

THE REDUNDANCY FUND USED IN THE UNITED KINGDOM & OTHER JURISDICTIONS FOR RECOMMENDATION TO THE TAX COMMITTEE

Introduction

Redundancy is essentially one of the reasons for dismissal. As such, it occupies a crucial place in modern labour law and is governed by strict legislation. Most countries commonly have existing redundancy legislation which sets out what constitutes a dismissal by reason of redundancy for the purposes of the particular statute. Notably, the concept of dismissal by reason of redundancy is not exactly the same country to country. However, it is generally accepted that: 'Redundancy refers to an occasion where employee dismissal is attributable wholly or mainly to: (i) the fact that the employer ceased, or intends to cease to (a) carry on the business for the purposes for which the employee was employed, or (b) carry on that business in the place where the employee was so employed, and; (ii) requirements of that business (a) for employees to carry out work of a particular kind in the place where the employee was so employed by the employer, have ceased or diminished or are expected to cease or diminish.'¹

Further, under such legislation, it is typical in most countries that an employee who is dismissed as a result of redundancy is entitled to receive a redundancy payment from his employer, subject to minimum criteria regarding length of service. These legislative provisions therefore provide protection to employees in the form of compensation, should dismissal by reason of redundancy occur.

¹ . 'Employment Protection Systems: A Fifteen Country Comparative Study,' April 2003, M.J Roberts, Researcher-University of Melbourne for the Australian Industry Group.

A number of countries have developed statutory schemes to regulate redundancy. Some countries have also established Redundancy Funds for the benefit of employees to ensure payment of entitlements in the event of redundancy. This paper seeks to specifically examine the function and operation of the Redundancy Funds which exist in the United Kingdom and other jurisdictions.

The United Kingdom - National Insurance Fund

Redundancy is comprehensively defined under United Kingdom labour law and there are specific provisions in relation to the handling of redundant employees. Pursuant to the Employment Protection (Consolidation) Act 1978 (UK) (EPCA), employees with a minimum of two years' service since their eighteenth birthday who are dismissed by reason of redundancy, are entitled to a lump sum statutory severance payment which varies according to age, length of the employee's service and weekly pay, provided they qualify under the provisions of the Act.

Notably, in the United Kingdom there is in fact no state-wide insurance scheme. Companies are however obligated to make a redundancy payment to a qualifying employee according to the calculations set out under the legislation. There is special provision for circumstances in which the employer is unable to pay.

The British Redundancy Fund (the Fund) was established by the Redundancy Payments Act 1965. Under the Act employers were required to make contributions to the Fund, and the administration of this Fund was by the Secretary of State.

Originally the purpose of this Fund was to provide compensation or “redundancy payment” in cases of dismissal of employees by reason of redundancy. Subsequently however, the scope of the Fund was expanded to include other unpaid obligations of employers. The Redundancy Fund along with its assets and liabilities were later merged with those of the National Insurance Fund.

The background and function of the British Redundancy Fund was set out by the House of Lords in the case of Secretary of State for Trade and Industry v. Frid [2004] UKHL 24. At paragraph 36 to 37 of the judgment Lord Hope of Craighead stated that:

“...section 26 of the Redundancy Payments Act 1965 established a new fund, to be called the Redundancy Fund, into which all sums received by the Minister under Part II of the Act were to be paid and out of which were to be made the payments provided for by that Act. Its original function was to provide for the payment of rebates to employers who had made redundancy payments. Section 26(2) of that Act provided for the preparation, examination and certification of accounts of this fund and their laying before Parliament in the same way as was done in the case of the National Insurance Fund. The Redundancy Fund was continued in

being by section 103 of the Employment Protection (Consolidation) Act 1978. Section 106 of that Act, the statutory predecessor of section 167 of the Employment Rights Act 1996, provided for the making of redundancy payments direct to the employees out of the fund in the event of the employer's insolvency. Sections 122 to 127, the statutory predecessors of sections 182 to 189 of the 1996 Act, provided for the payment out of the fund of the debts to employees, including arrears of wages, which were guaranteed in the event of the insolvency. The system for the payment of rebates to employers was abolished by section 17 of the Employment Act 1989. In the following year **the Redundancy Fund was abolished by section 13 of Employment Act 1990, as there was no longer a good reason for its existence as a separate fund. Its assets and liabilities were merged with those of the National Insurance Fund.** By that time the National Insurance Fund was under the control and management of the Secretary of State under section 133 of the Social Security Act 1975...It is from the merged fund that the sums at issue in this case were paid to the former employees of the company. **Its important characteristic for the present purposes is that it is a fund which is under the control and management of the Secretary of State for the statutory purposes and for which she is accountable under the statute to Parliament.** In the performance of these functions the Secretary of State is not in the position of a trustee under a private trust. She is performing a public duty on behalf of the Crown.'

