# REVIEW AND ANALYSIS OF COMPLIANCE OF THE NATIONAL LABOUR LEGISLATION OF JAMAICA WITH CARICOM MODEL LABOUR LEGISLATION

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By: Clive Pegus

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I. Introduction

This study undertakes a detailed audit and assessment of the extent to which existing national legislation of Jamaica complies with the CARICOM model labour harmonization legislation in the areas of:

- Termination of employment;
- Registration, status and recognition of trade unions and employers’ organizations;
- Equality of opportunity and non-discrimination in employment; and
- Occupational safety and health and the working environment.

These model laws, which were adopted by the CARICOM Standing Committee of Ministers responsible for Labour in 1995 and 1997 for implementation by Member States, are based on the core labour standards of the ILO and seek to mirror relevant ILO Conventions, namely:

a) Termination of Employment Convention, 1982 (No. 158);
b) Freedom of Association Convention, 1948 (No. 87);
c) Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
d) Equal Remuneration Convention, 1951 (No. 100);
e) Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
f) Occupational Safety and Health Conventions.

In fact, among the stated objectives of the first three named CARICOM Model Labour Laws is to give effect to the related ILO Conventions. The other CARICOM Model Labour Law appears compatible with the standards established in core ILO Occupational Safety and Health (OSH) Conventions and Recommendations. It should be noted however that the ILO has adopted several OSH instruments since the approval of the CARICOM OSH Model Law. In particular, the ILO adopted in 2002 a Protocol to Convention No. 155 to regulate further the recording and notification of occupational accidents and diseases, which should be considered by all CARICOM Member States in their efforts to implement the CARICOM Model Labour Laws.

While the primary focus of the study is concerned with compliance of Jamaica with the CARICOM model labour laws, comparisons are made with the applicable ILO Conventions. This approach has practical value in the light of Jamaica’s obligation under international law and ILO jurisprudence to comply with treaties that it has ratified and with core international labour standards and to submit periodic reports on such compliance to the Committee of Experts on the Application of Conventions and Recommendations. In fact, Jamaica’s obligation to comply with ratified ILO Conventions and core fundamental labour standards has greater legal force within Jamaica than that of its obligation with respect to the model legislation.

This study is based essentially on legislative compliance. Its remit does not include other sources of law such as the common law or case law. It also does not focus on what may be accepted and practised as good industrial relations principles within
Jamaica. The intention is to ensure that the legislation in Jamaica becomes fully compliant with the CARICOM model legislation and its ILO obligations.

While this assessment seeks to address the salient provisions of the CARICOM Model Labour Laws and related ILO Conventions and in particular gaps and inconsistencies in the legislation of Jamaica, it does not address every single provision. Consequently, absence of comment on any particular provision of the CARICOM Model Labour Laws should not be construed as an acknowledgement of compliance by Jamaica.

Recommendations are made regarding amendments required to address gaps and inconsistencies in Jamaica’s legislation with a view to achieving compliance with the CARICOM model laws and applicable ILO Conventions. It must be noted that these recommendations emanate from a purely technical assessment of the legislation against the benchmark of the CARICOM model legislation and relevant ILO Conventions. It is recognised that the soundness and practicability of the proposed amendments are matters to be determined by the Government of Jamaica through the consultative process with the social partners in the labour movement and the employers’ federation. The final determination of the practical value and soundness of the recommendations must be that of the people of Jamaica in general and the social partners in particular. It is therefore anticipated that the findings and recommendations of the study will be subject to review by the social partners of Jamaica.

**Legal status of CARICOM Model Law and ILO Conventions in Jamaica**

The CARICOM Model Labour Laws were adopted by the CARICOM Ministers of Labour for implementation by Member States. While Members States are expected to implement the model laws as an important requirement of the CARICOM Single Market and Economy, there is no legal obligation to ensure compliance; they are precatory and non-binding; and non-compliance does not invite any sanctions.

