



**ANNUAL  
ADMINISTRATIVE  
REPORT**

**OCTOBER 2017 TO SEPTEMBER 2018**

**INDUSTRIAL RELATIONS ADVISORY  
COMMITTEE**

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# EXECUTIVE SUMMARY

The Industrial Relations Advisory Committee as established by section 80 of the Industrial Relations Act, Chapter 88:01 plays an important role in advising the Honourable Minister of Labour and Small Enterprise Development, on industrial relations, employment law and international labour issues which may impact Trinidad and Tobago.

The term of office of the Committee commenced December 2016 for a period of two (2) years from the date of appointment. The last Administrative Report submitted was for the period December 2016 to September 2017 and this current report covers the period October 2017 to September 2018. The Committee was comprised of fifteen (15) members from various stakeholder groups and was chaired by Dr. Hyacinth Guy. During the period of review, the Committee held ten (10) statutory meetings over the reporting period and several Sub-Committee meetings.

At the beginning of the new reporting period, the Committee continued to work on the compilation of the final report on the review of the Retrenchment and Severance Benefits Act (RSBA). Work on this report had begun during the previous reporting period and much progress was made towards completion of this report. The final report was submitted to the Minister of Labour and Small Enterprise Development on December 11, 2017.

Following the submission of the Report on the RSBA, the Committee then moved to the next priority area of its work plan; a review of Employment Standards. The Committee examined the reports from earlier consultations and the significant work that was already produced on this topic including the Ministry's draft Code and Employment Standards Policy. The Committee presented its recommendations to the Honourable Minister on July 11, 2018 and submitted its final report on July 23, 2018.

As part of its remit, the Committee examined two other areas:

- i. A further review of the Industrial Relations Act (1972) as Amended in light of challenges and issues raised by the Conciliation Unit of the Ministry of Labour and Small Enterprise Development, in relation to the increasing tendency for parties to skip the conciliation process at the Ministry of Labour and send matters directly to the Industrial Court. It is expected that discussions on this issue would continue with the appointment of a new committee.
- ii. A review of the Trade Unions Act, Chapter 88:02. Members considered the present legislation relating to this issue and submitted and discussed their recommendations for review of this legislation. The Committee agreed that it would only submit its full review of this issue after the report from the public consultations was made available to it and it had an opportunity to consider the views of the wider stakeholders.

The recommendations made in all of its submissions represent the collective views of the varied stakeholder groups that make up the IRAC, all of whom have contributed to ensure that not just the particular group benefits, but that the recommendations made also serve the wider purpose, growth and development of a strong society and economy.

# VISION, MISSION, PHILOSOPHY AND THE STRATEGIC OBJECTIVES

The Industrial Relations Advisory Committee was established by section 80 of the Industrial Relations Act, Chapter 88:01 which states:

*80. (1) There is hereby established an Industrial Relations Advisory Committee (herein referred to as "the Advisory Committee") for the purpose of advising the Minister on any matter relating to industrial relations on which the Minister requests advice and for the purpose of performing the duties referred to in section 81.*

The functions of the Advisory Committee are outlined in Section 81 of the Industrial Relations Act, Chapter 88:01 which states: -

*"It shall be the duty of the Advisory Committee to keep this Act under review with a view to ensuring its development and reform, including in particular the modification of any of the provisions thereof and the elimination of anomalies, and for that purpose to prepare and submit to the Minister, from time to time specific proposals for changes therein."*

At its first meeting on January 23, 2017, the committee agreed on a work plan for the 2016 to 2018 period, as follows: -

Establishment of an  
Unemployment Insurance  
Scheme or Severance  
Benefits Fund or both

Review of Basic Terms  
and Conditions of  
Work/Employment  
Standards  
Recommendations

Industrial Relations in  
the Public Sector

Industrial Relations  
practices in  
Tobago

The Committee also agreed to the following guidelines in the performance of its duties:

- *The quorum for meetings* – the initial quorum was agreed at ten (10) of the fifteen (15) members with representation from each stakeholder body. However, this was subsequently revised to eight (8) persons with representation from each stakeholder body at the 7<sup>th</sup> meeting of the Committee held in July 2017.
- *Decision -making* – it was agreed that once a quorum was in place, decisions would be made based on agreement via a simple majority.
- *Confidentiality* – the Committee agreed that its work was confidential, and that each member must ensure that it established a procedure which represents the views and opinions of its wider representative body without breaching the confidentiality of the Committee.
- *Work plan* – the Committee established a work plan for the period of its service and placed as the first item on the work plan, the need to review the provisions which governed severance benefits for workers in Trinidad and Tobago who lost their jobs due to redundancy.