Accordingly, today the British “Redundancy Fund” is a part of the National Insurance Fund. Notably, ‘when an employer becomes insolvent an employee has the right to claim from the National Insurance Fund certain debts due, such as salary. Part XII, ss. 182-190 of the Employment Rights Act 1996 governs such payments though, ...such payments are subject to a maximum limit, set and reviewed by Parliament (s. 186(1)).’²

The said Fund is therefore principally used in cases of employer insolvency, although it applies in conditions other than insolvency, such as when an employer is unable to pay entitlements. It is established in Halsbury’s Laws of England 4th Edition 2000 Reissue, Vol. 16, para.590 that: ‘Where an employee claims that his employer is liable to pay to him an employer’s payment, and either:

- (1) that the employee has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance; or
- (2) that the employer is insolvent and the whole or part of the payment remains unpaid,

the employee may apply to the Secretary of State for a payment.

If, on such application the Secretary of State is satisfied that:

- (a) the employee is entitled to the employer’s payment;
- (b) one of the conditions specified in heads (1) and (2) above is fulfilled; and

1. Hardy, ‘Calculating Redundancy Payments in Insolvency Situations,’ *Insolvency L.J.* 2003, 4 (Jul), 162-163.

(c) in a case where the employer is liable, under an agreement in respect of which an exemption order is in force, to make a payment on the termination of an employee's contract of employment, the employee's right to the payment arises by virtue of a period of continuous employment, computed in accordance with the provisions of the agreement in question, which is not less than two years, the Secretary of State must pay to the employee out of the National Insurance Fund a sum calculated in accordance with the statutory provisions reduced by so much, if any, of the employers payment as has already been paid.'

The National Insurance Fund is today predominantly funded by employers and employees through the National Insurance Contributions (NICs). The Fund is held at the Bank of England and operates as a pay-as-you-go basis, that is, current NICs fund current benefits. Treasury Grants are utilized from time to time to maintain balance of the Fund without increases in NIC rates.

The lack of a state-wide insurance scheme in the United Kingdom has been viewed by some as inadequate. In fact some writers have opined that: 'It is not hard to see that redundancy payments in the UK are somewhat minimal compared to those in other European countries. In fact, benefits available across the EU differ so vastly that workers in countries such as France and Spain can afford to be more relaxed, even in the current economic situation. In the UK employers are only legally bound to give the employee a minimal one-off payment. After this, state benefits (also known in the UK as "the dole") must be relied upon – a flat figure of just 90 euros a week...Setting up a private

redundancy insurance scheme allows people to still have a sensible level of income should the “rainy day” arrive.’³

The existing schemes in some other nations will now be examined.

France

To begin, the French system for involuntary loss of employment protection consists of two schemes. Namely, (1) the Unemployment Insurance Scheme, which is financed by employee and employer contributions; and (2) the Solidarity Scheme (for the long term unemployed) which is financed by the state.

The Unemployment Insurance Scheme makes payments to workers who have involuntarily lost their jobs. Accordingly, where an employee has involuntarily lost his job, the Scheme will pay out up to 75% of the previous salary, provided contributions were made by the employer to the Scheme whilst the employee was working.

The Unemployment Insurance Scheme is a contractual scheme. A social coverage system for the unemployed was developed by representatives of employers and employees (known as the “Social Partners”), on the 31st December 1958. The regulations have since been updated by a process of continuous collective bargaining and agreements reached by

³. ‘*Worried about redundancy? Know your rights and the quickest route to new employment,*’ Personnel Today, May 2003.

the Social Partners. 'Once approved by the Government, the conditions within the Scheme became binding upon employers and employees alike.'⁴

