



Labour Relations Bill, 2015

Summary Notes

June 2015

The Labour Relations Bill, 2015 ("the Bill") has been released for public consultation; the public is invited to provide feedback on the Bill by **August 31, 2015**. The Bill seeks to provide clarifications within the current Labour Law (2011 Revision), especially in priority areas for reform which will be of benefit to both the employee and the employer.

Why is it necessary to revise the Labour Law (2011 Revision)?

The last attempt for a comprehensive review of the Labour Law was undertaken in the early part of the last decade, and this resulted in the Employment Law 2004. However, that law was never fully brought into force. Extensive legislative changes were necessary in order to align the current Labour Law with the reorganisation of Labour and Pensions Services in the Cayman Islands and to make provisions for other amendments, which have been deemed necessary as priority areas for reform and clarification of the Labour Law, to benefit both the employee and the employer.

What are the general objectives of the Labour Relations Bill, 2015?

- to align the Labour Relations Bill, 2015 with this Coalition Government's vision as it relates to its awareness of best human resources practices;
- to clarify the law for the benefit of all users, employees and employers, and other stakeholders, as well as to protect and enhance the rights of employees and employers where prudent;
- to establish clear expectations in dispute resolution as well as timelines for enforcement action;
- to institute a more effective deterrent to non-compliance with the legislation by increasing penalties and fees where appropriate; and
- to ensure that efforts are made to lessen the opportunities or loopholes for structural discrimination against Caymanian employees.

What are the major changes being proposed in the Labour Relations Bill?

A summary of the critical changes proposed in the Bill is listed, as follows:

- **Part I - Preliminary:**
 - provides a revised definition of an "employee" in order to clarify who shall *not* be considered an employee for the purposes of this law;



- clarifies that a “part-time employee” means an employee who is contracted to work between 15-30 hours a week;
 - introduces the new term “self-employed casual worker” to replace the ambiguity of the current definition of “casual employee” ;
 - introduces “established age of retirement” or “established retirement age” to provide clear guidance on retirement requirements;
 - provides that the law would apply to all employees except those in the public service, which removes the previous exemption of the law to charitable organisations and churches;
 - requires that a copy of the Law and the contact information for the Department of Labour and Pensions (DLP) is made available at the workplace and accessible to all employees and failure to do so makes employers liable on summary conviction of \$500 fine;
 - requires every employer to enter into a written contract of employment within 10 working days with every employee (including household domestics) which will be a statement of employment conditions and failure to do so is an offence liable of a \$10,000 fine upon summary conviction;
 - employers who offer or provide employment on terms that are not in conformity with the legislation are liable upon summary conviction to a fine of \$2,500 or to a 6 months’ imprisonment or both;
 - employers failing to provide to the employee a statement upon termination are liable on conviction to a fine of \$2,500 or imprisonment for 6 months or both;
 - requires that reasonable training is provided to the probationary employee and provides for the possibility for termination during the probation period to be considered as unfair dismissal given certain requirements.
- **Part 2 - Leave:**
 - provides for an increase in maternity leave from 12 to 14 calendar weeks (which is the International Labour Organization’s minimum standards) and specifies that 6 weeks of maternity leave must be taken immediately after childbirth;
 - entitles pregnant female employees who meet the eligibility rules to be allowed to attend ante natal care appointments during working hours;
 - entitles male employees who meet the eligibility rules to receive paternity leave (5 working days paid, 5 working days no pay) and paid adoption leave of 1 calendar week.



- **Part 3 - Remuneration and Hours of Work:**

- allows for employees to be able to work more hours than the standard work day (up to four hours) on the condition that the total number of hours worked for the week doesn't exceed the standard work week (45 hours);
- with approval from a Labour Tribunal or Director of DLP, provides that where overtime pay includes a time-off equivalent for the extra hours worked by an employee, at least one half of the payment shall be in cash or non-cash compensation if the time off in lieu is equal to or more than the standard work week;
- "payment in kind" is defined and provides that employment contracts must pay at least 50% of the total remuneration in money;
- any employer who does not pay overtime in accordance with the law is liable on summary conviction to a fine of \$2,500 or to imprisonment for 6 months or both;
- every employer, regardless of size, must keep an accurate work account in respect to the time worked, leave taken, deductions, etc. for each employee and any employer must provide a statement of wages; an employer who does not keep an accurate work account for each employee or fails to furnish an employee with a statement of wages is liable on summary conviction to a fine of \$2,500 or to imprisonment of 6 months or both.
- an employer who enters into an agreement contrary to the provisions regarding the forms of payment, deductions and the payment of wages commits an offence liable on summary conviction to a fine of \$2,500 or to imprisonment of 6 months or both;

- **Part 5 - Severance Pay:**

- increases severance pay from 1 week's wage to 2 week's wages for each completed year of employment up to a maximum of 24 weeks' wages at the employee's highest base wage except in cases of unfair dismissal;
- where the redundancy is found to be a case of unfair dismissal, the employee shall be entitled to an award of 4 weeks' wages for each completed year of employment up to a maximum of 48 weeks' wages at the employee's highest basic wage;
- the severance pay in cases of unfair dismissal shall be in addition to any other award for unfair dismissal under this legislation.

