

WEEK THREE

HRM and the Law

- National and international legal frameworks
- Collective and individualistic perspectives on employment law
- The contract of employment
- Terminating the contract of employment

An overriding concern of Strategic Human Resources Management is to link Human Resources Management with Organizational Goals, taking into account the External and Internal Forces relevant to Human Resources Management.

National and International Legal Frameworks

The field of Human Resources Management is greatly influenced and shaped by employment legislation. Indeed, regulations and laws govern all aspects of human resource management, including recruitment, placement, development, and compensation areas.

Employee rights in the workplace include everything from rules for hiring and getting paid through losing a job and unemployment benefits. These include:

- illegal firings and layoffs
- challenging a job loss
- wages and hours
- privacy on your email and voice mail
- family and medical leave
- on-the-job safety and health
- health insurance and retirement plans
- workplace testing
- sexual harassment
- discrimination
- unemployment, disability and workers' compensation insurance

A variety of laws govern what you can and cannot do during all phases of the hiring process.

Generally, the employer must:

- avoid illegal discrimination
- respect the applicant's privacy rights
- refrain from making promises you can't keep
- follow the legal rules for hiring immigrants, and
- follow the legal rules for hiring young workers.

Collective and individualistic perspectives on Employment Law

Comparative Analysis of employment and termination legislation in the case of Jamaica and England

Worker's Rights Case Study (Applied to Jamaica)

There are 2.6 million people living in Jamaica. Nearly 1.1 million are active in the workforce.

Most Jamaican employees work in either the services or agricultural industry. The Jamaican government regulates employment in the country with various laws. These laws are maintained and enforced by the Jamaican Ministry of Justice.

Jamaican labor law is a collection of separate acts that have been written over many years.

Basic labor law includes information on workers compensation, minimum wage and women's rights. Similar to other countries' labor laws in most respects; Jamaican law does have some differences, such as set minimum wages for the entire country and times women are specifically allowed to work.

Employment (Equal Pay for Men and Women) Act

Employers must pay men and women equally. If an employer has both male and female workers in substantially similar positions, he is not allowed to pay them any differently.

Employers also must keep records of payment so that they can prove that they have complied with the Employment Act.

Holidays with Pay Act

Both full-time and "casual" workers are entitled to holidays and sick leave with pay. The amount of pay a worker will be given will be determinate upon how long he has been at his job, how many hours he works, and how much he gets paid regularly.

Maternity Leave Act

A woman is entitled to maternity leave if she has worked for her employer for a total of at least 52 weeks, if she expresses to him a need to take maternity leave and agrees to come back to work and if her doctor writes a certificate for the employer saying she will need to take maternity leave. Maternity leave may not exceed 12 weeks. If a mother becomes ill in those 12 weeks, a doctor may write her another certificate so that she may take another period of time off, not exceeding 14 weeks. Once a woman has completed her maternity leave, she is entitled to return to work with the same employer or the employer's successor, with the same pay and benefits, and is to be considered a continuance of her position from before she left.

Minimum Wage Act

This act created minimum wages for different professions. Each profession has its own base minimum wage. The wage changes with hours and with people whose income is a household income. Workers must also be paid more on holidays, Sundays and Good Friday.

Termination Act

This act creates minimum weeks notice corresponding to the amount of time a worker has been working for an employer. It begins with two weeks notice (at least) for a worker who has worked for four weeks with her employer and it ends with 12 weeks notice if she has been employed with that employer for 20 years or more.

Women Act

Women may not work at night unless their day work accidentally carries on into the night. If the State Minister for Labor allows a woman to work at night, her hours may not exceed 10 in a day. If an employer disobeys this law, he will be subject to a \$20 fine, as of June 2010.

Worker's Compensation Act

If a worker is injured, she shall be paid compensation. If she dies from the injury, her dependents shall be paid instead. The worker or her dependents will be paid either 36 months wages or \$1,500, whichever is less. Workers have six months to file a complaint after injury.

Worker's Rights Case Study (Applied to England)

Find the subject case at

http://www.adviceguide.org.uk/england/worker_rights_at_work/basic_rights_at_work.htm

Individual Contracts of Employment and Collective Agreements

Labor Agreement is a contract between labor and management governing wages and benefits and working conditions.