The Committee resolved that in the above areas, its work would be conducted by the establishment of subcommittees.

## ORGANISATIONAL STRUCTURE

The Industrial Relations Advisory Committee as provided by Section 80 of the Industrial Relations Act, Chapter 88:01 when established in December 2016, consisted of a Chairman and fourteen other members. This fifteen-member Committee is of a multipartite composition having representatives from stakeholder groups representing employers, workers, the Tobago House of Assembly, Industrial Relations Practitioners and Academia.



Caption: Senator the Honourable Jennifer Baptiste-Primus is joined by members of the Industrial Relations Advisory Committee chaired by Dr. Hyacinth Guy (On Minister's right). L-R: Mr. Clyde Elder, Ms. Cavelle W. Joseph, Mr. Keston Nancoo, Mr. Vincent Cabrera, Mr. Christopher Vaughn Auguste, Mr. Ronald Brereton (party hidden), Dr. Paul Balwant, Ms. Gorgonia Auguste, Ms. Sabina Gomez, Mr. Kashta Ome, Ms. Sangeeta Boondoo, Mr. Junior Demming, Ms. Cindy Joseph, Ms. Gloria Davis-Cooper. (Photo courtesy the Ministry of Labour)

The following persons were members of the Committee during the reporting period:

#### Chair

- Hyacinth Guy PhD, Industrial Relations Professional

#### Workers' Organisations

- Mr. Vincent Cabrera, Banking, Insurance and General Workers Union
- Mr. Clyde Elder, Federation of Independent Trade Unions and NGOs
- Ms. Gorgonia Auguste\*, Public Service Association (PSA). *From October 2017 to July 2018. Replaced by Rajindra Mohan*
- Mr. Rajindra Mohan\*. All Trinidad General Workers' Trade Union. *From August to September 2018.*

#### Employers' Organisations

- Mr. Keston Nancoo, Guardian Holdings Limited
- Mr. Kashta Ome, ANSA McAL Company Limited
- Ms. Cavelle W. Joseph, National Insurance Property Development Company Limited

#### Ministry of Labour and Small Enterprise Development

- Ms. Sabina Gomez, Ministry of Labour and Small Enterprise Development
- Ms. Sangeeta Boondoo, Ministry of Labour and Small Enterprise Development

#### Industrial Relations Professional

- Mr. Christopher Vaughn Auguste, North West Regional Health Authority
- Mr. Junior Demming, South West Regional Health Authority

#### Representative from Academia

- Dr. Paul Balwant, Lecturer, University of the West Indies
- Ms. Gloria Davis-Cooper, Lecturer, University of the West

*\*Gorgonia Auguste resigned from the PSA and was subsequently replaced on the Committee by Rajindra Mohan in August 2018.*

The term of the office for Industrial Relations Advisory Committee is for (2) years with effect from December 5, 2016. This report covers the period from October 2017 to September 2018. During its term of engagement, the Committee was supported by staff of the Legal Unit of the Ministry of Labour and Small Enterprise Development.

## POLICIES AND DEVELOPMENT INITIATIVES

Due to the nature of the Committee and duration of its term of two (2) years, the work plan of the Committee is established based on the priority areas given by the Minister of Labour and Small Enterprise Development.

### Work Plan of the Committee

At the beginning of the reporting period, the Committee completed the work that it had begun on the review of the Retrenchment and Severance Benefits Act (RSBA) and submitted its final report to the Honourable Minister on December 11, 2017. The Committee then turned its attention to the next priority area on its work plan, that is, the review of basic terms and conditions of work for workers/employees in Trinidad and Tobago.

