

PROPOSAL FOR ESTABLISHING NEW EMPLOYMENT RELATIONS IN THE CAYMAN ISLANDS

Introduction

The Ministry of Education, Human Resources and Culture has been in the process of developing an Employment Relations policy, consistent with Vision 2008, since February 2001. The implementation of the policy lies with this Ministry and is expected to modernise the use of human resources in the Cayman Islands.

It is government's intention to build a tri-partite system in employment relations that, secures equality and respect for all. The creation of this system will require a societal "change in attitudes", driven by a clear understanding of government's policy and of employers' and employees' rights and responsibilities.

The new Employment Relations policy is based on law and on our international obligations as an overseas territory of the United Kingdom, particularly with regard to human rights issues.

The foundation of the new Employment Relations policy is government's determination to avoid a welfare state. We need legislative revision to create laws that are "symbiotic" rather than "stand-alone". All the employment related legislation must work together for the greater good of each part.

For example, the current Workers' Compensation Law protects no one in our society. According to statistics from the Bureau of Economics and Statistics and from information gathered by the Chamber of Commerce regarding wages and remuneration, the least paid workers in our society make between five thousand (\$5,000.00) and nine thousand (\$9,000.00) dollars per year. Our Workers' Compensation Law (1996 Revision) defines "worker" for the purposes of the Law, as one who earns less than fifteen hundred dollars (\$1,500.00) per year.

The Civil Service offers workers' compensation coverage to all its employees, as do most large international companies. This is not because the Law requires it, but rather because it is good practice.

Consider this scenario: A worker, who earns more than \$1500.00 per year, is killed or injured to the point of total disability, he is not of pensionable age, he does not work for the civil service and he does not work for a big international company. There is no requirement under our present law to compensate this man for his work-related injuries or in the case of his death, to compensate his family, because he earns more than \$1,500.00 per year.

In this hypothetical scenario, the injured party/ies must file a civil suit in order to get any help from the employer. This process is expensive and time consuming.

How do we create an employment package of legislative changes that will prevent a situation such as this from arising? The answer is that all employment-related laws must be interdependent and interrelated, if we are to provide protection for our workers and prevent them from becoming dependent on the government.

The Cayman Islands is on its way to becoming a Non-Metropolitan Territory under the International Labour Organisation (ILO). With the exception of Turks and Caicos, all the other Overseas Territories have already become Non-Mets. We may be behind, but with the incorporation of our new Employment Relations policy/package, the Country is making great progress toward catching up internationally.

We understand that the most likely Conventions we will be required to adopt are: the Freedom of Association Conventions Nos. 87 and 98, Abolition of Forced Labour Conventions Nos. 29 and 105, Equal Treatment and Opportunities Conventions Nos. 100 and 111 and Employment Policy Convention No. 122. The adoption of ILO Conventions requires regular reporting, to the ILO through the United Kingdom, as to our progress in each of the areas of concern.

We expect that our ministerial, departmental and legislative changes will create a new approach to best practices in the workplace. We intend to promote a system of co-operation and dispute prevention. Our intent is to design a fair employment policy and modern employment legislation, the packaging together of which will benefit all.

It is this Government's intention to move away from total dependence on the Labour Tribunal System and move toward a system of advice, conciliation and alternative conflict resolution. Our hope is that these new standards will minimise litigation, prevent problems before they arise and settle existing problems with a spirit of voluntariness and co-operation.

In the United Kingdom (UK), approximately eighty (75%) of all labour complaints are dealt with under the ACAS System, a system of Advice, Conciliation and Arbitration. Jersey has recently launched such a system called JACS, which seems to be working well.

During a recent sitting of the Legislative Assembly, a Private Member's Motion called for a review of the Labour Law and was unanimously passed. It had already been announced in the Throne Speech that the new government intended to review that Law.

Initially, this process was begun by the drafting of a discussion document on the issues most urgently in need of legislative reform. This compilation has resulted in this White Paper, which will be circulated to the public for approximately three months. During this three-month period, we will be gathering information and input from the public. Following that consultative process, the public's input will be reviewed by the Ministry and the new Employment Forum and drafting

instructions will be formulated. The final draft will be reviewed by the Employment Forum and agreed by that body before being presented to Executive Council. After being accepted by Executive Council the new legislation will be presented in Green Bill form to the Legislative Assembly for discussion.

The government's new policy regarding employment legislation includes:

Firstly and very importantly, the Labour Law will be called the Employment Law, because it is intended to apply to all employees and employers. It is designed to be comprehensive and our intent is for it to apply to the civil service as well as to the private sector.

The Employment Law is proposed to include the establishment of a Minimum Wage Advisory Committee. We intend to restructure the administration of gratuities. In addition, the Ministry intends to require the use of written contracts of employment and to introduce an enhanced warning system for employees who are behaving in an obstructive or inappropriate way, and/or are not performing their jobs to the required standards. The Law proposes a mechanism to balance Resignation/Retirement pay due to voluntary pension participants (those sixty or older when the Law came into effect) with the amount of pension contribution made by employers on their behalf.

The Workers' Compensation Law should cover everyone, including the poorest and most underprivileged members of our working community.

The Pensions Law needs to be extended to provide disability and death benefits for employees and/or their families.

The Trade Union Law, consistent with Private member's Motion 6/2001, which was recently accepted at a sitting of the Legislative Assembly, should be made compliant with international standards and consistent with the Caricom Model, providing for Freedom of Association, specifically defined and providing for Collective Bargaining.

The Trade & Business Licensing Law should ensure that the proper protective measures are in place for employees, prior to Trade & Business licenses being approved or renewed for employers.

There are many areas of uncertainty in the labour market in the Cayman Islands today especially since we are experiencing a softening of the local economy. In the private sector, the job market is beginning to shrink and companies are being forced to lay-off workers. The September 11th disasters have only exacerbated the downturn in our economy and OECD has created fears for the financial future of Cayman.

Fear increases unrest and fuels conflict. This Government and specifically, this Ministry, intend to reduce the sources of conflict and promote co-operation in the labour market and in labour relations in general. It is our intent to make labour relations constructive, reasonable and fair.

This goal, of necessity, requires the restructuring of the present Labour Department to reflect modern legislation and updated employment relations practices. The restructured Labour Department will be renamed the Employment Relations Department. No longer will the primary focus of that Department be policing and enforcement, but rather it will be assisting employees and employers to operate in a spirit of co-operation, by focusing on preventing disputes, through the examination of issues that are real or potential areas of conflict.

The retraining of the employment services personnel will reflect good practice guidelines and with these, demonstrate the high standards of international compliance in the development of human resources.

The first phase of the training commenced prior to the opening of the Employment Services Centre (ESC) under the auspices of the Caribbean ILO Office in Trinidad. In tandem with this, a local training program has been developed to facilitate the transition.

We will be working closely with the Immigration Board and the Immigration Department in identifying areas of mutual co-operation and opportunities for improving the placement of Caymanians through the utilisation of computerised data-bases.