The non-binding nature of the CARICOM Model Law contrasts with the binding nature of a ratified ILO Convention. One fundamental principle of international law is that treaties are binding upon the parties to them and must be performed in good faith. This rule known as *pacta sunt servanda* is one of the oldest principle of international law now re-affirmed in Article 26 of the Vienna Convention on the Law of Treaties. Moreover, Article 27 of the Vienna Convention on the Law of Treaties prevents a party from invoking the provisions of its domestic law as justification for its failure to perform an obligation under the treaty. It should be noted also that the International Labour Conference at its Eighty-eight Session declared that all Members of the ILO, which includes Jamaica, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are subject to those Conventions, namely:
a) freedom of association and the effective recognition of the right to collective bargaining;
b) the elimination of all forms of forced and compulsory labour;
c) the effective abolition of child labour; and
d) the elimination of discrimination in respect of employment and occupation.

Thus, it is important from an international law perspective for the domestic law of Jamaica to be consistent with its international legal obligations.

The question arises as to how a treaty or convention ratified by Jamaica becomes domestic law within the jurisdiction of Jamaica. Jamaica has a dualist and not a monist legal tradition. In a dualist legal system, unlike a monist system, treaties when ratified are not automatically incorporated into the domestic law of the ratifying State. The process of incorporation of the provisions of an international treaty, where not consistent with or not a part of existing domestic law, requires the enactment of legislation.

The process of legislation in Jamaica, as is the case of all Parliamentary systems of democracy, is a time-consuming and cumbersome process. Jamaica may wish therefore to consider the adoption of the good practice of Belize, which provides through its International Labour Organization Conventions Act, Chapter 304:01\(^1\) for the automatic incorporation in domestic law of ILO Conventions ratified by Belize, regardless of any conflicting law. In fact, where the ratified ILO Convention conflicts with an existing law in Belize, the provision of the ILO Convention prevails. This procedure is an efficient method of incorporating a ratified treaty into domestic law. Of course, the automatic incorporation is subject to democratic and Parliamentary safeguards in that the treaty is laid before Parliament subject to negative resolution procedure. Parliament must have a say as to whether the treaty should be ratified in the first place. For the system of automatic incorporation of a treaty to be effective within the democratic framework, the ratification process must not be seen as an exclusive executive act. It must be subject to Parliamentary scrutiny.

**Legal Obligations of Jamaica**

Jamaica therefore has a legal obligation under international law and ILO jurisdiction to comply with the following ILO Conventions that it has ratified or acceded to and that are subject of this study:

a) Freedom of Association Convention, 1948 (No. 87);
b) Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
c) Equal Remuneration Convention, 1951 (No. 100);
d) Discrimination (Employment and Occupation) Convention, 1958 (No. 111);

It should be noted that Jamaica has not ratified the Termination of Employment Convention, 1982 (No. 158) or any of the 18 core Occupational Safety and Health

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\(^1\) www.belizelaw.org
(OSH). In 2005 Jamaica ratified the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152).

**Applicable Legislation of Jamaica**
The statutes of Jamaica which seek to incorporate provisions relevant to the CARICOM Model Laws and the applicable ILO Conventions are:

- Jamaica Employment (Termination and Redundancy Payments) Act
- Trade Unions Act, 1959 as amended
- Labour Relations and Industrial Disputes Act, 1975 as amended
- Employment (Equal Pay for Equal Work) Act of 1975
- Factories Act 1943 as amended.
II. Termination of Employment

The objectives of the model legislation on termination of employment are:

a) to give effect to the provisions of the ILO Convention concerning Termination of Employment, 1981 (No. 158);

b) to confer upon employees the right to continuity of employment and protection against unfair dismissals; and

c) to establish procedures for employers to follow to terminate an employment relationship in a fair and equitable manner.

It should be noted that Jamaica has not ratified the ILO Convention No. 158. Its Employment (Termination and Redundancy) Act, 1974 does not address the full scope of issues contained in the CARICOM Model Law or the ILO Convention No. 158. It is limited in scope to retrenchment and severance pay. Issues relating to the employment contract, termination of employment for reasons other than redundancy, unfair dismissal (other than termination on grounds of trade union membership or participation), constructive dismissal, winding up, serious misconduct, burden of proof and remedies are covered not by legislation but under the common law.