In relation to the workings of this Scheme in the context of France research indicates that 'Unemployment insurance is funded by two percent of monthly earnings of the insured person, and payments of 3.6% of payroll by the employer...To qualify for the unemployment benefit, an individual must be under sixty years of age and have worked a minimum of four out of the last eighteen months. The circumstances of unemployment cannot have been due to leaving voluntarily, for misconduct, or refusing a suitable job offer. The actual amounts vary according to previous income, but are between 57.4% and 75.0% of the daily reference wage. The duration of the benefit is determined by age (between four months and thirty months for insured persons less than fifty years old and between four months and sixty months for insured persons aged fifty and older) and by the length of insured employment.'⁵

Germany

A similar scheme exists in Germany. Accordingly, if an employee has contributed to an insurance scheme they are entitled to claim approximately 60% of their salary for a duration of 6 months, depending on their age and how long they have been paying insurance fees.

⁴ . 'Unemployment insurance: A scheme for social protection within the dynamics of employment,' Notice DAJ 266, Mise a jour Juillet 2003.

⁵ . 'Employment Protection Systems: A Fifteen Country Comparative Study,' April 2003, M.J. Roberts, Researcher-University of Melbourne for the Australian Industry Group, page 97.

Notably, the German welfare system is described as having ‘a passive element that seeks to provide for those whose employment is legally terminated. **The main mechanism through which this is achieved is unemployment insurance, which forms a branch of the statutory social security system.** Unemployment insurance benefits can be claimed by an unemployed person who is capable of working, available to work, and who has been covered by employment insurance for at least 360 calendar days in the three years preceding unemployment.’

German unemployment insurance is financed by employer as well as employee contributions, which are levied as an effective payroll tax on employment. The employer additionally makes automatic contributions into a special bankruptcy fund to ensure that in the event of a bankruptcy, employee wages can still be paid for another three months.

The Republic of Ireland - Social Insurance Fund

In Ireland the Redundancy Payments Act, 1967 required that a redundancy fund be established. Accordingly, the Redundancy and Employers Insolvency Fund was instituted, and was financed by employer and employee contributions. Section 27 of the Redundancy Payments Act, 1967 speaks to the financing of the Redundancy Fund, providing that:

“For the purpose of providing moneys for making payments which under this Act are to be made out of the Redundancy Fund there shall be paid into the Fund –

- (a) weekly contributions which shall comprise a contribution (in this Part referred to as an employer's redundancy contribution) by employers and a contribution (in this Part referred to as an employee's redundancy contribution) by employees, and
- (b) advances as provided for in subsection (2)."

Subsection (2) of the said Act provided that:

"The Minister of Finance may, on the recommendation of the Minister, advance from time to time to the Fund such as he thinks proper in order to enable the making of such payments out of the Fund as are required by this Act.

In May 1990 however, the Fund was joined with the Occupational Injuries Fund to form a more encompassing **Social Insurance Fund**.

Pursuant to the Redundancy Payments Acts 1977-2003 the payment of compensation by employers to employees who are dismissed by reason of redundancy is still preserved. Under the Act an employer is also entitled to claim a rebate from the Social Insurance Fund up to 60% of the redundancy lump sum paid out, provided the employee was given 2 weeks minimum notice of dismissal. An employer must send a completed redundancy certificate (An RP 2 Form), and Social Insurance Rebate claim form (RP3 Form), to the Department of Enterprise, Trade and Employment within 6 months of the date on which the redundancy lump sum was paid to the employee. Where an employer fails to comply

with the required notice or forms, the Minister has the power to reduce the entitlement to the rebate to as low as 40% of the lump sum.

An Employee is entitled to claim from the Social Insurance Fund (redundancy fund) if he is entitled to a redundancy lump sum from the employer, but only in circumstances where:

- (1) the employee has taken all reasonable steps including a written application, but excluding legal proceedings in an attempt to receive the redundancy lump sum from his employer and has failed to receive the whole or part of the sum.
- (2) the employer has failed to pay the whole or part of the lump sum because of insolvency.
- (3) The employee is unable to attain the lump sum because the employer has died and their affairs have not been settled.

In order to claim from the fund an employee must complete an RP 14 form and the Minister of Enterprise Trade and Employment must be satisfied that the employee is entitled to the lump sum.

Where an employee receives payment from the fund the Minister will take steps to retrieve any amounts from the employer concerned. Further, if the Minister finds that an employer had no reasonable excuse for failing to pay the lump sum he may withhold all, or part of the redundancy rebate to which the employer may have been entitled.

