

Labour Relations Bill Overview

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“Be Informed” Session



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Government's Stated Objectives

- To introduce best human resource practices into the law
- To clarify the laws, to protect and enhance the rights of Employees and Employers
- To establish clear expectations in dispute resolution and enforcement
- To lessen opportunities for “loopholes” and to address “structural discrimination” against Caymanians

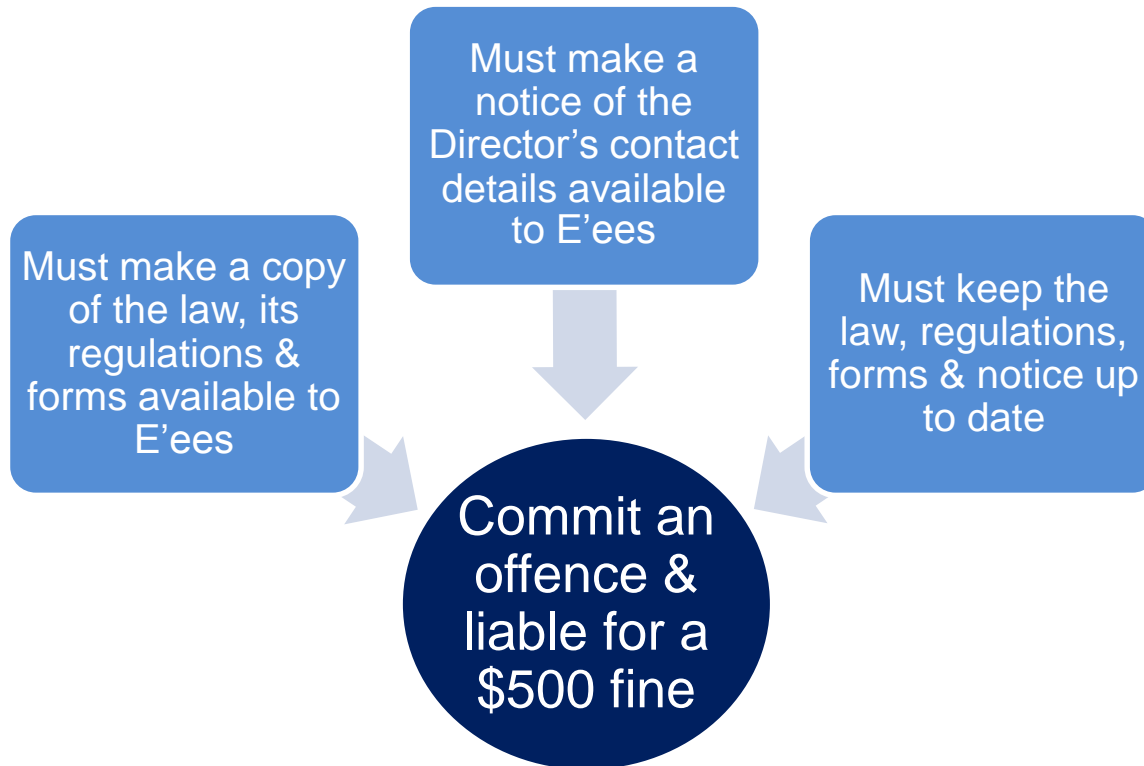


Definitional Changes

- New definition of an “**Employee**” (excludes children, temporary staff, volunteers etc.) (Now includes charities and churches)
- Beware **independent contractors** may be employees for the purposes of the labour law if the true legal relationship is that of an Employer/Employee
- New definition of “**Part Time Employees**” (works 15-30 hours per week)
- New definition of “**Self Employed Casual Worker**” (engaged on an irregular or intermittent basis (maximum 15 hours per week for no more than 90 days))