A significant feature of the restructured Labour Department (Employment Relations Department) is the separation of the Tribunal system from the compliance unit of the Department, in accordance with international standards. This will secure impartiality and will prevent even the appearance of impropriety in the Tribunal process.

Although the changes in the Labour Department are significant, we are committed to maintaining the current staff complement for at least two years. Following this period, the needs of the Department will be reexamined and new posts may be created.

We have worked in close consultation with the Superintendent of Pensions to strengthen and expand pension provisions. We intend to make pension legislation more robust, providing greater benefits and security for employees, with minimal hardship for employers. In addition, we intend to raise the standard of care for those administering pension plans, to the level of "trustees," recognising that handling and managing other people's money is in itself a fiduciary duty.

A new service is being offered as part of the new Labour policy. The Employment Services Centre (ESC) opened on the 23rd of November 2001 with the remit of assisting employees and employers understand best practices and resolve potential disputes through a co-operative approach, based on the mutuality of interests. To this end, the ESC will provide templates for

contracts, employee warning forms and accident report forms. All these forms will be user friendly and assist employers in complying with the new requirements. The focus of the new Employment Services Centre will be on the Caymanian workforce, in terms of support, advice on best practices, training and re-training. There will be special emphasis on assisting small businesses as they make up about 80% of local businesses.

The Ministry has also established an Employment Forum, referred to above. This is a tripartite body formed to advise the Ministry and approve programmes offered at the Employment Services Centre. This group will also approve good practice guidelines for employers and employees and review and approve any and all new employment legislation prior to its presentation to Executive Council.

In keeping with the objectives of Strategy 8 of the Vision 2008 Plan, the Ministry is committed to improving employment relations in the Cayman Islands in a transparent and accountable manner. We will promote dialogue among workers and employers. We will afford you the opportunity to be heard and we will offer assistance with your organisational problems in any way we can.

We will now proceed into the substantive changes in the various laws that compose the Employment Legislation package. And, we invite your written comments and perspectives.

Substantive Changes proposed in the New Employment Law

We have been advised that the term “casual employee” should be re-defined, as the definition in the current Labour Law allows for abuses. Apparently the current meaning has been used to avoid paying benefits to workers by claiming that they are not employees of the employer. Thus “casual employee” has been re-defined to mean a person who is employed on an irregular basis or intermittent basis, not exceeding one month consecutive, and shall not include “seasonal employees”.

As stated above, we intend that all employees (except for casual employees, under the new definition) shall be under written contract to their employers. This is in keeping with good business practices and makes the terms of employment clearer between both parties. This mechanism alone will reduce conflicts between employer and employee, due to the misunderstanding of rights and responsibilities.

The Employment Services Centre (ESC), will offer on-line and in hard copy form, contract templates for the benefit of those employers not already using written contracts of employment. These forms will be focused on small establishments as most large companies and the civil service already utilise contracts of employment. The ESC wants to make it easier for small businesses, not already established in the practice of contracting with employees, to comply. A

template contract will also be found in a Schedule to the new Employment Law for the convenience of the public.

Our intent is to strengthen existing links with the Immigration Board and Department so that the Director of Employment Relations will be able to confirm that an employee is being hired within the confines of the new Employment Law package, including pension provision, workers' compensation provision, health insurance provision, etc. The Director will be able to confirm for the Immigration Board or Department, whether a Caymanian/status-holder, is or is not qualified and/or available for a particular job opening. This confirmation process was called for under the current Labour Law but was not implemented, thus resulting in conflicts among Caymanians and residents as to positions available.

“Employees of managerial level” has been re-defined to make determination easier. From our discussions with stakeholders, we've learned that this definition was a major source of conflict, especially in the area of “gratuities”. Thus, we have defined “managerial level” as salaried employees only, whose jobs involve the formulation of policy, a decision-making role in the management of the company and a role in effectuating company policy. Excluded are those workers who are wage earners and are responsible for lower and mid-level supervisory functions, and who do not contribute to policy formulation, interpretation or decision-making, as to the carrying out of company policy.

“Gratuity” is defined as an amount, usually money, given voluntarily, over and above what is charged or due, usually in appreciation for good service. Often our service providers/business owners charge a “gratuity” on top of the charges for the service they provide to customers. This does two things: it drives up the costs in Cayman, especially to tourists and it puts an enormous burden on business owners, to keep up with those charges/collections, divide them among their service staff (not including managerial staff) and do it correctly, under penalty of law.

Our laws have not been specific enough as to whom should participate in the division of gratuities. By default and/or waiver, large companies have not been required to create, maintain and provide the Director with gratuity collection and division records, although the Labour Law called for it. The result has been loss of revenue to individual service employees and loss of face for employment relations.

We intend that if employers continue charging or collecting gratuities, it will be imperative that they file an acceptable plan with the Director of Employment Relations for his approval. Guidance will be provided in the legislation/regulations as to what kind of plan is acceptable. The plan must include provision of the information contained in a Schedule to the new Law, called “Gratuity Reporting,” and it must be sent to the Director quarterly, either on-line or in hard copy. The service employer will be required to keep a copy of that information for six years.

We will make it easier for employers to comply with the Law regarding gratuities, by making it clearer who can and must participate in any division of those collections and by making the format easier to follow and submit. We are, however, firm in our expectation of strict conformance to the requirements of this Law.

It is our hope that with the eventual establishment of a minimum wage, employers will no longer charge a gratuity percentage, but will allow gratuities to be given voluntarily, for good service. We believe that in the long term this will reduce the costs to tourists and thus boost our economy and secondarily will stimulate “good practice” in service employees, encouraging them to give improved service to earn a “tip”. The employer could then contract with the service employees to share the tips they make with other service staff, who also provide service to patrons/customers. The onus would then be on the employees to comply with their contracts and the burden of reporting, dividing and the liability for failure to do so “by the law”, would be off the employer entirely.

We have added a definition of “seasonal employee”. Seasonal employees are not to be considered “casual employees” but are to be considered “part-time employees”, having the right to full benefits of an employee, on a pro-rata basis, as part-time employees do.

The “notice” period for probationary employees has been extended from 24 hours to two weeks. We were advised that often, considerable time and energy are put into the training of a probationer and that one day’s notice is hardly economical, especially if an employer has put four or five months into his/her training.

Delayed vacation pay was an issue raised, by the old Labour Department in its input into this new Law, as problematic. We intend that this issue should be covered in the contract of employment. Our contention is that when vacation time is earned, vacation pay is earned and should be paid at the time it is taken, without delay.

Another suggestion from the Labour Department was to extend the definition of “immediate family” for the purposes of “compassionate leave”. The definition should be extended to include grandparents and siblings as well as spouses, children and parents. Employees should understand that “compassionate leave” is not mandatory and is not remunerable if not used.

We intend to remove the opting-out clause for overtime wage earners. Wage earners, by contract should receive time and one-half pay for hours worked over the normal workday or workweek or compensation time-off for the number of hours worked overtime. Salaried employees can still contract out of overtime, as usual.

