

Labour Law considerations for Employers in the Cayman Islands

If you are an employer in the Cayman Islands there are a number of considerations which you must keep in mind when engaging, terminating or agreeing terms and conditions for employees.

Common Law

At the heart of every employment relationship is an employment contract. Every employee is deemed to be working under a contract of employment, regardless of whether or not they have signed a written agreement. In Cayman it is a legal requirement to provide every employee with a written statement of their terms and conditions. Therefore, it is highly advantageous to have a written agreement in place. These can range from a simple contract to highly complex arrangements including bonus or dividend schemes, restraint of trade and confidentiality provisions.

Just like any contract, once it is executed by both parties, it is binding between them. Any breach of the contractual terms by either the employer or employee will be a breach of contract and the injured party can pursue a claim for breach through the court system. If the claim is successful, remedies can be awarded. This would usually take the form of contractual damages, designed to put the injured party back into the position that they would have been in had the breach not occurred. More rarely, they could also include equitable remedies such as issuing an injunction or forcing the party in breach to comply with their contractual obligations. For example, if an employment contract contains post-employment restraint of trade clauses, an employer could seek an injunction to enforce these terms.

Labour Law

An employer cannot dictate any employment terms and conditions that they wish, as a minimum standard an employment contract must comply with the base level protections provided by the Labour Law. However, this law does not apply to employees who work for Government, charities or churches. Government employees are governed instead by Government's Personnel Regulations and employees of charitable organisations and churches are arguably exempt from any protection. As well as being good practice, the law requires that employers are under a duty to keep accurate records and provide pay slips.

The Labour Law contains minimum standards relating to various common employment terms and conditions such as:

- Probation periods;
- Notice periods;
- Vacation leave;
- Sick leave;
- Maternity leave;
- Standard work week and day, overtime pay and rest periods;
- Gratuities; and
- Health and safety.

Employees can be dismissed without cause by providing them with the requisite notice period, whichever is the higher of the period of time between paydays or the notice period provided for in their contract of employment. In such a situation, and where an employee has been employed in excess of one year, an employee will be entitled to severance pay. Severance pay should be calculated at a rate of one week's wages, at the employee's latest basic wage, for each completed year of service.

Severance pay does not need to be paid if an employer is dismissing an employee for cause. However, an employer must ensure that they are in compliance with the provisions of the Labour Law or the employee may have a claim for unfair dismissal. The Law directs that a dismissal for good cause shall not be unfair if it is for reason of misconduct so serious that the employer cannot reasonably be expected to take any course of action other than termination. Examples would include conduct where the employment relationship cannot reasonably be expected to continue, committing a criminal offence in the course of employment, behaving immorally in the course of his duties or being under the influence of a controlled drug or alcohol during the hours of employment.

In instances where the misconduct does not reach the level of serious misconduct as previously defined, but is still conduct which the employer should not be expected to tolerate a repetition of, for example, absenteeism or not performing duties in a satisfactory manner, the employer should provide a written warning to the employee. This warning should state the action that the employer intends to take in the event of further misconduct. If the employee subsequently commits another act of misconduct of any kind

in relation to his work, the employer may terminate the employment of the employee without further notice.

Since the circumstances of dismissal can be complex and an employee who believes that he has been dismissed unfairly may apply to the Labour Tribunal for a determination, it is important that employers navigate the dismissal process sensibly and seek expert advice if they are unsure.

Minimum Wage

Since 2016, when national minimum wage was introduced in the Cayman Islands, employers have been required to pay workers at least \$6.00 per hour, before any deductions. There are slightly different rates applying to certain classes of employee such as live-in household employees, those working under approved schemes of gratuities or employees working on a commission basis.

Gender Discrimination

The Labour Law provides basic anti-discrimination provisions but the Gender Equality Law provides more detailed provisions to eradicate gender discrimination in the work place. It outlaws sexual harassment in the workplace and treating men and women differently in relation to terms and conditions of employment, including equality of pay. This means that employers should carefully consider their pay structures ensuring that men and women who do equal roles or work of equal value are paid the same.

Pension

Every employee between the age of eighteen and sixty five must be a member of a pension plan. An employer must contribute not less than five per cent of the employee's earnings up to the annual maximum pensionable earnings (currently CI\$87,000), although the employer can choose to pay more. The employee must then contribute any difference between the amount paid by the employer and ten percent of their earnings. For a Caymanian employee, an employer must start making contributions at commencement of employment but for an employee on a work permit, employers are given a six month grace period. Employer's do not need to pay pension contributions for household domestic employees.

Health Insurance

Employers are required to provide employees and any unemployed dependents with health insurance but they are permitted to deduct from the employee's salary a proportion of the employee's premium and all of the premiums for their dependents.

Further Information

At Broadhurst LLC we have 25 years of experience dealing with employment and litigation matters. Questions surrounding these issues can be complex. It is advisable to seek the assistance of a legal professional who can give advice and support. We would be delighted to assist you with your employment related issues, please contact info@broadhurstllc.com.

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