The Contract of Employment

Contract of Employment is an agreement between an employer and employee and is the basis of the employment relationship.

A contract gives both employee and the employer certain rights and obligations. The most common example is that employees have a right to be paid for the work they do. The employer has a right to give reasonable instructions to the employees for work at the job. **These rights and obligations are called contractual terms.**

A contract of employment will usually be made up of two types of contractual terms. These are:

- Expressed terms.
- Implied terms.

Key points

- Most employment contracts do not need to be in writing to be legally valid, but it is better if they are.
- A contract 'starts' as soon as an offer of employment is accepted. Starting work proves that you accept the terms and conditions offered by the employer.
- Most employees are legally entitled to a Written Statement of the main terms and conditions of employment within two calendar months of starting work. This should include details of things like pay, holidays and working hours.
- An existing contract of employment can be varied only with the agreement of both parties.
- Some people might assume that a contract of employment consists of only those things that are set out in writing between an employer and an employee. It's true that many of the main issues, such as pay and holidays, are usually agreed in writing.

Terms usually contained in the Job Contract

1. Express contractual terms. Express terms in an employment contract are those that

are explicitly agreed between employees and employers and can include:

- amount of wages, including any overtime or bonus pay
- hours of work, including overtime hours (there is a legal limit for most employees on the maximum number of hours they can work per week)
- holiday pay, including how much time off employees are entitled to (full-time workers are entitled to specific days' paid holiday by law - they may be entitled to more under their contract. Part-time workers are entitled to a pro rata amount)
- sick pay
- redundancy pay
- how much warning (notice) the employer must give with dismissal.

The express contractual terms may not be in one written document, but may be in a number of different documents. They may not be written at all. The express terms may be found in:

- the job advertisement
- a written statement of main terms and conditions
- any letters sent by the employer to employees before they start working
- anything employees were asked to sign when or since they started working
- instructions or announcements made by the employer on a notice board at work
- an office manual or staff handbook
- pay slips.

Because a contract will still exist even if there is nothing written down, anything which was said to employees by the employer about their rights, and anything which are agreed verbally, should be recorded.

2. Implied contractual terms. Implied terms in an employment contract are those which are not specifically agreed between the employer and employee.

Implied terms are:

- general terms which are implied into most contracts of employment
- terms implied by custom and practice
- terms from agreements made with the employer by a trade union or staff association.
- General implied terms

The following duties and obligations will usually be implied into any contract of employment:-

- the employee and employer have a duty of trust to each other. This means, for example, that if the employee gives the employer's industrial secrets to a competitor, he/she will have broken an implied contractual term of trust
- the employer and employee have a duty of care towards each other and other employees. This means, for example, that the employer should provide a safe working environment for the employee and that the employee should use machinery safely.
- the employee has a duty to obey any reasonable instructions given by the employer. There is no legal definition of reasonable, but it would not be reasonable to tell an employee to do something unlawful, for example, a lorry driver should not be told to drive an uninsured or untaxed vehicle.
- the employer has a duty to pay the employees wages and provide work. As long as they are willing to work, the employer must pay wages even if no work is available, unless the contract says otherwise.
- **Terms implied by custom and practice.** When dealing with a particular employment problem, there may be no express contractual term covering the matter. In such a case, it is helpful to look at what has happened to other employees in the workplace. This is because if other employees have been given this right, this can be argued that employees have the right under 'custom and practice'.

It is best to put a contract in writing - it saves a lot of potential misunderstanding further down the line. Simple misunderstandings over what is or what is not in a contract can often be the main cause of employment tribunal claims.