Employer Responsibilities





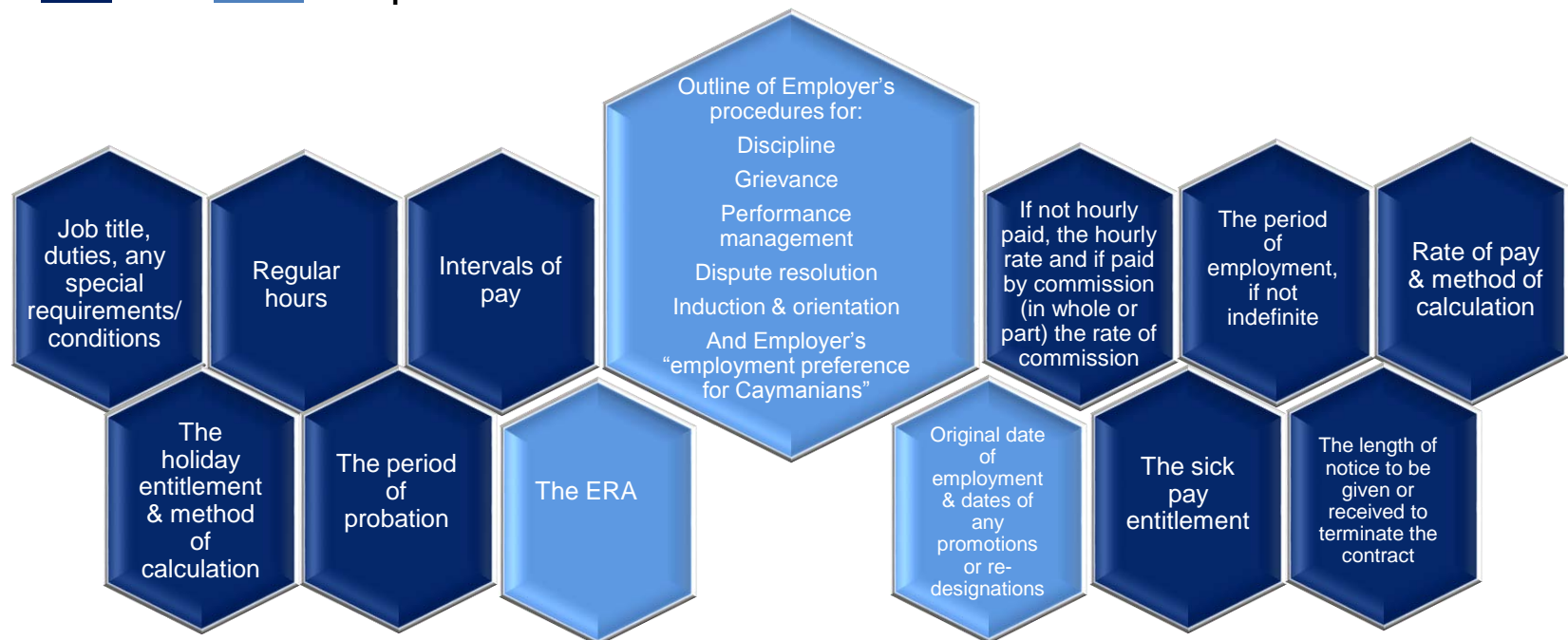
Contract of Employment or Statement of Working Conditions (“SOWC”)?

- Conflict used in draft bill appears to require a Contract of Employment and a SOWC
- SOWC must be signed by both Employer & Employee and dated (will appear as a second contract)



Statement of Working Conditions (“SOWC”)

- Old and New Requirements





Statement of Working Conditions (“SOWC”)

- No transition provisions
- Practical problems getting new SOWCs signed
- SOWC must be provided within 10 days of entering into the employment contract or 7 days after a written request from the employee “on entering into the Contract of Employment”



Contract of Employment or Statement of Working Conditions (“SOWC”)?