Public Holiday pay should again be contractual. Wage earners must receive double time pay for holiday hours worked or compensation time-off at basic pay.

We have been encouraged by international standards to increase maternity/parental benefits/leave. We are not in favour of going as far as the UK, by giving twenty-eight weeks maternity leave. We are of the opinion that three months leave for women having babies is adequate, with two months paid in full and one unpaid. It is necessary that we allow fathers whose wives are giving birth to have time off as well. We have agreed to two weeks paid leave. We believe this will encourage family bonding, assist recovering mothers and comply with international requirements and expectations. The paternity part of parental leave is not mandatory and is not remunerable if not used.

Adoption leave should also be extended to fathers in families adopting children under the age of three years. The same amount of time off will be allowed to adoptive mothers, but with twenty working days paid and twenty-five working days unpaid. Fathers of families adopting children under the age of three will receive two weeks off, with one week paid and one week unpaid. In the cases of both adoptive parents, time off is not mandatory and is not remunerable if not taken.

A Select Committee has been set up in the legislature to study the issue of minimum wage and an Advisory Committee is to be established under the new Employment Law, to study and make recommendations to the Minister for the establishment of a local minimum wage. We are encouraged by these moves and our hope is that the result will be an acceptable minimum wage establishment prior to the end of 2002.

The current Labour Law established that only some employees were due breaks during a full work day. We are proposing that all employees that work a full work day are due, at least, two paid 15 minute breaks during that work day. And, all employees should be given, at least, one-hour meal break during a nine-hour work period. The meal break is not remunerable. This is especially important for wage earners. The issue of breaks should be addressed in the contract of employment.

We have introduced the requirement of “pay statements” for all employees and a template of a pay statement will be added as a Schedule at the end of this new Law. These pay statements will accompany each wage or salary payment made to an employee. Pay Statement formats will also be available from the ESC, either in hard copy form or on-line for the convenience of employers not already using them. A copy of each pay statement is to be kept as a record by each employer for each employee for a period of six years.

The same will be required for each gratuity payment made by employers to employees. These “gratuity statements” will accompany each gratuity payment to each service employee. A Gratuity Statement format will be included as a Schedule at the end of the new Law and the formats will be available through the ESC, in hard copy form and on-line, for the convenience of employers. These, too, will be a matter of record and the employer must retain a copy for a period of six years.

The introduction of pay and gratuity statements will reduce conflict between employers and employees regarding amounts due and deductions therefrom and provide an important record, which will be admissible in evidence should conflicts arise.

Heretofore, where agricultural and construction workers were terminated, severance pay was not payable for six months, if those employees weren't rehired before that period expired. We have shortened this period from six months to 90 days, except where emergent provisions apply.

Severance Pay will remain one week pay per 12 month period of service for employees being laid-off and not rehired within 30 days or 90 days (for construction and agriculture workers), or workers being made redundant. No severance pay is due to be paid to an employee who is dismissed because of misconduct pursuant to Section 52 (1) or to employees who have received warning/warnings about their inappropriate behaviour in the workplace or lack of satisfactory performance. If the behaviour has not changed or the performance has not improved adequately in the six-month period of employment following the warning/s, pursuant to Section 52 (3) and 53 (2), the employer can dismiss the employee and not be responsible for severance pay.

Although the severance pay level is expected to stay the same, the Ministry does intend to recommend a legislative change imposing a penalty for dismissals found to be unfair.

Severance pay under the current Labour Law is payable at "the latest basic wage". Again, the Labour Department have informed us that the phrase, "latest basic wage," has been used to reduce the time/hours or remuneration of workers who were to be made redundant, causing their latest basic wage to be a lesser amount than was typical during the period of their employment. Therefore we have added a clause to Section 41 (1) stating that "provided that where an employee's basic wage was higher within the twelve month period just prior to the termination of his employment, then severance pay for that employee shall be based on that higher wage, unless good cause is shown. Good cause includes but is not limited to corporate downsizing/restructuring.

Part VI of the current Labour Law deals with Resignation/Retirement Allowances and was added to give a benefit to older workers who did not qualify under the Pensions Law of 1998. Some employers allowed their employees who were not entitled to pensions under that Law, to voluntarily participate in their pension plans.

Those employers voluntarily contributed to the pension plans of employees not actually entitled under the Pensions Law. The new Employment Law allows employers to offset their contributions to those pension plans against any amount of retirement/resignation pay, due to those employees, who are leaving their employment.

Employee swapping, which has been a practice in local industries, has effectually left workers without a primary employer, responsible for their health insurance, workers' compensation benefits and/or pension contributions. One employer should be the primary employer of an employee by contract and that party should be responsible for the provision of all pay and benefits to the employee. If an employer agrees to swap employees with a secondary employer, that secondary employer should contract with the primary employer for the employee's services. The secondary employer should pay an amount certain, to the primary employer to cover the employee's pay and whatever benefits' costs there are to the primary employer for that employee's services. Then the primary employer should pay the employee, as always, and continue to provide his/her benefits, as always.

Under the current Labour Law, the Department of Labour primarily deals with unfair dismissal and severance pay issues. Likewise, the Tribunals have jurisdiction over these two issues only. Under the new Employment Law, the Employment Relations Department will deal with any labour-related issue or complaint. This includes issues related to the provision of Workers' Compensation to injured employees, pension contribution complaints (along with the Superintendent of Pensions), remuneration issues, contracting requirements, warnings notices and any other complaint/problem related to employment relations. This new Department will truly be a full services Labour Relations Department.

The Complaints process will go as follows: A complaint will be filed with the Director of Employment Relations. He will immediately direct it to a team within the Department who will be obligated to conciliate the issue. If the attempts at conciliation fail, the issue can be directed for binding Arbitration, if the parties agree to that method of dispute resolution. Arbitration services will be introduced at a later time, possibly later this year or early next year. If the parties do not agree to conciliate, or arbitrate and accept the time delay and costs involved, they can proceed directly to the Tribunals. A cost will be levied by the Tribunal on any party refusing/failing to attempt the resolution of a conflict by either in-house (employer's) dispute/grievance procedures and/or good faith efforts to conciliate. There are avenues of appeal to the Employment Appeals Tribunal and to the Grand Court on a point of Law only.

The team of conciliators will be trained to international standards, as will the Arbitrator, who will be an independent person, unassociated with the Department.

The Director and the Department will be unassociated with the Tribunal process, to prevent bias or the appearance thereof. The Department will only provide secretarial support for the Tribunals.

Workers' Compensation Law

According to local compensation statistics, the current Workers' Compensation Law does not provide coverage for any employees, as the definition of the term, "worker," for the purposes of the Law, is one who earns less than \$1500.00 per year.

In order to make Workers' Compensation protection available to all employees in the Cayman Islands, it is necessary to change the definition of "worker" as follows:

"Worker" means any person who has entered into a contract for employment with an employer, whether by way of manual labour or otherwise and whether the remuneration is by wages or salary or by work done." The civil service and most large companies already offer workers' compensation benefits/protection to their employees.

