



## Does a 3-weeks' vacation entitlement cost the Employer 4-weeks' pay?

The *Employment Act, 2001* provides a comprehensive set of minimum standards of employment within The Bahamas which includes, amongst other important aspects of the employment relationship, the vacation entitlement.

### ***The statutory vacation entitlement***

For an employee who has been employed for a term in excess of 12 months and up to 7 years, a minimum of 2 weeks' paid vacation is entitled by statute. An employee employed for a term in excess of 7 years is entitled by statute to a minimum of 3 weeks' paid vacation<sup>1</sup>.

### ***How is a "week's" pay calculated?***

A "week" is defined in the *Employment Act* as being a period of 7 days<sup>2</sup>. The *Employment Act* also provides that in every period of 7 days an employer shall allow each employee 48 hours (i.e. the equivalent of 2 days) rest.<sup>3</sup> Effectively, therefore, it has been the custom and practice of regarding the work-week as 5 days and a week's pay based on the value of the 5-day work-week. Correspondingly, the 5-day work-week formed the basis of a week's pay for purposes of calculating pay for the vacation entitlement.

The long settled basis for calculating the value of a week's pay in the context of vacation entitlement was thrown into question following a decision of the Bahamas Industrial Tribunal during late 2013<sup>4</sup>. In a decision resulting from a dispute between the Central Bank of The Bahamas and the Union of Central Bankers, the Tribunal President held that the computation of vacation pay for a week should be at the value of 7 working days as opposed to a 5 working days.

The basis of computation resulting from the Industrial Tribunal's decision, meant that 3 weeks' vacation entitlement (traditionally computed based upon 5 working days a week and aggregating 15 working days' pay), would instead result in 21 days' pay (the equivalent of more than 4 working weeks). The Industrial Tribunal's decision had the effect of increasing the value and cost of vacation entitlement such that a 3-weeks' vacation entitlement would cost the employer 4 weeks' + 1 day's pay.

On appeal to the Court of Appeal against a number of findings made by the Industrial Tribunal, the Court of Appeal quashed the decision relative to the computation of vacation pay<sup>5</sup>. Effectively the status quo prior to the Industrial Tribunal's decision is



restored. The result: a 3-weeks' vacation entitlement is valued at and costs the employer 3-working weeks' pay.

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<sup>3</sup>Sections 12 & 13 Employment Act, 2001

<sup>4</sup>Section 2(1) Employment Act, 2001

<sup>5</sup>Section 9 Employment Act, 2001

<sup>6</sup>No. 1875/2013 – Central Bank of The Bahamas (Employer) and Union of Central Bankers (Union); Decision And Reasons; Harrison L. Lockhart, Tribunal President, dated 28/Aug/13.

<sup>7</sup>SC04App & CAS No.248/2013, Central Bank of The Bahamas v Union of Central Bankers, dated 29/Nov/13

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