

Labour Law Update: New Legislation Provides Welcome Relief for Employers

The Covid-19 outbreak and restrictions imposed by the Cayman Islands Government to assist in managing the spread of the virus are having a profound effect on businesses in Cayman. Many employers find themselves in the difficult situation of trying to sustain their business while their ability to trade is either completely or significantly curtailed.

The Government has approved and enacted the Labour (Amendment) Law, 2020 (**the “Amendment”**) and the Labour (Extension of Severance Pay Period) Regulations, 2020 (**the “Regulations”**).

The Amendments to the Labour Law (2011 Revision) (**the “Law”**) and introduction of the Regulations provide practical assistance to employers managing the fall-out of Covid-19 by extending the period in which an employer is entitled to temporarily dismiss an employee, due to Covid-19, without becoming liable to pay them a severance payment. This change effectively allows employers to “furlough” employees for up to 60 days where the decision to temporarily dismiss an employee is based on factors arising from the Covid-19 emergency.

The Regulations, in particular, are therefore a key change to the Law which may have immediate consequences for employers and/or their business. Employers should have regard to the Regulations if they are making the difficult decision to temporarily dismiss employees due to Covid-19.

The Law and the Regulations

Section 7 of the Law provides that:

“Any person who is re-employed by the same employer or, where the severance pay required under this Law has not been paid to the employee, by the successor employer, within 30 days of the termination of his employment, shall not be regarded as a new employee, but his employment shall be regarded as continuous for the purposes of the calculation of his period of probation and of any benefits under this Law”

In short, section 7 of the Law has always enabled employers to terminate an employee’s employment for up to 30 days and then re-hire them, within the prescribed time, without the employer becoming liable to make the employee a severance payment.

The protection afforded to the employee under section 7 of the Law is that if they are dismissed and then rehired

within 30 days their employment is considered continuous, which may offer them protection with respect to the completion of their probation period and/or their entitlement to recover severance pay if at a later stage their employment is ultimately terminated.

Section 41 of the Law states that upon an employee's employment being terminated he/she is entitled to a severance payment calculated at one week's wages for each completed 12 months of his or her employment.

However, pursuant to section 42 of the Law if the employer states, at the time of the employee's dismissal, that the termination is to be temporary and a date of recall is given within (i) six months for agriculture and construction workers (section 42(3) of the Law); or (ii) 30 days for all other employees (section 42(2) of the Law) then the employer is not obliged to make a severance payment to the employee as long as they are rehired within the prescribed period.

The Regulations have been enacted as a direct result of the current global crisis. The Regulations specifically state that:

"If as a result of the Covid-19 virus, an employer temporarily terminates the employment of any employee entitled to severance pay, the period under section 42(2) or (3) of the Law within which that employer is required to pay severance pay to that employees shall be extended by thirty days".

In practice this means that if, as a result of the Covid-19 virus, an employer temporarily terminates the employment of an employee who is:

- a construction or agricultural worker, the employer may provide them with a recall date within 6 months and 30 days of their termination; or
- any other employee, the employer may provide them with a recall date within 60 days

and will not thereafter be liable to make the employee a severance payment if they are rehired within the prescribed time.

It is important to stress that the Regulations can only be relied upon if the employer's decision to dismiss the employee is as a result of Covid -19, therefore the Regulations cannot be relied upon if the decision to temporarily dismiss the employee was for any other reason.

In addition, if for any reason, the employee is not ultimately re-hired by the employer within the prescribed time, set out above, then the employer will remain liable to pay the employee severance payment and also interest on the severance payment. Employers should also be aware that a failure to re-hire an employee within the prescribed time may give rise to a question of whether the employee's dismissal was fair and whether the employer acted reasonably within the circumstances of the case, which could give rise to a further claim for unfair dismissal.

The Amendment

The Amendment makes short but practical amendments to the Law to take account of the Shelter In Place Regulations in Cayman which, as we are all familiar with, require that non-essential businesses are closed and the majority of the Islands' workforce, who are not front line workers, are either working from home or not working.

In summary, the first amendment is to section 84 of the Law and provides that any document, including particulars, information or any other record which is required to be served on another person, may now be sent by electronic means (to the email address provided by that person) in the form of an electronic record. This amendment is a welcome update to the Law in the current crisis but will also be well received by employers and employees alike as it reflects the reality of modern working practices, specifically that email is widely regarded as an appropriate way in which to communicate.

Furthermore, the amendments have extended section 86 of the Law so as to permit Cabinet to grant extensions or exemptions for the period of compliance with the Law in times of "*earthquakes, hurricanes, floods, fires, and outbreak of pestilence, infectious diseases or other calamity.*" This is plainly intended to be of practical assistance to cover difficult situations such as the current circumstances we are facing.

The Regulations and the Amendment introduce welcome additions to the Law to assist in these difficult times. However, if you are an employer intending to temporarily terminate any employee's employment as a consequence of the Covid-19 crisis we advise you to seek advice before taking action to ensure that your business interests are properly protected.



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