In undertaking this review, the Committee held ten (10) statutory meetings over the reporting period and several Sub-Committee meetings. The Committee's plan of action comprised of data collection, data analysis and discussions to arrive at its conclusions. The Committee agreed to conduct its work through the establishment of Sub-Committees which had mandates in specific areas, as follows:

#### Subcommittee No. 1 – Statement of Employment Particulars

**Members:** Vincent Cabrera, Sabina Gomez, Christopher Vaughn Auguste

**Mandate:** To review the literature on employment particulars and other available data and report on the issue with regard to duration, probation, regulation of working times, leave, other benefits, basis for termination and recordkeeping

#### Subcommittee No. 2 – Non-discrimination provisions

**Members:** Clyde Elder, Cavelle Joseph, Keston Nancoo

**Mandate:** To review non-discrimination provisions and report on the issue with regard to equal pay for equal work, protection from unfair dismissals, guidelines and procedures for termination, harassment in the workplace, non-discrimination based on medical condition or disability and any other related issue.

**Subcommittee No. 3 – Safe and healthy workplace and environment**



**Members** Ronald Brereton, Junior Demming

**Mandate:** To review issues of child labour and decent work and report on issues that the Committee should consider in its recommendations.

#### **Subcommittee No. 4 – Terms and Conditions of work**

**Members** Gorgonia Auguste, Cindy Joseph, Kashta Ome

**Mandate:** To review terms and conditions of work which exist in the legislation of several comparator counties and report on the issues of regulation of working times, leave provisions, severance benefits, gratuity payments and deductions from remuneration and other related issues.

#### **Subcommittee No. 5 – Termination of Employment**

**Members** Kashta Ome, Hyacinth Guy, Sangeeta Boondoo

**Mandate:** To review existing provisions and those of comparator countries and report on best practices in this area and any gaps in current local legislation.

#### **Subcommittee No. 6 – Labour Code**

**Members** Paul Balwant, Gloria Davis-Cooper

**Mandate:** To research precedents on the subject of labour codes both regionally and internationally and report on best practices in the area.

#### **Subcommittee No. 7 – General Provisions**

**Members** Sangeeta Boondoo, Hyacinth Guy, Antonia White

**Mandate:** To review provisions related to Employment Agency employment and any other matters related to the policy and report on issues of concern, challenges and recommendations for the area.

In undertaking data collection, the Committee reviewed among other documents the following:

- The substantial work that was previously undertaken by the Ministry of Labour and Small Enterprise Development (MOLSED) arising from consultations it held with stakeholders, including a policy paper on the issue;
- Review of available documentation, literature and legislation in Trinidad and Tobago;

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- Review of employment standards legislation in the wider Caribbean and International regions;

- Review of International Labour Organisation's (ILO) Decent Work Agenda and ILO Conventions;
- National Strategic Plan, Vision 2030; and
- The Basic Terms and Conditions of Work Bill, 2000.

The Committee undertook an extensive review of the Basic Terms and Conditions of Work Bill that was proposed in 2000. The Committee found that while the Bill was well intentioned and provided a starting point for discussions, many of the provisions contained therein were in need of review and updating. The Committee found the Policy Paper produced by the Ministry of Labour and Small Enterprise Development as an outcome of the conduct of the National Stakeholder Consultation held on June 29, 2016 to be very instructive.

On July 11, 2018, the Committee delivered a presentation on its recommendations to the Honourable Minister and on July 23, 2018, a final report titled "Employment Standards" was submitted to the Honourable Minister. A summary of the recommendations contained in that report is attached to this report. The recommendations from this report formed the basis for a series of public consultations held by MOLSED at which various stakeholders offered their feedback and recommendations. IRAC members also participated in the aforementioned consultations which were held both in Trinidad and Tobago.

