; job experience)</td>
<td></td>
</tr>
<tr>
<td>Employee’s current qualifications</td>
<td></td>
</tr>
<tr>
<td>Possible alternative job match</td>
<td></td>
</tr>
<tr>
<td>Employee’s disciplinary, medical and other records</td>
<td></td>
</tr>
</tbody>
</table>
Termination of employment

Voluntary Separation of Employment

"As its name implies, a voluntary separation is entirely voluntary in character. A worker elects whether or not to leave his employment on acceptable terms offered by his employer. Any termination of his employment is, therefore, consensual and not forced. The employer induces the worker to leave his employment prematurely by offering a payment that is not based on any particular formula but which is attractive enough to persuade the employee to resign or retire from his employment before his normal age of retirement... Of course, there is always the possibility that his employment may become surplus to his employer's requirements and liable to be compulsorily retrenched, in which event he would be entitled by law to receive compensation for his past service by way of severance benefits."

Oilfields Workers’ Trade Union v. BP (Formerly Amoco) [Trade Dispute No. 125 of 1999]
<table>
<thead>
<tr>
<th>Retrenchment</th>
<th>VSEP</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>LAWS</strong></td>
<td></td>
</tr>
<tr>
<td>Governed by</td>
<td>Not generally governed by laws</td>
</tr>
<tr>
<td>Retrenchment laws</td>
<td></td>
</tr>
<tr>
<td><strong>BENEFITS</strong></td>
<td></td>
</tr>
<tr>
<td>Severance benefits/redundancy payments specified by law</td>
<td>Payments are ‘enhanced’ and ‘attractive’</td>
</tr>
<tr>
<td><strong>NOTICE</strong></td>
<td></td>
</tr>
<tr>
<td>Statutory notice must be given unless there are unforeseen circumstances.</td>
<td>No particular notice is generally given but there ought to be consultation</td>
</tr>
<tr>
<td><strong>IF IMPLEMENTED</strong></td>
<td></td>
</tr>
<tr>
<td>Workers may bring a claim for wrongful/unfair termination</td>
<td>Workers need not accept offer and, may remain employed unless by virtue of contract end, compulsory retrenchment or dismissal for cause.</td>
</tr>
<tr>
<td><strong>PRINCIPLES</strong></td>
<td>The last worker employed is usually the first to be retrenched (LIFO), all things being equal</td>
</tr>
<tr>
<td>---------------</td>
<td>---------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>AFTER</strong></td>
<td>No new worker may be hired in the position of the retrenched worker, unless some period has elapsed.</td>
</tr>
<tr>
<td><strong>IMPLEMENTED</strong></td>
<td></td>
</tr>
</tbody>
</table>
Leave and Absence Management systems

Managing the absent worker requires an understanding of-

• the application of the Laws,

• Human Resource Management policies and/or Collective Agreements and Contracts of Employment, and

• the principles and practices of good Industrial Relations.
### Leave of absence from work

There are generally two broad categories of Leave:

<table>
<thead>
<tr>
<th>PAID LEAVE</th>
<th>UNPAID LEAVE</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Vacation</td>
<td>• Unauthorised Leave</td>
</tr>
<tr>
<td>• Sick and (extended)</td>
<td>• Extended Sick</td>
</tr>
<tr>
<td>• Injury (compensable)</td>
<td>• Injury/ Extended Injury</td>
</tr>
<tr>
<td>• Casual</td>
<td>• No Pay</td>
</tr>
<tr>
<td>• Maternity/ Paternity</td>
<td>• Extended maternity on non-medical grounds</td>
</tr>
<tr>
<td>• Bereavement/ Compassionate</td>
<td>• Extended bereavement</td>
</tr>
<tr>
<td>• Special</td>
<td></td>
</tr>
<tr>
<td>• Study</td>
<td></td>
</tr>
</tbody>
</table>

- Injury (compensable)
- Casual
- Maternity/ Paternity
- Bereavement/ Compassionate
- Special
- Study
Sick Leave and Injury Leave

Sick Leave usually refers to that period during which an employee is suffering from some illness and as a result, is permitted or authorised to be away from the job and does not perform any of the functions or jobs assigned. Proof of the illness (by way of submitting a medical certificate) is usually required when an employee utilises more than two (2) consecutive days of leave.
Sick Leave and Injury Leave

Injury Leave usually refers to that period during which an employee is suffering from some injury and as a result, is permitted or authorised to be away from the job and does not perform any of the functions or jobs assigned. Pay, while on Injury Leave is usually determined by the nature of the employment relationship and whether the employer admits that the employee was injured by reason of his employment.
Relevant Laws on leave

Duration of Leave (certain workers)

- Minimum Wages Acts
- Maternity Protection Acts

Employers’ duties regarding absence caused by injury/illness at work

- Workmen’s Compensation Acts
- Factories Acts
- Occupational Safety and Health Acts