In Ireland it was felt that the redundancy legislation which existed was outdated and ineffective in financially compensating employees for their loss of employment, particularly in relation to people who had extensive service with an employer. The enactment of the Redundancy Payments Bill 2003 which was effective as of 25th of May 2003, provided improvement in the statutory payments which employees were entitled to, in cases of redundancy. Under the new bill all statutory redundancy payments will not be subject to tax, whereas previously redundancy payments above £10,160 were liable to tax.

Australia

In Australia, the term 'severance pay' refers to compensation for the loss of non-transferable credits and inconvenience and hardship imposed upon employees in the event that they are made redundant from their employment. Under Australian Law employers are required to make direct severance payments to employees in the event of redundancy.

Research has indicated however, that 'under Australian law there is no entitlement at common law to severance pay in the absence of a contractual entitlement, an entitlement arising under statute, an individual award or individual agreement.'⁶ In limited circumstances the Australian Industrial Relations Commission had a statutory power to order an employer to pay a severance allowance where an application had been made. However, as a result of pressure arising from the collapse of some major employers the

⁶ . 'Employment Protection Systems: A Fifteen Country Comparative Study,' April 2003, M.J. Roberts, Researcher-University of Melbourne for the Australian Industry Group, page 129.

Commonwealth government introduced the Employee Entitlements Support Scheme in February 2000.

In the context of Australia it has been stated that: 'Following a number of company collapses in recent years, the ensuing loss of worker entitlements became a prominent industrial issue. In addition to outstanding wages, these entitlements encompass annual leave, payment in lieu of notice, long service leave and redundancy entitlements. In 1998 these were estimated to be worth \$140 million annually to displaced workers. The problem was that no scheme existed to adequately protect such entitlements, notwithstanding the Employee Entitlements Support Scheme set up by the Commonwealth to assist former employees. This scheme set a maximum of up to 29 weeks wages, capped at \$20,000 for unpaid entitlements which, in its first year of operation, amounted to an average payment of ...just 30 percent of the outstanding monies due. Understandably the scheme was criticized by unions and the Australian Labour Party on the ground that payments of less than a third of the amount owed to workers was inadequate.'⁷

The Employee Entitlements Support Scheme was therefore established to provide a safety net for workers in the event of corporate failure. However, it was later replaced by the General Employee Entitlements and Redundancy Scheme, (GEERS). GEERS covers employees made redundant on or after 12 September 2001, due to company insolvency. 'Operationally the scheme covers all employees who have an award, certified agreement,

2. Nelson & Holland

'Industrial Relations 2001: A new spirit of compromise?', Asia Pacific Journal of Human Resources 2002/40(2)

or Australian Workplace Agreement (AWA). The entitlement coverage includes unpaid wages, unpaid annual leave, pay in lieu of notice, accrued long service leave, and up to 8 weeks redundancy pay. A cap of \$81, 850 is in place on individual payments, and this is to be indexed.⁸ The GEERS is fully funded by the Government, however it is not without criticism. Some weaknesses of the scheme include the fact that it does not apply to all business failures and it has no legislative standing.

Since the establishment of GEERS, trade unions in certain industry sectors have attempted to institute applicable enterprise bargaining agreements to provide for an industry based, and primarily employer funded scheme for meeting employee entitlements in the event of corporate collapse.

Currently there exist a number of **worker entitlement funds** throughout Australia. A worker entitlement fund is a trust fund for employee long service leave, sick leave or redundancy payments. These funds are often referred to as redundancy trusts or redundancy funds.

Although these funds operate in a variety of ways they all essentially function to manage employee entitlements, and to protect such entitlements should an employer become insolvent. Employers pay regular amounts into a fund in keeping with industrial agreements or industry norms. The fund either pays amounts directly to employees when due, or reimburses the employer if and when they incur and pay employee entitlements.

⁸ . 'Protecting Employee Entitlements: Corporate Governance and Industrial Democracy in Australia,' Burgess, Lewer & Waring

Additionally, the Australian taxation system handles redundancy payments more favourably than other types of termination payments made to employees. Notably, most employees whose contracts of employment have terminated receive the benefit of lower taxation rates, however 'for redundant employees, taxation treatment upon termination is considerably more generous and is subject to incremented tax free thresholds of: AUD\$5,623 plus AUD\$2,812 for every completed year of service. These tax free thresholds represent a significant benefit for employees made redundant.'⁹

Further, in 2003 the Australian government introduced changes to Fringe Benefits Tax legislation to ensure that employers who paid contributions to approved worker entitlement funds and who met certain other conditions would not be required to pay Fringe Benefits Tax on the amounts paid into the funds.