- **Part 7 - Unfair Dismissal:**

- provides that employers who replace a work permit holder with a Caymanian or a Permanent Residency Holder would not be liable to pay severance or unfair dismissal compensation;
- introduces a definition of "constructive dismissal" as grounds for unfair dismissal;
- requires employers to report to the Director of DLP in the cases of specified employee redundancies and terminations;



- clarifies issues that the Tribunal may take into consideration when deciding remedies for unfair dismissal complaints and allows for the amount of an award of compensation to be no less than 4 week's wages for each year of full-time or equivalent work;
 - provides employees with protection from victimisation as a result of "whistle blowing" or making legitimate complaints for specified situations such as working conditions, etc.;
 - requires employers to define the "established age of retirement" with employees within employment contracts to be no sooner than 65 years of age, except where professional or industries standards mandate an earlier age and establishes a new penalty of \$5,000 for non-compliance (i.e. where the employer seeks to terminate the employee outside of these established protocols).
- **Part 8 - Health, Safety and Welfare:**
 - provides that every employer shall provide protection from on the job accidents, injuries and work-related illnesses or diseases in the form of a worker's compensation insurance policy or enter into a bond in the amount to be determined by the Director of the DLP;
 - introduction of a new clause that provides that the Director shall take such steps as necessary to ensure compliance with this Part of the law including investigating complaints and carrying out routine inspections or carrying out investigations to determine compliance;
 - allows for Cabinet to make regulations for the imposition of administrative penalties for employees who violate this section of the law;
 - allows for Cabinet to make regulations prescribing, among other things, the safety measures to be taken in respect of machinery, prohibiting the use of any substance, the confirmation of any certification that supports the competency of any person to operate various equipment used in construction or industrial workplaces and make regulations prescribing arrangements for the licensing, training or certification by the Director of site safety supervisors, occupational health and safety trainers or temporary workers entering the Islands for the purposes of conducting training;
 - increase in penalties with the introduction of new penalties for occupational health and safety breaches.
- **Part 9 - Administration:**
 - provides that the Director, Deputy Director, and labour inspectors shall have, when performing duties regarding the obligation of administrative penalties, the same powers conferred on a constable under the Police Law and may enter any workplace without prior notice at any time during work hours to ensure compliance of the Law;



- introduces a statute of limitations of 2 years (currently the DLP is constrained by the 6 months statute of limitations in Section 78 of the Criminal Procedure Code) in which the Department can institute criminal proceedings for any offence under the Law and the “start date” would be from the date in which the DLP receives a formal complaint from an employee or discovers the violation as a result of an investigation or a proactive inspection of an employer’s records;
 - increases the power of the Director to receive written complaints for resolution instead of all complaints being directed to Labour Tribunals and outlines the time frame for the procedure of the complaint process made to the Director;
 - provides that any person who refuses to comply with a decision of a Labour Tribunal commits an offence and is liable on summary conviction to a fine of \$500 for each day that the offence continues in addition to any penalties that may be applicable; any award made by a Labour Tribunal, when registered in Grand Court and is enforceable as an order of the Court.
- **Part 10 - General Penalties and Miscellaneous:**
 - provides that preference being given to a Caymanian in hiring shall not be regarded as discriminatory;
 - introduces a new amendment regarding discriminating against Caymanian job applicants for being “over qualified”;
 - introduces a new amendment under discrimination regarding employers not permitting or condoning sexual or other kinds of harassment at the workplace or in the course of carrying out duties;
 - provides that an employer shall not victimise or discriminate against an employee who has made a complaint in good faith to the DLP regarding non-compliance with the legislation;
 - employers who commit offenses in relation to occupational safety and health of employees are liable on summary conviction to a fine of \$500 for each day that the violation continues;
 - standardises the ability of the Court to order employers, who have been convicted of not paying employers wages or benefits, to pay not only fines or other penalties, but interest at the rate of 10% per annum on an amount that the Court determines should have been paid to the employee;
 - provides that Cabinet may make regulations to provide for an administrative penalty system.

The Ministry and Department of Labour and Pensions invite the public to review the Labour Relations Bill, 2015 and provide feedback by via email at lpl@gov.ky by **August 31, 2015**.