This does not mean that businesses/employers will be required to purchase workers' compensation insurance policies for their employees, although employers of larger groups of employees will probably find this option easier and cheaper. Our intent is to protect employees and the families of employees who might be injured on the job. The reasons for this imperative are multifaceted. The number one reason that all jurisdictions are being compelled internationally to incorporate this protection is that employers, who are required to provide workers' compensation for their employees, tend to make their workplaces safer. It actually costs employers less to improve the safety conditions of their businesses than it does to pay for the injuries and possible death of employees injured, as a result of employment.

Employers become stricter on their employees, requiring compliance with safety mechanisms and personal protection rules set forth in the businesses. They require employees who drive a vehicle on their behalf to comply with safety standards on the roads and to follow speed limits and keep their vehicles in better running condition. Employers also look to reducing their costs in the provision of insurance, where applicable, by including and improving safety standards, suited for the particular business, that are state-of-the-art.

Employers are not responsible to pay compensation benefits for employees who cause their own accidents in the workplace by wilful or serious misconduct or who recklessly ignore safety rules and mechanisms put in place to protect them.

For instance, if a worker is injured on the job while he is under the influence of any intoxicating or controlled substance, the employer is not responsible for these benefits. If a worker wilfully removes safety protection mechanisms from machinery or wilfully fails to use safety equipment put in place and provided for his/her protection, the employer is not liable for these benefits. Most other jurisdictions have removed these exceptions and provide workers' compensation benefits on a "no fault" basis.

Those jurisdictions have found that a "no fault" basis reduces the number of law suits, court time, attorney fees and attendant costs of litigation, to establish fault. There is merit to these arguments and eventually, this is probably the way to go with workers' compensation. As for now, with the concept being newly introduced into the workforce, the Ministry believes that the employee should be made to carry some of the responsibility for his/her own safety.

The workers not included under this new Workers' Compensation Law, are those of a "casual nature" as per the new definition in the Employment Law and "out-workers" or those to whom articles or materials are given to be repaired, cleaned, altered, washed or finished. Also not included are those who are family members of the employer and/or living in his home. Subcontractors and contractors, who are not employees of the employer, but are hired to carry out work independent of the employer, are not covered by workers' compensation benefits, and persons in the military service of the Crown are not required to be covered.

This means that domestic employees and gardeners who were not covered under the current law must now be covered. Domestics who are employed by agencies will be covered by the agency, but domestics that are hired by private individuals in private residences must be covered. Under the current Law, if a domestic used a motor vehicle as a part of his/her employment, he/she was to be covered, if making less than \$1500.00 per year.

Under the current Law, agricultural workers could only be covered if they worked on a holding of twenty-five acres or more or if they drove a motor vehicle as a part of their employment (again, only if they earned less than \$1500.00 per year). Agricultural workers on any size holding and whether or not they drive a motor vehicle are covered under the new Law.

Compensation where "death" results to the employee as a result of the injury/ies, whether the worker leaves dependants, wholly or partially dependent, on his/her income, is 48 months wages or salary. Under the current Law, this amount is 36 months wages or \$1500.00, whichever is less.

Compensation for "permanent total incapacity" for employees injured on the job, under the new Law is 48 months wages. Under the current Law, this amount is 48 months wages or \$2000.00, whichever is less and for minors, it is ninety-six months wages or \$2000.00, whichever is less.

Under the current Laws, discrimination is allowed in the remuneration paid to minors. Age discrimination protection, is one of the basic Human Rights under the European Union (EU) Declaration. The ILO Conventions call for protection of the rights of minors in the workplace. Thus, under this government's employment package, minors and adults are to be treated equally.

The compensation for "permanent partial incapacity" due to work injuries, is to be the percentage of compensation payable in the case of "permanent total incapacity," proportionate to the loss of earning capacity permanently caused by that injury, as determined by one or more qualified physicians, using standardized charts, for that purpose.

This brings us to the Schedule of Injuries contained in the current Workers' Compensation Law. Based on conversations with physicians at the George Town Hospital, who are active in making

determinations of percentage disabilities, we learned that to include as a Schedule to the Law, an all-inclusive list of disabilities, is impossible. The guidelines that physicians follow in making determinations of disability percentages are standardized. The material is massive and having had the opportunity to review it, we too, are of the opinion that it would be impossible to include those standards in the Law. Rather than include some of the percentage values as a Schedule to the Law, as the current Law does, we have concluded that the determinations of percentage values of disabilities should be left to physicians qualified to make those judgments. These are medical issues, not legal issues and we believe it is best not to try to legislate issues that are outside the scope of our knowledge. Henceforth, a qualified physician or physicians will make the determination of percentages of disability in work injury cases, based on standardized charts, designed and updated periodically, for that purpose.

The amount of remuneration payable to an employee whose work-related injury leads to “temporary incapacity,” will remain, as in the current Law, one-half monthly wages or salary for the period of the employee’s temporary incapacity. We believe the employer at any time should be able to request that the employee submit to further examination by a physician, to confirm that the temporary incapacity is continuing and/or to reassess the prognosis.

Under the current Law, an adult is to be paid one-half his monthly wages and a minor is only permitted one-third of his monthly wages, in the event of temporary incapacity. As before, any kind of distinction based on age should be removed from the Law. Thus, whether an employee is of majority or is a minor, he/she will be allowed one-half his/her monthly wages/salary during the period of his/her temporary incapacity due to an injury on the job, provided that, the percentage of injury and incapacity is determined by one or more qualified physicians using standardized charts, designed for that purpose.

The current Law provides that workers’ compensation benefits paid by employers on behalf of their injured employees, should be paid into the Court for disbursement. This provision is rarely used because the companies providing workers’ compensation benefits to their employees pay them directly, as the insurance company pays the employers.

For the employers who find it easier to carry workers’ compensation policies through an insurance company, the use of the Court for this purpose may be inconvenient. Employers, in this instance, may find it easier to direct the benefits immediately to the employees, as the insurance company reimburses them.

The provision for compensation benefits to be paid into the Court should remain for the convenience particularly of those who do not choose to purchase workers’ compensation policies.

Certainly, on the death of an employee, due to a work-related injury, the benefits should be paid into Court for the distribution to his/her heirs/dependants.

The current Law provides for the reimbursement of the person paying the funeral expenses of an employee, who is killed on the job, to be paid from the workers' compensation benefits payable on his/her behalf, up to \$24,000.

We spent some time talking with funeral home directors on the Island and learned that a "no frills" funeral, with only basic provisions, like hearse and driver, grave-digging machine, grave excavation, basic body preparation, including embalming, costs on average \$3,700.00.

We do not wish to place a dollar amount reimbursable to one who has paid for the employee's funeral, but choose to leave that decision to the Court. It will take into consideration, the needs of the dependants, the actual receipts for the expenses and any other considerations it deems reasonable and equitable.