Belgium

A Redundancy Fund has also been established in Belgium. The purpose of such a fund is that in the event of the closure of an enterprise the fund operates to pay to the employees who are dismissed, in cases where the employer defaults, any pay due under the individual contracts of employment, as well as any compensation and benefits due under the law or collective agreements. Accordingly, in situations where an employer does not or cannot comply, the '**Fund for Compensation – in Case of Closures – of Laid Off Workers**' (Fund for Closures) will arrange settlement.

⁹. 'Employment Protection Systems: A Fifteen Country Comparative Study,' April 2003, M.J. Roberts, Researcher-University of Melbourne for the Australian Industry Group, page132

The Fund for Closures was established under the auspices of the National Employment and Placement Service and possesses legal personality. It is administered by the Management Board of the Service, and is financed by levies payable by employers.

Before receiving compensation under the Fund employees must first fulfill the following conditions. Namely they must have:

- (1) been employed under an open ended employment contract;
- (2) had at least one year's length of service in the enterprise;
- (3) been dismissed (Excepting cases of just cause) either during the 12 months preceding the closure of the enterprise or at the time of its closure, or during the 12 months following its closure.

Notably, various categories of employees are excluded from entitlement to compensation under the Fund. Examples include, those employed in enterprises covered by Articles 80 and 81 of the Treaty Establishing European Coal and Steel Community, to whom special regulations apply, employees found guilty of criminal charges in connection with the running of the enterprise that has closed down, and employees who have reached the statutory pensionable age.

The redundancy payment in the event of closure amounts to 1,000 Belgian francs per year of service in the enterprise, subject to a maximum of 20,000 Belgian francs.

Additionally, employees are entitled to 1,000 Belgian francs per year of age over 45, again subject to a maximum of 20,000 Belgian francs.

Cyprus

The Republic of Cyprus enacted a comprehensive law in 1967 which deals with redundancy and the arbitrary dismissal of employees. Under the Termination Law of 1967 a National Redundancy Fund was created into which employers make contributions of 1% of each worker's wage. According to this scheme the risks of redundancy are spread out on insurance principles over all the employers in the island.

Part IV of the Act empowers the Council of Ministers to establish the Redundancy Fund and make regulations for its operation. It further provides for notice of proposed redundancy to the Minister of Labour, and directs employers to give redundant employees priority in engagement if the work force is increased within eight months of the redundancy.

In addition, there is provision for the Fund to make application to the Court and the requirement that the Council of Ministers shall consult through the Minister of Labour with the Labour Advisory Board as well as the Management Committee of the Fund, before making any regulations or amendments concerning the operation of the fund.

Sweden

'Individual employment rights in Sweden are generally protected by a combination of employment contracts and collective agreements.'¹⁰ For the purposes of Sweden therefore, the regulation of redundancy is attempted through Swedish collective agreements on employment security. Examples include the redundancy support agreements. 'Their object is to facilitate organizational change in a way that satisfies the interests of both employers and employees.'¹¹

In Sweden there is no statutory obligation for the employer to pay a severance payment directly to the employee. Although local authorities and county councils are obliged to make a severance payment directly to their employees in accordance with a collective agreement, namely AGF-KL. Accordingly, although there is no requirement under Swedish labour law for the provision of redundancy payments, many collective agreements make such provisions.

Research indicates that: 'More often, workers get severance pay from funds, established through collective agreements such as the AGB-insurance and Redundancy programme agreement. Common features are that they are financed from contributions paid by the employers and administered by a limited company or a foundation set up by the parties to

¹⁰ . 'Employment Protection Systems: A Fifteen Country Comparative Study,' April 2003, M.J. Roberts, Researcher-University of Melbourne for the Australian Industry Group, page 120.