\$10,000

Failure to provide a written statement of working conditions

\$2,500 or
6 months
in jail or
both

Provide an Employee with a defective written statement of working conditions

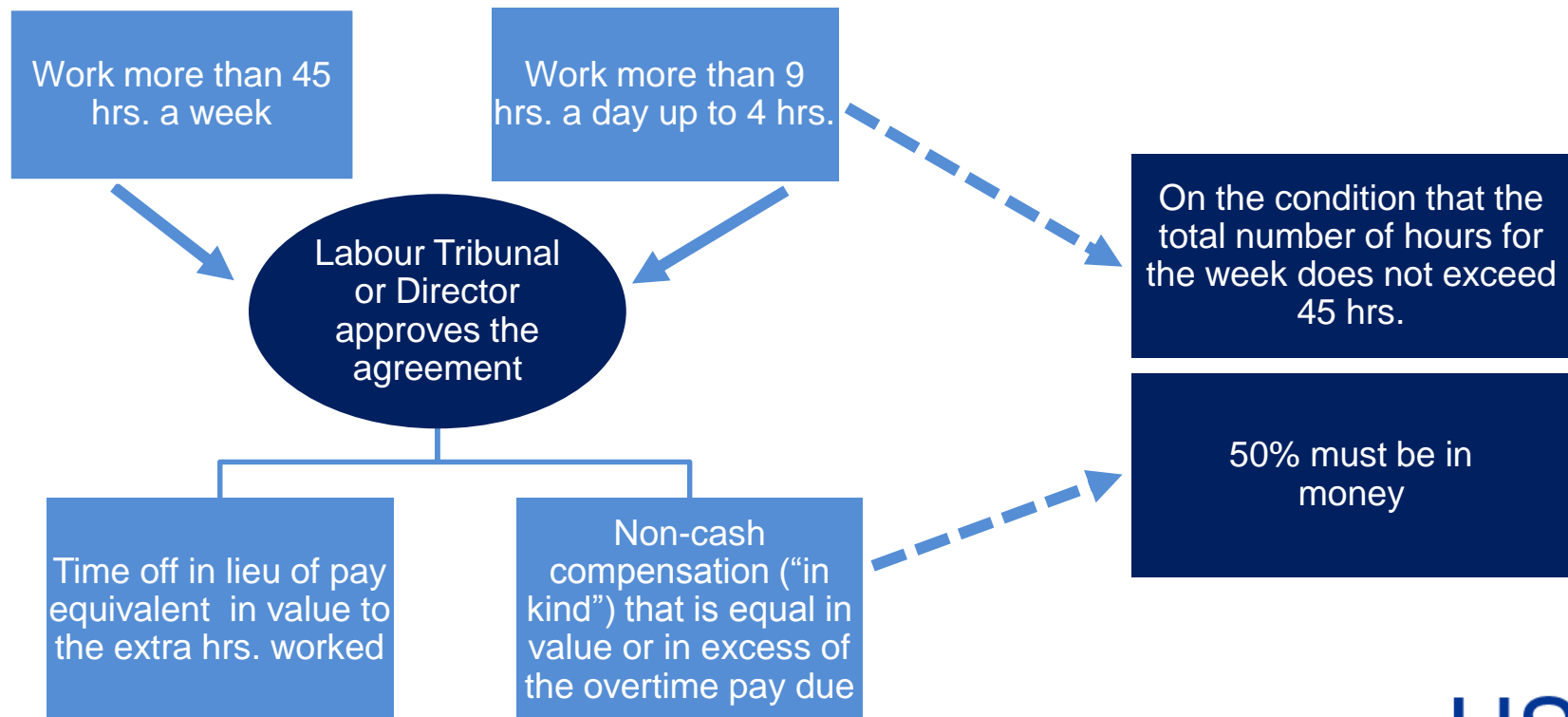
\$2,500 or
6 months
in jail or
both

Failure to provide SOWC on request



Failure to comply could lead to a penalty of \$2,500 or 6 months imprisonment or both

Hours of Work





Leave

- The 12 months employment requirement will be removed for vacation leave
- Vacation leave will instead accrue monthly (***this must be stated in contract***)
- Extra leave if injured “on the job” and no Workmen’s Compensation policy or extended sick leave disability benefits in place (***10 days per year of service on top of regular sick pay on application to the Director***)
- Maternity leave increases from 12 weeks to 14 weeks (***6 weeks must be taken after the birth of a child***)



Leave

- Female employees will receive paid time off for antenatal visits (subject to eligibility requirements)
- Paternity leave will be introduced (5 days paid, 5 days unpaid)
- Adoption leave will be introduced for men (1 week paid, subject to eligibility requirements)



Redundancy (Employers)



- The report must be in a prescribed form and filed with the Director
- The Employer must continue to file reports **every 6 months** for the **next 2 years** or such other time as the Director may specify



Redundancy

- A new list of events that may give rise to redundancy (including automation, sale or down-sizing of a business, act of God etc.)
- Redundancy will only apply where the tasks the person was last employed to perform no longer exist or is not expected to exist in the 12 month period following redundancy



Redundancy

- No guidance on how soon the report must be filed
- \$500 fine for each day an Employer fails to file the report with the Director
- No guidance on whether the fines for late filing apply equally to the reports due every 6 months



Severance Pay (Fair Dismissal)

OLD LAW	NEW LAW
1 week's wage	2 weeks' wage (Must be employed at least 1 year to qualify)
For each completed year of employment	For each completed year of employment
No limit	Up to a maximum of 24 weeks (Pro-rated for part years, excluding year 1)
Employee's latest basic wage	Employee's highest basic wage



Severance Pay (Unfair Dismissal)

OLD LAW	NEW LAW
1 week's wage	4 weeks' wage (Must be employed at least 1 year to qualify)
For each completed year of employment	For each completed year of employment
No limit	Up to a maximum of 48 weeks (Pro-rated for part years, excluding year 1)
Employee's latest basic wage	Employee's highest basic wage