Section 6 of the current Law has caused a great deal of problems in interpretation, for those actually paying workers' compensation benefits to injured employees. Workers' Compensation policies require the companies providing benefits to their employees, to determine the amount of the injured employee's monthly wages, for the purposes of the half-monthly payments to employee's sustaining temporarily incapacitating work-related injuries. This section is cumbersome. We have attempted to make it easier to determine monthly wages/salary, as follows: If an employee has worked one year, then one-twelfth of his/her yearly amount, equals one month's income. If he/she has worked less than a year, then the average monthly amount he/she has earned since being employed in that job should be utilised. If an employee has not completed a month of service with the employer, when he/she is injured, then the monthly amount made by another employee in the same or similar position as the injured employee, should be the amount used. We believe that the simplicity of this will assist those required to do the calculations.

In Section 19.(1) of the current Law if an employer has been personally negligent or has wilfully acted in such a manner that an employee is injured as a result of that act of the employer, the worker/employee can sue the employer civilly or he can claim workers' compensation benefits. The employer can not be held liable for both workers' compensation benefits and damages under the law.

We believe the employee should have the right to pursue a negligent employer civilly and claim workers' compensation benefits. If the employer is found liable civilly and ordered to pay damages to the injured employee, he (the employer) should be able to offset those damages payable against the amount of workers' compensation benefits he has paid.

Section 23 of the current Law disallows any workers' compensation being paid to an injured employee (or to an employee's family, if he/she is killed on the job) if that employee or family member has received any pension benefit or ex-gratia payment for the injuries sustained. Workers' compensation should be offset by such other benefits, where it is appropriate, but not denied simply because other benefits have been received or are receivable.

Section 37(1) of the current Law specifies that a worker who becomes incapacitated due to any disease, prescribed by regulation as being a disease due to the nature of his employment, will be entitled to compensation. The regulations to the Law do not specify or prescribe any disease as being due to the nature of employment. This supports the Ministry's position that medical decisions need to be made by qualified physicians and not lawyers. Thus, if a qualified physician, using standardized charts and guidelines and taking into account causes and incidences of a disease, determines that the disease is due to the nature of the employment or due to a condition in/of the employment, and not common to all persons, then that disease will be compensable under the new Law.

Substantive Changes to the National Pensions Law and Regulations

The definition of "Pension Plan" has been changed as follows: "includes a defined benefit pension plan or a defined contribution pension plan constituted and administered to provide pension benefits and ancillary benefits for employees but does not include an employee's profit sharing plan or a deferred profit sharing plan; a plan under which all pension benefits are provided by contributions made by members who are not self-employed; a fund or plan supplementary to a registered pension plan; or any other prescribed type of plan.

A definition has been added as to "relevant benefit", this means any benefit provided under a pension plan, which is approved by the Office of the Superintendent of Pensions, to include any pension benefits and ancillary benefits.

"Year's Maximum Pensionable Earnings" will be changed to mean earnings totalling in any year, seventy-two thousand dollars or such other amount as may be prescribed.

This Ministry is committed to requiring the highest standards of those setting up, managing, administering or investing pension monies/funds.

As a result, the standard of care has been raised to that of trustee (a fiduciary-duty for handling other people's money). Thus Section 4 (1) will be changed as follows: "...every employer in the Islands shall provide a pension plan set up under trust or make contribution to a pension plan set up under trust, for every person employed by him in the Islands which shall, at the employer's discretion, be either a defined benefit pension plan or a defined contribution pension plan." The method of appointment of trustees will be specified in the trust document and agreed with the Superintendent of Pensions.

In order to allow the Civil Service Pension Plan to come under the National Pension's Law, if desired, and depending on whether or not it is recommended that the civil service come under the new Employment Law, the following subparagraph has been added to Section 4: "Provided that any pension plan constituted by law, other than this Law, is exempted from the trust provision required in paragraph (1) and shall be governed and administered by that law."

The following changes have been recommended for Section 8, regarding who can administer a pension plan: (a) an employer may be an administrator only if approved by the Board of Trustees; and (e) a board, agency or other person made responsible by this Law or any other law or any trust agreement, subject to the approval of the Superintendent of Pensions.

Section 11 provides the circumstances under which the Superintendent shall not register a pension plan. The only addition to the usual reasons for non-registration is “if the plan does not provide for the accrual of pension benefits and relevant benefits in a gradual and uniform manner.”

Section 12 (9) has been changed because in the current Law, an amendment which purported to convert a defined benefit plan to a defined contribution plan was only void, if not done with the written consent of the employer. It should be the employees’ whose agreement is obtained to change the form of a pension plan, not the employer’s. Thus this paragraph has been changed to, “an amendment which purports to convert a defined benefit pension plan to a defined contribution pension plan, or visa versa, shall be void and of no effect unless made with the written consent of the employees and the Superintendent of Pensions.”

Section 16 (2)(c) allows for a three-year review of a defined benefit plan and a five -year review of a defined contribution plan, with an actuary, to review the financial operation of the plan. This has been changed to provide for a three year review of both kinds of pension plans, with an actuary, or from time to time, as the Superintendent determines, throughout the continuation of the plan.

Section 17 deals with the standard of care an administrator must exercise. It has been changed such that an administrator shall exercise the care, diligence and skill in the administration of the plan and in the investment of the funds, that a trustee would be required to exercise in dealing with the property of another.

Section 20 has been changed requiring administrators to provide information about the provisions of the plan and the rights and obligations under it, to persons required to become members of it, from 90 days to 60 days.

Section 25 deals with membership in pension plans. The current Law excludes domestic employees doing housework in private residences. Both this Ministry and the Government as a whole are strong in their commitment to bring Cayman in line with international standards regarding human rights and in the long term, to prevent a welfare state. Thus, it is the opinion of this Ministry that we should include in the security of old age, those who work in the least paid jobs in the Country. The poorest sectors must not be excluded. Laws should be designed to protect those who are most in need of protection.

A new Section 32 has been proposed for addition to the Law, to describe more clearly defined contribution benefits. This section reads, “A member of a defined contribution pension plan that is continued and/or established after 1 June 1998, shall be entitled at his normal retirement date to (a) an annual pension that is equal to the value of the accumulated contribution with interest made to the pension fund by or in respect of the member or former member; (b) provided that any amount due under (a) above, shall be exclusive of any part of the accumulated contributions that have been allocated to purchase ancillary or additional benefits, in accordance with this Law.”

As mentioned previously in both Employment Law changes and in Worker’s Compensation Law changes, provision needs to be made for workers who may be injured or killed on the job. Workers’ compensation benefits are only a part of a whole package designed to provide protection to injured or infirmed workers or those killed as a result of their employment, and /or their families. An important part of this whole, is the provision of ancillary benefits, on top of pension benefits, per se.

Ancillary benefits include disability and death benefits for those who need them.

The Civil Service Pension Plan already calls for a contribution on the parts of both employer and employee of 6%. We believe that the additional contribution of 1% from the employer and the employee, totalling 6% from each, will provide these very necessary ancillary benefits, on top of pension benefits.