Termination of Employment Contract

by Notice or Payment in lieu of Notice

A contract of employment may be terminated by the employer or employee through giving the other party due notice or wages in **lieu of notice**. In the case of a continuous contract of employment, the length of notice or the amounts of wages in lieu of notice required are:

Lieu of notice

During Probation Period

- **Within the first month of probation** not required
- **after the first month of probation** not less than 7 days of notice

After Probation Period

- with agreement to the length of notice not less than 7 days of notice
- without agreement to the length of notice not less than 1 month

Wages in lieu of notice

Notice period expressed in days or weeks

Average daily wages earned by an employee in the 12-month period preceding the day when a notice of termination of contract is given

X

Number of days in the notice period for which wages would normally be payable to the employee

=

Wages in lieu of notice

Notice period expressed in months

Average monthly wages earned by an employee in the 12-month period preceding the day when a notice of termination of contract is given**

X

Number of months specified in the notice period

=

Wages in lieu of notice

*In case a notice has not been given, one shall adopt the average daily wages of the employee in the 12-month period preceding "the day when the contract is terminated".

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Termination of Employment Contract Without Notice or Wages in lieu of Notice

An employer may summarily dismiss an employee without notice or payment in lieu of notice if the employee, in relation to his employment:

1. wilfully disobeys a lawful and reasonable order;
2. misconducts himself;
3. is guilty of fraud or dishonesty; or
4. is habitually neglectful in his duties.

Taking part by an employee in a strike is not a lawful ground for an employer to terminate the employee's contract of employment without notice or payment in lieu.

NOTE : Summary dismissal is a serious disciplinary action. It only applies to cases where an employee has committed very serious misconduct or fails to improve himself after the employer's repeated warnings.

An employee may terminate his employment contract without notice or payment in lieu of notice if:

1. he reasonably fears physical danger by violence or disease;
2. he is subjected to ill-treatment by the employer
3. breach of contract

Statutory Restrictions on Termination of Employment Contract

An employer shall not dismiss an employee under the following circumstances:

Maternity Protection

An employer shall not dismiss a female employee who has been confirmed pregnant and has served a notice of pregnancy.

Paid Sick Leave

An employer shall not dismiss an employee whilst the employee is on paid sick leave.

Giving evidence or information to the authorities

An employer shall not dismiss an employee by reason of his giving of evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation.

Trade Union Activities

An employer shall not dismiss an employee for trade union membership and activities.

Injury at Work

An employer shall not dismiss an injured employee before having entered into an agreement with the employee for employee's compensation or before the issue of a certificate of assessment.

Termination Payments

The items and amount of payments payable to an employee on termination of employment or expiry of the contract depend on a number of factors such as the length of service, the terms of employment contract and the reason for termination of contract.

For quick reference, termination payments usually include :

- outstanding wages;
- wages in lieu of notice, if any;
- payment in lieu of any untaken annual leave, and any pro rata
- annual leave pay for the current leave year;
- any outstanding sum of end of year payment, and pro rata end of year payment for the current payment period;
- where appropriate, long service payment or severance payment;
- other payments under the employment contract, such as, gratuity, provident fund, etc.

Time of Making Termination Payments

An employer shall pay all the termination payments, except for severance payment, to the employee as soon as practicable and in any case not later than seven days after the date of termination or expiry of contract.

For severance payment, an employer shall make payment not later than two months from the receipt of a notice from an employee claiming for severance payment.

Industrial Relations

Industrial Relations consider the laws, conventions and institutions that regulate 'the workplace'.

Industrial Relations mean different things to different people. Industrial Relations (employer-employees) may be viewed as the dynamics of contradiction between employers and employees and the struggle for control over work structures, processes and relations in which regulations and institutions are significant elements.

The following illustration depicts how IR shapes our working life, our society and the national economy.

Worker's perspective

As workers, we associate Industrial Relations with Unions, Industrial Awards, and labour laws that set the conditions under which we work. This includes our pay, safety, employment security and opportunities for training. 150 years ago people worked 6 days a week, 12 hours a day or more and there were no provisions for sick pay or holiday pay. There was no protection for children who were often a form of cheap labour, or worse, were sold into slavery. As a society we have come a long way since, and this is largely due to 'collectivism' and the formation of labour unions.

Employer's perspective

Modern day employers attach great importance to maintaining good industrial relations as a cornerstone of business growth and success. Industrial relations in this context is about negotiations between workers and business owners/managers to work towards increased productivity and improved product quality in exchange for better conditions of employment for workers. Employers need to reduce conflict between workers and business management that can damage business reputation, affect worker morale and decrease profits.