- **Constructive dismissal now included**
- **No general right to interest (Only due on temporary layoff agricultural and construction workers)**



Severance Pay (Employers)

- Only applies if the Employer terminates the employment
- Acquisition of an existing business (Contingent liability risks)
- Maintain a Register of Hire & Termination Dates
- Introduction of a \$2,500 fine on summary conviction or imprisonment for a term of 6 months or both



Termination for Serious Misconduct

OLD &
ONGOING

NEW

Committed criminal offence in course of employment

Conduct of E'ee

Under the influence of drugs or alcohol

Conduct that has a detrimental impact on the performance, reputation or conduct of the E'r or E'ee

Extensive use of electronic communications in workplace during working hours contrary to policies in place

Reckless or unsafe practices after being trained or warned

Making false representation

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What amounts to misconduct?





Warnings

- Employee will be required to sign written warnings as ***an acknowledgement of receipt*** of the warning
- This ***does not*** constitute an admission of any allegations contained in the letter
- What if the Employee refuses to sign?
- The Employer must make a note on the warning and have the notation witnessed by an independent 3rd party



Performance Warning

- The warning letter must include appropriate instructions on how to improve performance
- The Employee then has **90** days to start performing their duties in a satisfactory manner (currently only **30** days is given)
- After **45** days the Employer may carry out an evaluation of the Employee's progress (*This is recommended*)



Performance Warning

- What if after 90 days the Employer concludes that performance has not improved?
- If the Employer decides to terminate, they must do so ***on the day immediately following the end of the 90 day period***
- Employers may want to take legal advice on the form and content of misconduct & performance warnings and also the relevant time limits involved



Termination of Fixed Term Contracts

- New provision relating to a series of fixed term Employment Contracts with less than 30 day gaps
- Potential liability for unfair dismissal claims
- For Work Permit holders, the termination will be fair if they are being replaced by a Caymanian/RERC/PR Holder



Unfair Dismissal

OLD LAW	NEW LAW
<u>Maximum</u> of 1 week's wage for each completed year of employment	<u>Minimum</u> of 4 weeks' wage for each completed year of employment
Limited by number of years employed	NO LIMIT
Not possible unless completed probation period or 3 months employment	Claims can arise if employee is terminated in probationary period (unless there was "gross misconduct" or "good cause")



Unfair Dismissal (Tribunal Considerations)

NEW

- Length of time unemployed after unfair dismissal
- Stress and hardship
- Loss of earnings/loss of continuous employment
- Reputational damage
- Evidence of attempts to secure employment/challenges encountered

OLD

- Length of continuous employment preceding dismissal
- Likelihood of finding comparable employment
- Degree of unfairness of the dismissal
- Period up to the likely retirement age



New Remedy: Back to Work!

With or without
an
“administrative
penalty”
awarded
against the
Employee

Reinstatement (as if dismissal had
not taken place)

Re-engagement (comparable or
other suitable work)



New Remedy: Back to Work!

- Tribunal to consider:
 - practicality
 - wishes of the parties
 - the circumstances of the dismissal
- Unclear what happens if Tribunal orders reinstatements/re-engagement against the wishes of either an Employer or Employee
- Not clear if there is a liability to pay wages between dismissal date and reinstatement/re-engagement



What Can We Expect?

- Larger Awards
- Employers will “lawyer up” but no costs awardable
- More claims
- Longer hearings with potential second hearing to address remedies if finding of unfair dismissal
- More appeals



Established Retirement Age (“ERA”)

- Every Contract of Employment must have an ERA of not less than 65 years
- What is an ERA?
- The **date** which has been **agreed** between the Employer and the Employee, in a Contract of Employment, as the **minimum** age at which the Employer **may terminate** the Employee for the purposes of retirement
- Employers must advise each Employee of the ERA (through staff manuals, newsletters etc.)
- New offences



Established Retirement Age (“ERA”)

- 12 months prior to an Employee’s ERA the Employer must advise the Employee of:
 - (1) the date of retirement; and
 - (2) the steps to be taken by the Employee regarding pensions & any other payments due upon retirement



Established Retirement Age - Fines



- How does an Employer comply and when?