ILO Conventions require social security protection for everyone. We do not have a social security system in place in Cayman. The Pension Plan, inclusive of ancillary benefits, and including all workers, is as close as we can come to providing a system of social security for workers. All people need protection in old age and in cases of infirmity or death, before old age.

As stated earlier, “relevant benefits” as related to pensions means pension benefits and ancillary benefits. A new Section 46 reads, “All relevant benefits shall be adjusted for inflation as prescribed.”

Part VII of the Law concerns Contributions. This is where significant changes in the National Pensions Law take place. Members of a defined contribution plan should contribute 5% of their earnings for pension benefits and 1% of their earnings for ancillary benefits. Employers cannot contribute less, to either the members’ pension benefits or to their ancillary benefits. It should be noted that all contributions form part of the accumulated contributions that make up the employees’ accounts.

For members of a defined benefit pension plan, members shall not be required to contribute more than the amount stipulated in the actuarial report, up to a maximum of 5% of their earnings for pension benefits and 1% of their earnings for ancillary benefits, in any one year, and the employer shall contribute an amount equal to the amount contributed by each member.

Self-employed persons must contribute to a pension plan or an individual retirement account for pension benefits, every year during their employment, 10% of their earnings, up to the year's maximum pensionable earnings and 2% of their earnings for ancillary benefits, each year.

A new Section 53 has been recommended, reading - "Every person engaged in selecting an investment to be made with the assets of a pension fund shall ensure that the investment is selected in accordance with a statement of principles adopted by the trustees and pursuant to the criteria set out in this Law and prescribed Regulations."

A new paragraph (d) has been suggested to Section 54, regarding "Locking In". "Contributions to the pension plan to provide pension benefits shall be deemed to include contributions to provide ancillary benefits, except where such contribution has already been allocated to purchase ancillary benefits as required by this Law."

Section 58 has been proposed for change, such that the pension benefit of a person under a pension plan, a prescribed individual retirement account or a life annuity purchased under a pension plan, shall not be commuted or surrendered during a person's life, and a transaction that purports to commute or surrender such a pension, benefit or prescribed individual retirement account, is void and of no effect. The current Law makes reference to "a prescribed retirement savings arrangement," rather than an individual retirement account.

Section 91(3) has been changed to read, "No summary proceedings under this Law shall be commenced later than 5 years after the date when the subject matter of the proceedings occurred or is alleged to have occurred or is formally brought to the attention of the Superintendent of Pensions." This provides some extra protection from the running of Statute of Limitations, by the addition of the last clause.

Section 94, makes the Confidential Relationships (Preservation) Law prevail over this Law. This should be changed by adding the following clause: "... except that the Confidential Relationships Law shall have no application to the seeking, developing or divulging of confidential information by the Superintendent of Pensions, when a matter is under investigation by that Office, to the extent reasonably necessary to protect the interests of the members of a pension plan." It is important that these legislative requirements be enforceable and any limitations to their enforceability should be carefully weighed and a determination made as to whether the protection of the new employment legislation outweighs the protection of privacy in employment issues.

Substantive Changes to National Pensions General Regulations

In these Regulations, “earnings”, described in Section 3 of the Law, shall mean all payments and emoluments, payable by an employer and received by an employee in consideration of employment, in monetary form. Earnings shall include wages, salary, allowances, leave pay, pay in lieu of notice and other income including variable irregular rewards or compensation.

Earnings shall not include severance payments made on termination or any payments made in recognition of long service. Any health insurance premiums paid by an employer are not a part of earnings.

Variable irregular rewards or compensation include any part of earnings not paid on a fixed basis as a wage or salary or additional to a basic wage or salary. They include allowances, dividends, interest, profit related pay, regular bonuses, performance related bonuses, fees, tips and gratuities.

Tips and gratuities are excluded if they are not in monetary form or are not paid or payable by the employer (directly or indirectly) to an employee. (If an employee earns a tip or gratuity for the provision of good service to a patron, and that gratuity is not charged by the employer, but is voluntarily given by the patron or customer, then it is not income in the form of earnings to the employee. If it is charged by the employer and thus divided among the service employees or if it is collected by the employer and divided among the service employees, then it is income in the form of earnings for the employee.)

Non-contractual gratuitous bonus payments are not included if they total less than 20% of the regular earnings received in a plan year. If they are greater than 20% of the regular earnings in a plan year, then the total amount received is included.

For self-employed persons, partners, directors, officers and employees who receive income in consideration of employment or from investment in a trade or business, “earnings” shall include gross earnings and receipts from the relevant trades, professions or businesses for which they are engaged in any relevant pay period. Earnings where appropriate shall include income and payments in monetary form whether such payments take the form of salary, commission, allowances, fees, bonuses (except as provided above) or payments of expenses or dividends from shares.

For the purposes of assessing earnings, the relevant pay period shall not exceed twelve months and shall correspond to the period for which a regular contribution is to be made to a pension plan. Earnings shall not include amounts paid or payable as reimbursement of bona fide business and trading expenses.

Earnings may be estimated for any relevant pay period provided that such estimate is not less than an amount equal to the “earnings” for the pay period of equal length falling immediately prior to the relevant pay period.

The current regulations leave “year’s maximum pensionable earnings” at sixty-thousand dollars. In order to bring this amount up to date, the following changes have been recommended: “The prescribed maximum amount for the purpose of the definition of “year’s maximum pensionable earnings” in section 3 of the Law is seventy-two thousand dollars, increasing each year on the 30th of June, by an amount that represents the increase in the cost of living, calculated by internationally accepted formulae respecting inflation increases as announced each year by the Superintendent of Pensions.”

A new subparagraph is proposed for addition to regulation 6, in keeping with the Ministry’s intent to make all the elements of new employment legislation interrelated and interdependent. This section deals with the application for registration of a pension plan. The additional subparagraph calls for the application to be accompanied by a copy of the contract of employment that applies to each employee/member of the pension plan and if the contract is in “specimen” form, meaning the same contract format applies to all employees of a particular employer, then it must be certified that the wording used is the same, in the contract issued to each member.

Section 23 of these regulations specifies the contents of any statement provided by the administrator of a plan to the spouse, beneficiary or legal representative of a member or former member who has died, to whom the pension benefits of that member or former member are payable. Subparagraph (b) has been amended to state, “the amount and method of payment of any relevant benefit”; and subparagraph (d), to state, “where applicable, the basis for any increases to a pension payment.” In (b), “relevant benefit” replaces the words “pension benefit”.

Section 30 of the General Regulations deals with a graduated scale of contributions. For the purposes of Section 48 (8) of the Law, after June 2002, there is no provision for reduced contributions. As this legislative package will most likely not become effective until at least June 2002, this entire section has been eliminated.