#### **Other areas reviewed:**

- i. The Committee was invited by the Ministry of Labour and Small Enterprise Development to provide comments on the Trade Unions Act. Members of the Committee reviewed the legislation, consulted with their representative bodies and made recommendations on areas they wished to have reviewed. The Committee took a decision that it would hold its recommendations until it had an opportunity to review the comments from stakeholders which were expected from National Consultations on Employment Standards. This decision was documented and communicated to the Honourable Minister by the Committee.
- ii. The Committee undertook a further review of the Industrial Relations Act in response to issues and challenges raised by the Member representative from the Conciliation Unit of the Ministry of Labour and Small Enterprise Development. These issues and challenges were directly related to certain Industrial Court Judgements which required the Conciliation Unit to adjust its administrative procedures. The Member was of the view that this was having an adverse impact on the conduct of Industrial Relations and engaged the full Committee in a discussion on the issue. Some issues raised included:
  - The right of parties to submit a matter to the Industrial Court without having an unresolved certificate in hand;
  - The failure and sometimes refusal of parties to attend conciliation proceedings at the MOLSED within the required time frame citing that there was no obligation to do so within the law;
  - The tendency by parties to raise preliminary issues while the substantive matter was being processed at the Court; and
  - The perception by parties to the issues that the MOLSED was simply a conduit to the Industrial Court thereby undermining the conciliation process.

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These matters were discussed and findings and recommendations for the way forward were recorded in the minutes of the Committee. No reports were submitted as the term of the Committee came to an end and precluded same.

### **Challenges**

In undertaking its work, the Committee continued to face administrative challenges relative to research, data collection, analysis and the follow up of issues. This was a direct result of the vacancy that existed for the position of Technical Secretary, a vacancy which has existed for almost 4 years. As a result, the Committee continued to rely on the assistance of the staff of the Legal Unit, Ministry of Labour and Small Enterprise Development to fill this gap.

### **The Way Forward**

The Industrial Relations Advisory Committee will continue to commit to its duty and provide the support, expertise and knowledge that is required to have an efficient industrial relations system. The Committee would also like to acknowledge the stellar support of the staff of the Legal Unit, Ministry of Labour and Small Enterprise Development for their continued assistance in the absence of a Technical Secretary.

## **FINANCIAL OPERATIONS**

The Industrial Relations Advisory Committee is not responsible for the administration of financial resources.

## **HUMAN RESOURCE DEVELOPMENT PLAN**

The Committee as previously outlined, is established under Section 80 of the Industrial Relations Act and has its mandate from Section 81 of this Act. As such the development of a Human Resource Plan is not part of its remit.

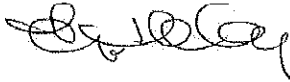
## **PROCUREMENT PROCEDURES**

The Industrial Relations Advisory Committee is not responsible for procurement activities.

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## PUBLIC AND COMMUNITY RELATIONS

The Committee as previously outlined, is established under Section 80 of the Industrial Relations Act and has its mandate from Section 81 of this Act. The purpose of the Committee is to advise the Minister on any matter relating to industrial relations on which the Minister requests advice and for the purpose of keeping the Act under review with regard to ensuring its development and reform as referred to in section 81 of the Act. From time to time, the Committee will take part in national consultations at which time it would present its recommendations on the various policy papers it would have produced. This is the scope of its activities under the heading, Public and Community Relations.



Hyacinth Guy (PhD)  
Chairman, IRAC

Date: October 02<sup>nd</sup>, 2020

# Policy Recommendations – Employment Standards

## Industrial Relations Advisory Committee

July 23, 2018

The Committee recommends that Legislation on Employment Standards should provide the following:

- i. Any provision in any agreement or established custom that seeks to exclude or in any way limit the operation of any provision of the Legislation shall be void except where such provision or custom seeks to provide greater or higher benefits than those set out in the Legislation.
- ii. The Legislation shall apply to all categories of workers/employees and shall not apply to independent contractors, members of the National Defence Force and unpaid volunteers working for an organisation with a charitable purpose.
- iii. Each worker/employee is entitled to a written contract of employment, upon assumption of duty.
- iv. The written contract of employment shall include provisions in respect of;
  - a. The start date of contract and/or duration of contract, as applicable;
  - b. Whether probation is necessary, and the period of such probation;
  - c. Regulation of hours of work;
  - d. Absence from work;
  - e. Other benefits;
  - f. The basis for the determination of the contract;
  - g. The rate of pay in Trinidad and Tobago currency; and
  - h. Obligations of the worker/employee and the employer.
- v. A sample contract template should be enshrined as a schedule to the legislation.
- vi. The MLSED should implement the use of an employment contract building software similar to the agreement builder used in New Zealand.<sup>1</sup>
- vii. With the exception of statutory deductions, an employer shall not make deductions from employees/workers without their approval.