¹¹ . National report to the XVII World Congress of Labour Law and Social Security, Montevideo, Uruguay, 3-5 September 2003, 'Social Protection for the Unemployed: SWEDEN,' - Ahlberg page 1.

the collective agreement. The workers covered cannot withdraw money from the funds if they are still employed.’¹²

Another example of a Swedish collective agreement which requires employers to provide redundancy payments is the special SAF-LO Collective Agreement on Insurance for Severance Pay. ‘Under the SAF-LO Collective Agreement on Insurance for Severance Pay, workers aged forty years and over may be eligible for redundancy payment. Swedish employers are also required to continue paying wages if they “temporarily” lay off their employees.’¹³

Further, in the event of an insolvency, Swedish employees are additionally entitled to severance/redundancy pay during their period of notice for between one and six months. This is protected at the outset by priority in debts, and if there is not enough money a state funded and administered wage-guarantee fund provided the balance.

Canada

The system in Canada is somewhat more complicated. Like Australia Canada is a Federation. As such it consists of various different Provinces. ‘Each Province and the Federal Government, has at least one Act covering labour relations and employment standards in the industries under its jurisdiction.’¹⁴

¹² . National report to the XVII World Congress of Labour Law and Social Security, Montevideo, Uruguay, 3-5 September 2003, *Social Protection for the Unemployed: SWEDEN*, - Ahlberg page 3.

¹³ . *Employment Protection Systems: A Fifteen Country Comparative Study*, April 2003, M.J. Roberts, Researcher-University of Melbourne for the Australian Industry Group, page 122.

¹⁴ . Ibid, page 23.

In some Canadian jurisdictions, the employment protection legislation includes severance pay for certain types of layoffs. Notably, in the Federal jurisdiction the compensation is not large. For employees with more than twelve months continuous employment such compensation consists of approximately five days wages and two days wages for each completed year of employment. Further, for Ontario severance packages only apply to mass termination, and employees with five or more years of service. However when an employee qualifies for such compensation the amount is considerably high.

Social security in Canada is also subject to both Federal and Provincial regulation. The Provinces normally pattern and expand upon the basic model provided by the Federal Legislation.

Canada lays claim to employment insurance provided for under the Employment Insurance Act 1996, (EIA). The main aim of the EIA is to provide temporary financial assistance to aid unemployed individuals find work, it covers all salary earners including Federal government employees. 'Qualification for employment insurance is dependent upon hours worked-both total hours (for new entrants and re-entrants) and hours worked the previous year...Insurance is financed by both employer and employee premiums, and payouts commence after a two week period, and last for up to forty five weeks. The amount received is fifty five percent of weekly earnings, and may be supplemented for low-income families with children.'¹⁵

¹⁵ . *Employment Protection Systems: A Fifteen Country Comparative Study*, ' April 2003, M.J. Roberts, Researcher-University of Melbourne for the Australian Industry Group, page 26.

amount from the employers...In Jamaica and Trinidad and Tobago, there is no fund, so that the employer pays the full cost of termination without refund.'¹⁶

Accordingly, employers in Barbados are required to make a severance payment to a qualifying employee, in keeping with the specifications and calculations provided under the legislation. However, the Severance Fund exists to fulfill two purposes. Namely, (1) to ensure that an employer will be able to recover a percentage of the payment from the Fund, and (2) to guarantee a severance payment to employees in situations where an employer is unable or unwilling to make the requisite payment.

Pursuant to section 24(1) of the Severance Payments Act, the Severance Fund shall be under the control and management of the Minister. The Minister is obligated under section 24(2) to keep proper accounts of the Fund and adequate financial and other records in relation to it. It is specifically provided that within six months after the financial year to which the accounts relate, the Minister must submit such accounts to the Auditor General for audit.

It is also interesting to note that the Minister is also empowered under section 24(4) to invest any moneys forming part of the Fund in such manner and in such securities as the Minister of Finance may direct. Further, under section 24A(1) the Minister also has the ability to delegate his functions relating to the control and management of the fund as he thinks appropriate to the National Insurance Board.

¹⁶ . *'Labour Market Regulation and Employment in the Caribbean,'* (prepared for the Inter-American Bank by A.S. Downes, N. Mamingi & R.M. Antoine).

Section 25(1) of the Severance Payments Act stipulates that every employer is liable to pay an employer's contribution in respect of a person over the age of sixteen years and under the age of sixty-five years employed by him. Such contribution is to be called a "severance fund contribution." And the amount of severance fund contribution which is payable by an employer is prescribed by regulations made by the Minister, and are to be paid to the National insurance Board.