Health, Safety & Welfare

- All workplaces must be registered within 1 month of commencement & changes to the workplace must be reported (***private homes are excluded***)
- Every employer must have Workmen's Compensation Insurance or enter into a Bond (amount to be determined by the Director)



Health, Safety & Welfare – New Workplace Requirements

Provision of adequate drinking water	Have adequate onsite first aid equipment
Have hurricane rules & procedures	Have adequate restrooms
Have fire hazard rules & procedures	Have appropriate waste disposal procedures and storage for hazardous materials
Have adequate means of escape	Have reasonable access to source of food or has a canteen
Have adequate well maintained facilities for employees to sit (where appropriate)	Has other facilities as reasonably necessary for health, safety & welfare of employees in that line of business



Health, Safety & Welfare – Cabinet Empowerment

-
- Make regs. to impose admin penalties for Ee's who violate this section
 - Prescribe safety measures in respect of heavy machinery
 - Prohibiting the use of any substance
 - Confirmation of any certification to prove the competency of any person operating various equipt.
 - Make regs. for licensing, training and certification of various types of workers



Investigative Powers of the DLP

- Labour Office inspectors will have the same powers, privileges and immunities as a police constable regarding the imposition of administrative penalties
- Criminal proceedings can be brought up to 2 years from the date a violation is discovered or a complaint is received (***DLP currently limited by a 6 month statute of limitation***)
- If you fail to comply with any penalties imposed by the Labour Tribunal, you will be liable on summary conviction for an ***additional fine of \$500 for each day of non-compliance***



Whistle-blower (Employees)

- Employee can make a disclosure to the DLP if he “reasonably believes” the Employer has failed to comply with the new law. If Employer threatens or actually subjects the Employee to victimisation following the making of a disclosure then the Employee can make a complaint to the Labour Tribunal (not Director)
- Not clear what award the Tribunal can make if it finds victimisation has occurred



Whistle-blower (Employees)

- Harassment
- Bullying
- Discrimination
- Denial of promotion without cause
- Demotion without cause
- Re-assignment of work or career opportunities
- Dismissal or suspension without cause
- Redundancy without cause
- Intimidation
- Being made subject to discrimination by the E'er or by an E'ee of the E'er
- Threatening any of these actions



Discrimination

- A separate whistle-blowing power will be given to Employees to report discrimination and the Employee can seek a remedy if there is victimisation after the report is filed
- An employee can make a complaint to the Labour Tribunal if he considers there has been discrimination (not clear what the Labour Tribunal can award in these cases)



Discrimination

No person (whether an E'er or E'ee) shall discriminate with respect to any person's:

Hire, Promotion,
Dismissal, Tenure,
Wages, Hours or other
conditions of
employment

Sex, Race,
Colour, Political
or other opinion,
Pregnancy

National or
social origin,
Association with
a national
minority

Birth or other
status *(except
where
preference is
given to a
Caymanian in
hiring)*

Mental
impairment or
physical
disabilities
(provided ability
to perform the
job is not
impaired)

Language,
Property

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Increased Jurisdiction of Tribunal

- Date of hire
- Whether severance is due & the amount payable
- Any matter concerning the giving or receiving of notice
- Vacation entitlement
- Unpaid wages
- Violation of leave benefits
- Breaches of safety and health provisions by the Employer
- Unlawful deductions
- Failure to comply with overtime pay
- Absence or violation of contractual terms
- Discrimination
- Redundancy or retirement amounting to unfair dismissal
- Constructive dismissal
- Unlawful or improper administration of gratuities



Transitional Provisions

- When this law comes into force every complaint, decision, appeal etc. that has not been “wholly dealt with” will be handled in accordance with the old law
- There is no provision allowing Employers a certain amount of time to comply after the law comes into force



Why Comply?

Failure to comply could lead to a fine or 6 months imprisonment or both

\$2,500	\$500 PER DAY (UP TO 2YRS)	\$5,000	\$500	\$10,000	4 WEEKS' WAGE (AT EMPLOYEE'S HIGHEST BASIC WAGE)	2 WEEKS' WAGE (AT EMPLOYEE'S HIGHEST BASIC WAGE)
Maintain a Register of Hire & Termination Date	Failure to file Redundancy Report	Failure to state ERA in Employment Contracts	Not making a copy of the Labour Law, its regulations & forms available to EEs	Failure to provide a written SOWC	Severance Pay in Unfair Dismissal cases	Severance Pay in Fair Dismissal cases
Non-compliance with overtime regime	Non-compliance with any decision of the Labour Tribunal	Failure to advise EEs of ERA	Not having a current notice of the DIR's contact details available to EEs			
Providing an EE with a defective SOWC		Failure to advise EEs 12 months prior to ERA	Not keeping the law, its regulations & forms and/or the notice up to date			
Failure to provide SOWC to EE on request						

Questions?



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