Substantive Changes to Pension Fund Investment Regulations

The most significant change in this set of regulations is the requirement of a statement of principles for the investment of pension funds and the establishment of a set of standards with which those who are responsible for the investment of pension funds must comply. These recommendations follow:

“Trustees, administrators and their agents responsible in accordance with the Law for the investment of pension funds shall, at all times -

- act in the best interest of the members and beneficiaries and shall exercise in relation to all matters affecting the pension fund, the same degree of care and diligence as a trustee would

exercise in dealing with the property of another and to use the skill a trustee possesses, by reason of profession, business or calling.

- avoid actions or decisions that take account of remote or imperceptible benefits for members or other beneficiaries.

- follow an investment strategy which they are conscious will not be to the financial detriment of members or beneficiaries having no investment choice.

- set up and follow a policy framework or strategy for making investment decisions that balances risk and return in the best interests of the members and beneficiaries, avoids the need to make specific investment decisions and maintains the ability to exercise discretion in setting future investment policies.”

“The administrator shall establish a written statement of principles governing investment decisions. The statement will be written to enable those involved with the investment decisions to comply with the law and regulations and shall include their policy in relation to diversification and suitability, the kind of investment to be held, the balance between different kinds of investments, risks, the expected return and reliability of investments.”

“The administrator must obtain and consider written advice from a qualified investment adviser and shall consult with the employer or employers before preparing the written statement of investment policies.”

“The administrator must adopt strategic objectives relating to the allocation and distribution of assets held by the pension fund.”

Section 11 of these regulations requires the administrator to submit along with the financial statement each year, a register of members of the pension plan. Additions to the contents of that register are: confirmation that each member has been issued a contract of employment, in keeping with the new Employment Law and a copy of the relevant contract of employment that applies to each member or group of members and if that contract is in specimen form, it must be certified that the wording is that used in the contract issued to each member.

This Ministry believes that cross-referencing the interrelated laws making up the employment legislation package will provide checks and balances, securing equal treatment of all, and protecting the rights of workers and employers. It is of the opinion that the Employment Relations Department, (formerly called the Labour Department) should be responsible for all aspects of employment (labour), whether it be employment law issues per se, workers' compensation issues, pension issues, trade union issues, trade & business licensing issues or issues otherwise related to employers and employees.

It should be remembered that Trust Law guides in matters concerning Trusts. The current Trust Law indicates that the Trust Instrument itself can provide for the proper handling dormant accounts, an issue of concern that has been raised by Administrators/Trustees. Reference to the

Courts for confirmation of the particular rights of Trustees is always the best option and the process for referrals is clearly delineated in Trust Law.

Substantive Changes to Actuarial and Fund Management Regulations

Section 7 of these regulations deals with the information to be supplied with the application for registration of a defined contribution plan. The application must include a report in a form approved by the Superintendent. One change to the contents of this report is the requirement of confirmation by the Superintendent that the asset mix is appropriate to the plan membership, on the assumption that pension income is, or will be, the principal income of the members or former members of the plan on retirement.

Section 8 provides for any lifetime benefits to be increased by 2% annually. It should be changed to reflect the introduction of the relevant benefits concept. Thus, this section should state, “All relevant benefits payable as a pension for the lifetime of a member shall be increased by the greater of 2% annually or in line with an index acceptable to the Superintendent.” And, “commuted values, transfer payments, payments made to purchase annuities and any other payments shall be actuarially adjusted so that the value of such payment is equal to the value of the relevant benefits with annual increases.”

Changes Recommended by Caricom **Trade Union Law**

Based on the recommendations of Caricom, the current Trade Union Law, in the Cayman Islands needs to be updated, by the addition of definitions and of several sections.

International standards call for a section clearly laying out the meaning of “Freedom of Association.” Included in this part should be employee and employer basic rights, freedom of association protection for employees, freedom to join or not to join, membership, federations and remedies.

A new definition of trade union needs to be incorporated into this Law. The current Trade Union Law does not differentiate between employees’ unions and employers’ organisations. Although the format is the same organisational structure, the purposes and membership are entirely different. The meaning should not be combined into one definition.

It is also recommended that sections on “Recognition of Bargaining Rights” and “Collective Agreements” be added.

We are also encouraged to clearly define what should be included in a union's or organisation's constitution.

Many of the elements of our current law can be updated and incorporated, such that the re-write does not have to be as extensive as some of the other laws in the employment legislation package.

For the benefit of understanding the necessity of these changes, our recommended additions to the Trade Union Law are based on the ILO Conventions on Freedom of Association, No. 87 and on the Right to Organise and Bargain Collectively, No. 98.

Definitional Changes

Our current law contains very few definitions. The only definitions provided are for "registered", "Registrar", "trade dispute", "trade union" and "workmen".

The additional definitions needed are as follows:

"bargaining agent" this is a trade union that acts on behalf of employees;

"bargaining unit" a group of employees on whose behalf collective bargaining may take place;

"collective agreement" this is a written agreement between an employer and a trade union concerning terms and conditions of employment or other matters of mutual interest;

"dependent contractor" is one who performs work for another for compensation such that he/she is in relation to that person, in a position of economic dependence and under an obligation to that person, more closely resembling the relationship of employee than that of independent contractor.

"employers' organisation or association" is a combination established by employers, the principal purposes of which are the representation and promotion of employers' interests and the regulation of relations between employers and employees;

"Minister" means the Minister who is responsible for Human Resources;

"trade union" any combination of persons, temporary or permanent, the principal purposes of which are the representation and promotion of workers' interests and the regulation of relations between employees and employers. It includes a federation of trade unions, but not an organisation or association that is dominated or influenced by an employer or an employers' organisation.

It is recommended that this law and regulations should make provision for rights of association of policemen, firemen and prison guards and forces.

Freedom of Association

As indicated above this section must include some basics that we all understand, but that need to be stated:

Every employee has the right to take part in the formation of any trade union or federation; to be or not to be a member of any trade union to take part in lawful union activities; to hold office in any union or federation; to take part in elections in unions; to be elected as a representative of a union; to act in his elected capacity; and exercise any right conferred by this Law and assist anyone else in the exercise of such rights.

Every employer has the right to take part in the formation of any employers' organisation or association; to be a member of any such organisation and take part in its lawful activities; to hold office in an organisation; to be free from obligation to employ members of a trade union; and to exercise any rights conferred under this Law and assist others in the exercise of them.

Trade unions are to be protected from employer interference. No one has the right to act in a way designed to put a trade union under the dominion of an employer/ employers' organisation or by any means, financial or otherwise, to place a union under the control of employers/employers' organisations.

No one can force, coerce or compel, by threat or intimidation, anyone else to join or not to join, or support or not support, a trade union or an employers' organisation.

The constitution of any trade union or employers' organisation must state the criteria for joining the union/organisation, any person eligible under that constitution has the right to membership, if they pay the required dues and comply with the rules of the union/organisation. "No trade union or employers' organisation shall discriminate in its constitution or by its actions against anyone on the grounds of race, sex, religion, ethnic origin, national extraction, colour, indigenous population, social origin, political opinion, disability, age, pregnancy, marital status or family responsibilities." (Caricom's discriminatory grounds)

Remedies

Any infringement of these rights of association are punishable as an offence. Where a complaint is lodged that an employee/applicant is dismissed or denied employment based on freedom of association issues, the burden shifts to the employer to prove that the dismissal/denial had no connection to the employee's/applicant's trade union membership or activities. If the Court finds that the complaint is well founded, it can order the reinstatement of an employee or payment of compensation or any other remedy that it finds reasonable.