Accordingly, the Severance Fund is financed by contributions from employers. Further research indicates that these employer contributions are currently at the rate of 1% of insurable earnings.

As already noted the Act also makes the important provision of the payment of rebates to employers out of the Fund, which is a percentage of the severance payment. Section 29(1) specifically provides that:

"Subject to subsections (2) and (6) and section 42(5)(b), the Minister shall make a payment (in this Part referred to as a "rebate") out of the Fund to an employer who

(a) is liable under Part II to pay and has paid a severance payment to an employee; or

(b) under an agreement in respect of which an order is in force under section 10 is liable to make and has made a payment to an employee on the termination of his contract of employment."

The Third Schedule to the Severance Payments Act provides that: "Subject to this Part and sections 29(6) and 33, the amount of the rebate payable in respect of a severance payment shall be an amount equivalent to such percentage of the amount of that severance payment as the Minister prescribes." Research indicates that the rebate to employers is currently 25% of the amount of the severance payment.

If, however, the employer refuses to make such payment or is unable to make the payment because of insolvency, the Severance Fund makes the payment directly to the employee and in such a case the amount of the payment is recoverable by the National Insurance Board from the employer. Accordingly, section 31(1) provides that:

"Where an employee claims that an employer is liable to pay him an employer's payment and either

(a) that he has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and that the employer has refused or failed to pay it or has paid part of it and has refused or failed to pay the balance; or

(b) that the employer is insolvent and that the whole or part of the payment remains unpaid,

the employee may apply to the Minister for a payment under this section."

Section 31(2) additionally provides that:

"Where on an application made under this section the Minister is satisfied

- (a) that the employee is entitled to the employer's payment;
- (b) that the condition specified in either paragraph (a) or (b) of subsection (1) is fulfilled; and
- (c) that in a case where the employer's payment is such a payment as is mentioned in paragraph (b) of subsection (1) of section 29, the employee's right to payment arises by virtue of the period of employment (computed in accordance with the agreement in question) which is not less than 104 weeks,

the Minister shall pay the employee out of the Fund a sum calculated in accordance with the Fourth Schedule reduced by so much (if any) of the employer's payment as has been paid."

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The Caribbean

Many of the Caribbean countries have redundancy legislation which is similar to that provided under Jamaican law. Notably, redundancy in Trinidad is governed by the Retrenchment and Severance Payments Act, which provides severance payments for retrenched employees. Like the Jamaican Legislation, the Trinidadian Act also provides a formula for the payment of severance pay. The laws in both Barbados and Dominica however, do provide for the establishment of a severance/redundancy fund.

Not unlike most other countries Barbados has legislation in place which makes provision for qualifying employees to receive a severance payment. Accordingly, section 3(1) of the Severance Payments Act, 1985 provides that:

“Where on or after the appointed day an employee who has been continuously employed for the requisite period

(a) is dismissed by his employer because of redundancy; or

(b) is laid off or kept on short-time to the extent specified in subsection (1) of section 6 and complies with the requirements of that section; or

(c) is dismissed by his employer because of a natural disaster, his employer is, subject to this Act, liable to pay him a sum calculated in accordance with the First Schedule.”

The general provisions in relation to the right to a severance payment, for the purposes of Barbados therefore, are not much different from most other jurisdictions with similar legislation. Notably, to qualify for a severance payment an employee must satisfy the conditions prescribed under the Act. However, the Barbados Severance Payments Act goes further to establish a **"Severance Fund,"** and additionally makes provision for the functioning and operation of this Fund. The legislation therefore specifically addresses the contributions to be made to the Fund, as well as how such contributions are to be collected.

The main purpose of the Severance Fund is to provide compensation for employees dismissed because of redundancy or natural disaster or who terminate the contract of employment after a period of lay-off or short-time.

In relation to the workings of the Fund it has been noted that: 'Employers in some countries are responsible for paying severance to employees when they are terminated and then recovering part of the payment from a Severance Fund (e.g. Barbados). In Barbados, the Severance Payments Fund is administered by the National Insurance Board. Employers must make severance fund contributions on behalf of their employees based on their insurable earnings. Employers are required to pay employees their severance and then claim a rebate which is determined by the Minister responsible for the Fund's administration. In cases where the employers are unable to make payments to the employees, the Fund makes the payments to the employees and then seeks to recover the