Benefits

- National Insurance Acts
THE JUDICIARY OF TRINIDAD AND TOBAGO

WORKMEN’S COMPENSATION ACT

Re-Death of – Sherwin Cabralis, late of
Lp # 4 Maturita Extension Bye Pass Road, Arima
A workman lately employed with Ministry of Housing & the Environment

Compensation in the above matter having been deposited with me under Section 8 of the Workmen’s Compensation Act, persons claiming to be the dependants of the said Sherwin Cabralis are hereby required to appear before the Commissioner on Friday the 20th day of April, 2012 at 9.0’clock in the forenoon at the Hall of Justice, Port of Spain when the Commissioner shall proceed to determine the distribution thereof.
Leave and Absence Management systems

The best absence management systems use a combination of clear policies on leave, good shift schedules, incentives, overtime provisions, cross-training, temporary personnel, and predetermined limits to manage absences. These systems use well-defined procedures that are properly communicated so as to address each type of absence.
Additional strategies which may be implemented to foster an attendance culture include:

• Flexible Working hours
• Part-time work
• Job sharing
• Career break schemes
• Working at home
• Part-year employment
• Wellness management programs
• Use of Leave Tracking software
CATEGORIES OF LEAVES OF ABSENCE

<table>
<thead>
<tr>
<th>EMPLOYEES</th>
<th>Date(s)</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>HERNANDEZ, Camille</td>
<td>September 8 - 10, 2011</td>
<td>3</td>
</tr>
<tr>
<td>THOMAS, Raul</td>
<td>April 12 – 20, 2011</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>June 10 - 13, 2011</td>
<td>4</td>
</tr>
<tr>
<td>THOMAS WILLIAMS, V</td>
<td>January 2, 2011</td>
<td>1</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>VACATION</th>
<th>SICK</th>
<th>INJURY</th>
<th>MATERNITY</th>
<th>BEREAVEMENT Local</th>
<th>BEREAVEMENT External</th>
<th>PATERNITY</th>
<th>EDUCATION/STUDY</th>
<th>CASUAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>14</td>
<td>10</td>
<td>30</td>
<td>60</td>
<td>3</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>3</td>
</tr>
</tbody>
</table>
Components of the best leave Policies include:

- Identification of types of leave and eligibility
- Leave allocation
- Processing (and approval of) the leave request & suitable forms
- Return to Work provisions
- Pay & benefits during a leave of absence
Collective Bargaining

The concept relates to negotiations between an employer and a group of employees (or their representative bodies) by meeting and treating in good faith, with a view to the conclusion of a collective agreement or the revision or renewal thereof or the resolution of disputes.
Collective Bargaining

Under *The Labour Relations and Industrial Disputes Act* [Jamaica] it is noted that -

“The major aim of the collective bargaining process is to arrive at terms and conditions acceptable to both employers and workers. These terms and conditions are usually enshrined in collective agreements, and often contain procedural and substantive provisions.”
Collective Agreements

Purpose

“...to settle the terms and conditions of employment of workers in a bargaining unit for an agreed period with a view to avoiding disruptions of work for the duration of the agreement.”
Collective Agreements

Terms in collective agreements are deemed to be incorporated into contracts of employment.

This position in English law was codified in the *Industrial Relations Act Chap. 88:01* [Trinidad and Tobago].

**s. 47. (2)** of the *Industrial Relations Act*: “The terms and conditions of a registered agreement shall, where applicable, be deemed to be the terms and conditions of the individual contract of employment of the workers comprised from time to time in the bargaining unit to which the registered agreement relates.”
Collective Agreements

Terms and conditions of collective agreements are:

• legally binding,
• directly enforceable in the Court, and
• generally valid for a specific term.

Once the collective agreement is registered, the parties shall be deemed to have actual notice of all the provisions.
Collective Agreements

Statutory provisions for the ‘registration’ of collective agreements mandate that copies of such agreements are dispatched to the various Ministries of Labour for their records. Employees must also be notified of new and/or revised agreements.

Notice is *actual* notice and not *constructive* (indirect) notice.
Collective Agreements

• There is a duty on the part of the employer to meet and treat with the recognised majority union.

• Apart from the inclusion of terms and conditions of employment of general application, Collective Agreements must include ‘procedures for settling disputes, either on the industry wide level or in the individual undertaking.’
Collective Agreements

Prescribed methods or procedures for settling disputes usually adopt/ follow chains of command and allow for protracted processes for unresolved issues. This may lead to potential legal actions.
Collective Agreements

Collective agreements are not HR management policies and therefore ought not applied or adopted to the exclusion of management prerogative.

The prudent HR practitioner constantly reviews the collective agreement (if applicable) to ensure that it supports the workplace policies, if necessary.
The End

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