Constitution

The constitution of every trade union and/or employers' organisation must include the following information:

The name of the trade union or employers' organisation; The objects of the union or organisation; qualifications for membership; provisions for the offices of president or chairperson, secretary or general secretary and treasurer; provision for periodic elections to offices and temporary replacements if an office-holder becomes disqualified or incapacitated; provision for general meetings open to all members each year or two years; provision that any member or delegate can propose a resolution at general meetings; statement of fees payable and the maximum period of arrears permitted before a member loses "good standing" status; the grounds on which an officer can be suspended or expelled from office or membership; procedure for suspension/expulsion from office or membership (including provision that member/officer must be fully informed in writing of the allegations and have a reasonable opportunity to meet them and shall have the right of appeal); provision for keeping full and accurate records by treasurer, for an annual audit of all accounts by an auditor who is not a member of that union or organisation, and for the availability of audited annual statements to all members; provision for banking and investment of all funds; provision for paying out of the funds including signatory authority; conditions under which a member may become entitled to any financial benefit offered by the organisation; provision for amending the constitution; duration of the financial year; provision for inspection of the register or other books by the members; provisions for amalgamation with other unions or organisations; and the manner of dissolving the trade union or employers' organisation.

Three copies of the constitution signed by the president/chairman and the secretary must be sent to the Registrar of Trade Unions with the application for registration of the union or employers' organisation.

A registered trade union or employers' organisation is deemed a body corporate and can contract, hold property and sue and be sued.

Bargaining Rights

A Tripartite Body must be established to be responsible for recognition and certification of trade unions and employers' organisations.

Trade unions can make application to this body, to be certified as the exclusive bargaining agent for a bargaining unit, if the majority of employees of an employer are members in good standing of that union.

The application must be written and must include a description of the proposed bargaining unit and evidence of the fact that the majority of employees in the bargaining unit want the union to

be their bargaining agent. A copy of this must be served on the employer. The Tripartite Body must make the determination within six months after submission.

The Tripartite Body must determine the appropriateness of the bargaining unit, having regard to the interest among the employees in the bargaining unit, the nature and scope of duties of the employees in the unit, the views of the employer as to the appropriateness and the employer's collective bargaining history.

The employer after receiving notice of the application will either indicate his agreement to recognise the union as the bargaining agent for that bargaining unit or indicate that he doubts the union's entitlement to be so recognised. He must do this in writing to the Tripartite Body along with his reasons. Then there are various procedures to be used in certifying, if the employer agrees, and rules applicable if more than one trade union applies for certification for a particular bargaining unit. Those rules are procedural in nature and do not need to be specified here.

Where a union has been certified as the recognised bargaining agent for the bargaining unit, the employer must recognise the union and bargain with them.

Where a union has been certified as the exclusive bargaining agent, it shall be the duty of that union to provide full and proper representation of the interests of all its members, whether they are fully paid up or not.

This is a very general outline of the certifying of bargaining agents. It is not exhaustive.

Collective Agreements

A Collective Agreement must be in writing and signed by the parties. It is a contract. It must contain the date on which it will become effective and contain procedures for settlements of rights and disputes. It is recommended that these be referred for conciliation, mediation or arbitration resolution. It must contain provisions for settlement of all differences whether arising out of interpretation, application or administration. It must be lodged with the Minister of Human Resources (Labour).

A Collective Agreement is binding (unless stated otherwise) on the employer and the trade union that have entered into it and every employee who is a member of the trade union (or that bargaining unit). The terms of the Collective Agreement are deemed to be incorporated into the employment contract of each employee who is a member of that union or bargaining unit. These agreements can be enforced in law.

Substantive Changes to the Trade & Business Licensing Law

Section 6 of the “99 Revision provides for a Board consisting of a Chairman, Deputy and seven members and the Chief Immigration Officer.

This Ministry believes that in order to enforce our employment legislation package, certain checks and balances must be put in place. One way to ensure compliance is to prevent the renewal of the licenses of those entities not in compliance with the Laws.

Furthermore, we propose making the Director of Employment Relations a member of the Trade & Business Licensing Board. He would be responsible for reviewing all applications for renewal (and new applications, as well) for compliance with the legislative package requirements, such as contractual obligations, pension provision, workers’ compensation provision, etc.

As discussed, contract information will be shared by the Departments of Immigration and Employment Relations. By the electronic exchange of this information, it will be easier to keep track of compliance. It will also assist the Director of Employment Relations in targeting those who need assistance in complying with the legislation.

The focus will initially be on assisting those entities not in compliance. We understand that it will take time to incorporate the new international standards into “the usual course of business” for many companies here in Cayman. Our emphasis will be on helping to ease the transition and providing assistance to those companies trying to comply.

We have established a small business advisory section of the ESC. It will offer special services to smaller businesses, helping them understand and comply with best business practices and international standards.

Substantive Changes to the Confidential Relationships (Preservation) Law

The Confidential Relationships (Preservation) Law has application to all confidential information regarding business of a professional nature.

The term, “professional nature” is slightly misleading here; it does not deal only with people in the professions. It deals with the divulgence of confidential information about businesses per se. It is in this context that we see a need for change.

Section 3(2) relates to the conditions under which seeking, divulging or obtaining confidential information is acceptable. This section lists a series of acceptable situations in which this kind of information can and should be revealed. Inspectors, constables and the Financial Secretary are among those to whom information can be revealed in varying circumstances.

We propose that confidential information relating to the operation of a business, should be reported to the Director of Employment Relations only when a business is alleged to be

operating outside the bounds of the employment legislation package (Employment Law, Pensions Law or Workers' Compensation Law, etc.). In the case of pension abuses, we believe that information should be provided to the Superintendent of Pensions. The powers that these individuals would have, would be investigative only, and could only be shared by essential governmental bodies. The established right to this kind of knowledge and information would assist in the implementation of the new legislative requirements and provide a means of protecting those needing the protection of these Laws.

Again, this Ministry fully understands that the process of incorporation and implementation of these changes will take time and patience. The new legislative package will not come into force until middle to late 2002. The three-month period for public review of this document will provide some time for businesses, employers and employees to look at what the international expectations are and to begin the process of incorporating them into their business plans.

It is essential for the public to understand that the Employment Relations Department will be a comprehensive employment services unit. It is committed to assisting businesses, employers and employees in every way possible to make the transition easier and the transition period reasonable.

The public are requested to make their suggestions and comments to the Ministry of Education, Human Resources and Culture, 4th Floor Government Administration Building, George Town, Grand Cayman, by submission in writing, or on line at doss.solomon@gov.ky.