Scope of Application

The provisions of Part 11 of the model legislation (contracts of employment) apply to all contracts of employment with certain categories of exemption listed in section 10 (fixed term or fixed task contracts of less than six weeks, employee of a family member and employees with collective agreements).

ILO’s Convention No.158 applies to all branches of economic activities and to all employed persons except fixed term or specific task workers, workers during their probationary period and workers engaged on a casual basis for short terms. The Convention also provides for Governments after consultation with workers’ and employers’ representative organizations to exclude categories of workers whose terms and conditions are governed by special arrangements, which facilitate protection equivalent to the Convention.

The Termination of Employment (Redundancy and Severance Payments) Act, 1974 excludes from the definition of employee and from its scope any person employed by the Government, the Council of Kingston and St. Andrew or any Parish Council.

Notice of termination of employment

The Jamaica Employment (Termination and Redundancy Payments) Act provides in section (3) for the minimum period of notice to be given by an employer to an employee regarding the termination of his/her employment. It states that where an employee has worked for at least four weeks continuous employment, he/she is required to give notice on the following basis:
Review and Analysis of Compliance of the National Labour Legislation of Jamaica with CARICOM Model Labour Laws

a) not less than two weeks’ notice if the period of his/her continuous employment is less than five years employment;
b) not less than four weeks’ notice if the period of his/her continuous employment is more than five years but less than ten years;
c) not less than six weeks’ notice if the period of his/her continuous employment is more than ten years but less than fifteen years;
d) not less than eight weeks’ notice if the period of his/her continuous employment is more than fifteen years but less than twenty years;
e) not less than twelve weeks’ notice if the period of his/her continuous employment is more than twenty years.

An employee who has been continuously employed for four weeks or more is required to give at least two weeks’ notice of his intention to terminate his/her employment. However, either employer or employee may terminate a contract of employment without notice during the probationary period, not exceeding ninety days.

The notice periods in the Employment (Termination and Redundancy Payments) Act are below the standard provided for in the CARICOM Model Labour Law. The CARICOM Model Labour Law provides the following notice periods:

a) one working day – where the employee has been employed by the employer for less than one month;
b) two weeks – where the employee has been employed by the employer for one month or more but less than one year;
c) one month - where the employee has been employed by the employer for one year or more but less than five years;
d) two months - where the employee has been employed by the employer for five years or more.

Redundancy Payment
Section 5 provides for redundancy payments for a worker continuously employed for one hundred and four weeks retrenched the employer. It also provides that the employer and any other person to whom business was transferred during the period of twelve months after the dismissal shall be liable to pay the employee redundancy payment.

Section 5(1) provides that an employee is deemed retrenched if his/her dismissal is wholly or partly attributable to

a) the fact that the employer ceases or intends to cease operations for which employee was employed;
b) the fact that the requirements of that business for employees to carry out work of a particular kind have ceased or diminished;
c) the fact that the employee has suffered personal injury which was caused by an accident arising out of and in the course of his employment.

There is no provision in the Act for redundancy due to shortage of materials, a mechanical breakdown, a force majeure or an act of God.
The employer is required by section 9 to give the employee a written statement of indicating how the amount of payment has been calculated.

There is no statutory provision for prior consultation with the recognised trade union or preference to retrenched employees in the event of future recruitment by the employer.

**Continuity of employment**

The *Employment (Termination and Redundancy Payments) Act, 1974* in section 7 provides for continuity of employment in the case of a successor employer. However, there is no statutory provision which provides that an employee’s continuous employment shall not be treated as interrupted if the employee is absent from work due to approved leave, suspension, temporary lay-off (not more than six months), inability to work on account of an occupational disease or accident.

**Remedies**

The *Labour Relations and Industrial Disputes Act*, section 12 provides for remedies for unjustifiable dismissal in terms consistent with the CARICOM Model Labour Law. The Tribunal can order the employer to reinstate the employee with compensation for loss of wages, compensation, or such other relief as it may determine.