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<sup>1</sup> <https://eab.business.govt.nz/employmentagreementbuilder/startscreen/>

- viii. An employer shall provide a payslip to each worker/employee, a sample template for payslips being set out as a schedule to the legislation.
- ix. An employer shall keep employment records (including contract details, performance appraisals and reviews and payroll records) for a minimum period of five (5) years after the departure of the worker/employee from the organization.
- x. A worker/employee has the right to access their employment records.
- xi. An employer shall not discriminate against a worker/employee in hiring, firing, and other terms and conditions set out with Employment Standards legislation, because of gender, sexual orientation, religion, race, age, ethnicity, disability or membership in a trade union/worker organisation.
- xii. A worker/employee shall have the right to join any association or trade union of their choice.
- xiii. Men and Women shall be entitled to equal pay for work of equal value.
- xiv. An employer shall have the right to manage his enterprise in accordance with good industrial relations principles and practices and subject to the relevant labour legislation, industrial relations practices and other laws of Trinidad and Tobago.
- xv. A worker/employee shall have the right not to be unfairly dismissed from employment.
- xvi. A worker/employee shall have the right to a safe and healthy work environment that is free from any form of violence, harassment, including sexual harassment and bullying.
- xvii. It shall be an offence for an employer to employ a child who is under sixteen (16) years of age, except as provided for under Section 105 of the Children Act, Chapter 46:10.
- xviii. Labour or services obtained or maintained through force, threat of force, or other means of coercion or physical restraint shall be prohibited.
- xix. An employer shall have the right to regulate/determine/organize the working time of his workers/employees.
- xx. A worker/employee shall be entitled to ten (10) working days paid vacation leave annually after completion of one year continuous service.
- xxi. A worker/employee shall be entitled to fourteen (14) calendar days paid sick leave per year after completion of six (6) months continuous service.
- xxii. A worker/employee shall be entitled to five (5) days paid Parental Responsibility Leave and/or five (5) days paid Paternity Leave and/or one (1) month paid Adoption Leave, annually. Longer periods of leave, either paid or unpaid, may be determined by negotiations between the worker/employee and employer.
- xxiii. The employment of a worker/employee shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the

operational requirements of the undertaking, establishment or service. The burden of proving the existence of a valid reason for the termination shall rest on the employer.

- xxiv. A worker/employee whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.
- xxv. An employer shall give written notice of termination, which states the reason for the termination.
- xxvi. Termination of employment by reason of redundancy shall be addressed in accordance with the Retrenchment and Severance Benefits Act, Chapter 88:13.
- xxvii. Where there is no approved pension plan or other separation benefit payable to a worker/employee who reaches the age of retirement, the worker/employee shall be paid an ex gratia award .
- xxviii. A worker/employee has a responsibility to maintain the confidentiality of their employer's business if so required for proper business reasons.
- xxix. Where a client engages an employment agency to supply temporary or contract or contingent workers, the client shall be deemed to be the employer of the worker/employee and be responsible for ensuring the terms and conditions and other benefits of that worker/employee are maintained.
- xxx. A worker/employee shall obey lawful and reasonable instructions of his employer.
- xxxi. Every employer must have a disciplinary procedure and a grievance procedure within his company that is consistent with industrial relations principles and practice.
- xxxii. No employer shall terminate the service of a worker/employee for the purpose of breaking the service of that employee/worker, if the job function still continues (except in the case of an employer who maintains a pool of workers who benefit from job rotation). A break in service between contracts, at the initiative of the employer, shall still be counted as continuous service with the employer for the purposes of calculating severance benefits or gratuity if the break between the employment periods was less than a year.
- xxxiii. The rights and responsibilities outlined in the Legislation should be effectively enforced through monitoring and compliance mechanisms. It is recommended that this can be achieved under the Labour Inspectorate Unit of the MLSED supervising the enforcement and application of the Legislation and being empowered to charge or fine any worker/employee or employer who breaches its provisions. A breach of this legislation which is not determined at the level of the Labour Inspectorate, becomes enforceable as a trade dispute under the IRA, to be forwarded directly to the Industrial Court.