Societal Perspective

Whether we have good jobs and how we work has a fundamental effect on the quality of our lives. Unemployment causes social isolation and economic deprivation. When there are high levels of unemployment, there is social tension and upheaval. Too much employment has its own set of woes. People who work long hours often suffer from health issues and family problems. There is a need to strike a work-life balance to ensure a healthy, happy and productive population.

Government Perspective

Industrial relations is a major factor in managing the economy. As a nation we compete in the global marketplace for goods and services. If the workforce is inefficient and pays itself too much, then the cost of our goods and services is greater and consequently we are less competitive in the global marketplace. Governments create laws and policies that affect Industrial Relations and thereby influence the pay and conditions of work for workers.

Collective Bargaining

COLLECTIVE BARGAINING AND LABOR ARBITRATION

- **Collective Bargaining consists of negotiations between an employer and a group of employees so as to determine the conditions of employment.**

The result of collective bargaining procedures is a collective agreement.

Employees are often represented in bargaining by a union or other labor organization. Collective bargaining is governed by statutory laws, administrative agency regulations, and judicial decisions.

While it can be seen that the use of collective labour agreements has greatly expanded during the last decade including in the public sector and their introduction in many post-communist countries, it is hard to deny that their power to protect employees has diminished considerably and continues to weaken.

Roles and Functions of Trade Unions in Jamaica

What do trade unions do?

The core objective of the free trade union movement is the definition, promotion and implementation of the collective interests and rights of workers, particularly in relation to employers, but also in relation to the state and as part of broader civil society. Trade unions also provide their members with many social and welfare services.

The labour movement has been the most important historical driver of labour standards and worker's rights. Trade unions have also frequently been in the forefront of wider struggles for political change, democracy and social justice. This has led to their engagement in a range of activities such as campaigning and advocacy, education and awareness raising, policy development and the development of mutual financial institutions.

Functions of Trade Unions

Aim to further its members' interests, via the following:

- Obtain satisfactory rates of pay.
- Protecting workers jobs
- Securing adequate work facilities
- Ensuring satisfactory work conditions, this can include areas such as health and safety and equal opportunities.
- Negotiating bonuses for achieving targets
- Negotiating employment conditions and job descriptions

Objectives and Activities of Trade Unions

1. **Collective bargaining:** Where trade unions are able to operate openly and are recognised by employers, they may negotiate with employers over wages and working conditions.
2. **Industrial action:** Trade unions may organize strikes or resistance to lockouts in furtherance of particular goals.
3. **Political activity:** Trade unions may promote legislation favourable to the interests of their members or workers as a whole. To this end they may pursue campaigns, undertake lobbying, or financially support individual candidates or parties for public office.

Types of Unions

There are four types of unions

1. Craft Unions
2. Industrial Unions
3. Staff Unions
 - I. Company unions
 - II. Staff associations
4. Blanket or General

CRAFT UNIONS

Craft unions are those formed on the basis of particular skills such as motor mechanics, plumbing or electrical work. This type pre-dates the general unions that are known today.

- Made up of members sharing same skills or within the same trade
- They regulate the training requirements for the particular skill
- Define who may lay claim to the skill and do the job
- Limit the supply of the skill
- Very protective of their member's jobs.

INDUSTRIAL UNIONS

Draw their membership exclusively from a particular industry or economic activity. Best examples Jamaica Teachers' Association and Jamaica Junior Doctors Association.

- Membership is made up of workers of different skills within the same industry.
- Advantage to this is that the employers negotiates with only one group of employee representatives

STAFF UNIONS

- **Company unions** are those that are formed to and represent only workers in a particular company
- **Staff associations** either registered or unregistered as trade unions, bodies that represent the interest of workers in their respective companies. These include clerks, secretaries and administrative staff. Membership can also include public sector workers and supervisory staff. Examples:
 - **UTSAP** – Union of Technical Supervisory and Administrative Personnel
 - **JCSA** – Jamaica Civil Service Association – (not registered as a trade union)

BLANKET OR GENERAL UNIONS

- Open to all workers in all industries
- Members are drawn from all sectors and have a variety of skills
- Have power based on size

Usually they are the largest and most powerful unions, developed to help unskilled workers in industries. Examples: BITU, NWU, UAWU

REFERENCES

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