

LAW NOTES

A Bi-Annual E-Newsletter



A FRUSTRATED EMPLOYMENT CONTRACT: AN EMPLOYER'S ESCAPE!

Contributed by Paulette Neil - Associate

From as early as fifteen years of age, a person is eligible for employment in Jamaica. The relationship between the employer and employee is principally determined by the employment contract and the terms therein.

It is commonplace that an employment contract can be oral or in writing, so long as there are the relevant ingredients which make a contract between two parties binding (for example the parties intended to create legal relations between themselves and/or there is sufficient consideration (an exchange of promises) between the parties).

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An employment relationship usually contemplates the availability of an employee to carry out the various tasks for which he/she is contracted. However, what happens when an employee falls ill whether due to injury on the job or otherwise, and such illness results in the employee being unable to work for weeks, months or even years? Similarly, what happens when an employee is imprisoned, and a natural consequence of such imprisonment is that the employee is unable to perform the services for which he/she is contracted? Both situations can place an employer in a quite invidious position.

Often, long term illnesses or imprisonment are unforeseen circumstances and are usually not contemplated at the time when the employment contract was entered. However, such situations either make it impossible for the contract to be performed or render its performance fundamentally or completely different from its original terms. In such instances, the salient question then is whether the employment contract has been “frustrated”.

Frustration is a legal concept, which, if successfully established, will provide a basis on which an employment contract can be terminated. In such an instance, the employee is not deemed to be dismissed, and hence the employee cannot claim wrongful or unfair dismissal or that he/she is entitled to redundancy payment. It is usually the employer who is left in a predicament following the long-term absence of the employee due to illness or imprisonment, that seeks to rely on the legal doctrine of frustration.

Whether all illnesses or imprisonment of an employee leads to a frustrated employment contract.

When an employee falls ill and as a result of such illness, he or she is unable to attend to his or her contracted duties, the employee has a duty to notify his or her employer of such impending absence. Where such illness has been for an extended period the employee ought to keep his employer informed of the progress of the illness,

Business Development Tips

Participate in conversations around your specialist area.

Be visible and become known as someone that contributes. Manage your time wisely and select discussions that showcase your skills to people that might want or recommend your services.

Do something related to new business every day.

Make sure that your colleagues also focus on the new business effort. It can be as simple as a call to a prospect or writing a blog or sending an email. But make it a discipline that new business is a daily task.

Build your network.

That means both offline and online. People cannot buy your services or recommend you if you aren't there. That means scheduling time for attending networking events and also for participating in relevant conversations on forums.

however, where an employee fails to do so, an employer should make reasonable enquiries about such progress.

In determining whether such illness has frustrated the employment contract, thereby bringing it to an end, the following factors should be considered:

- The length of employment prior to the illness;
- How long the employment was likely to last in the absence of the incapacity;
- The nature of the job;
- The likely length of time the incapacity will last and the effect of the illness or disabling event;
- The need of the employer for the work to be done and the need for a replacement to do it;
- Whether the employee continued to receive wages;
- Whether the terms of the contract provide for incapacity;
- The conduct of the employer in relation to the employment; and
- Whether in all the circumstances a reasonable employer could be expected to wait any longer to see if the employee would return to work.

On the other hand, the imprisonment of an employee does not automatically infer that the employment contract has been frustrated. The circumstances of each case must be examined carefully. An employer must, in the circumstances of the imprisonment of an employee, consider the expected duration of any incapacity before concluding that the contract has been frustrated. In instances where the incapacity was for a short duration, case law has shown that it is less likely that the employment contract can be deemed frustrated. Therefore, an employer must safeguard against hasty conclusions of frustration.

Other possible solutions

An employer should consider other options available under employment law. For example, the employer may consider disciplinary procedures governing the contract of employment. If for example, an employee is alleged to have committed an offence within the course of his employment in breach of the company's code of conduct, the employer should in such an instance follow the procedures outlined in the company's disciplinary procedure or the Labour Relations Code and apply the appropriate disciplinary sanction. Of course, practical questions of the employee's availability to attend a disciplinary hearing may eventually arise here.

Other circumstances where an employment contract may be frustrated

There are other instances in which the performance of an employment contract is hindered and the question of frustration may arise, for example where a contract is dependent on an employee securing a specific license or a security pass and the employee has been denied such license or security pass, or such license or security pass has been issued to the employee but later revoked or withdrawn. Whether any such contract is deemed frustrated will depend on the circumstances of the case.

An employer should bear in mind that the legal principle of frustration will not be available to an employer where the frustrating event should have been foreseen or if the frustrating event or circumstance was caused by him.

As can be seen from the above, when a circumstance arises where an employer may be able to rely on the principle of frustration as a basis to terminate a contract of employment, a careful review should be done to ensure that the employer, when terminating the contract of employment, is not in breach of the Labour Relations Code and cannot be said to have acted unjustifiably. When in doubt, consult a qualified Attorney-at-Law who specializes in employment law.

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EPISODE 1 - THE OPPORTUNITIES & PITFALLS OF THE HOUSING MARKET

THE LEGAL LANDSCAPE PODCAST

Episode 1 is now available on our website

The first episode of The Legal Landscape, presented by DunnCox, Attorneys-at-Law addresses what potential home buyers ought to know about the current housing market in Jamaica.

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You may listen to the podcast at www.dunncox.com/the-legal-landscape-podcast

"FRUSTRATION IS A LEGAL CONCEPT, WHICH, IF SUCCESSFULLY ESTABLISHED, WILL PROVIDE A BASIS ON WHICH AN EMPLOYMENT CONTRACT CAN BE TERMINATED."



DunnCox AWARDS SCHOLARSHIP TO UWI LAW STUDENT

Attorney-at-Law at DunnCox Mr. Kris-Anthony Turner made a presentation to the recipient of the UWIDEF Scholarship Fund, Ms. Jillanna Blackwood, Undergraduate student at the Faculty of Law at the University of the West Indies on Wednesday, October 31, 2019.

The UWI Development and Endowment Fund (UWIDEF) is the major fundraising arm of the UWI Mona campus and provides stewardship for funds raised through major capital campaigns and projects, general endowment and planned donations.

DunnCox has been a contributor to the UWI Endowment Fund from its inception in 1998. The DunnCox award is presented bi-annually to a Jamaican national who has successfully completed the first year of study leading to the LL.B. degree at the University of the West Indies.



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