**Gaps in the legislative framework**

There are no statutory provisions relating to:

(i) the duty of an employer to prepare within fourteen days from the date of commencement of employment a written contract of employment (with certain minimum provisions) which shall be delivered forthwith to the employee;

(ii) maximum probationary period not to exceed six months;

(iii) unfair dismissal in terms set out in the CARICOM Model Labour Law;

(iv) constructive dismissal;

(v) summary dismissal;

(vi) termination for misconduct, breach of contract, satisfactory performance;

(vii) priority claim of employees’ wages and other payments over all other creditors, including the State and the social security, in the event of winding up an employer’s business;

(viii) burden of proof.
III. Registration, Status and Recognition of Trade Unions and Employers’ Organizations

Introduction
The stated objectives of CARICOM Harmonization Act Regarding Registration, Status and Recognition of Trade Unions and Employers’ Organisations (referred to in this section as “CARICOM Model Labour Law”) are:

- to give effect to the provisions of National Constitutions on freedom of association, the ILO Conventions on Freedom of Association, No. 87 (1948) and on the Right to Organise and to Collective Bargaining, No. 98 (1949);
- to establish procedures for the registration and status of trade unions and employers’ organisations;
- to promote and protect the recognition of trade unions; and
- to encourage orderly and effective collective bargaining.

Unlike the ILO Convention on Termination of Employment, No. 158 (1981), all CARICOM Member States have ratified the ILO Conventions on Freedom of Association, No. 87 (1948) and on the Right to Organise and to Collective Bargaining, No. 98 (1949). In addition, the principles and standards inherent in ILO Conventions No. 87 and 98 are fundamental principles of international labour law, which all ILO Members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the ILO, to respect, to promote and to realise in good faith.

Scope of application
The laws of Jamaica relating to the registration, recognition and status of trade unions are the Trade Unions Act, 1959 as amended and the Labour Relations and Industrial Disputes Act, 1975 as amended. No exemption is mentioned in either the Trade Union Act or the Labour Relations and Industrial Disputes Act.

It should be noted that the term trade union is defined to include an employers’ organisation.

Basic employee rights
Section 4 (1) of the Labour Relations and Industrial Disputes Act, 1975 provides that every worker shall, as between himself and his employer, have the right -

a) to be a member of a trade union as he may choose;

b) to take part, at any appropriate time, in the activities of the trade union of which he is a member;

c) not to be a member of a trade union.

Section 23(1) of the Constitution provides that except with his own consent, no person shall be hindered in the enjoyment of his freedom of peaceful assembly and association, that is to say, his right peacefully to assemble freely and associate with

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2 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, Paragraph 2
other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

**Protection of trade union from employer interference**

There is no statutory provision, which prohibits an act designed to promote the establishment of an employees’ organisation under the domination of an employer or an employers’ organisation or to support employees’ organisations by financial or other means with the object of placing such organisation under the control of employers.

**Freedom of association protection for employees**

Section 4 (2) of the *Labour Relations and Industrial Relations Act, 1975* makes it an offence for any person to prevent or deter a worker from exercising of the rights conferred by section 4 (1), or to dismiss, penalise or otherwise discriminate against a worker by reason of his exercising any of these rights.

Section 4(3) provides that where an employer offers a benefit of any kind to any worker as an inducement to refrain from exercising any basic employee right conferred in section 4 (1) and confers the benefit on one or more worker who agree to refrain from exercising their right and withholds the benefit from other workers who do not agree to do so, that employer is to be regarded as having discriminated against the disadvantaged worker.

**Penalties for infringement of basic employee rights**

Section 4 (2) of the *Labour Relations and Industrial Disputes Act, 1975* provides that any person who prevents or deters a worker from exercising any of his statutory rights conferred by section 4 (1) or dismisses, penalizes or otherwise discriminates against a worker by reason of his exercising any such right shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate of a fine not exceeding five hundred thousand dollars.

**Appointment of Registrar**

There is no statutory requirement for the competent authority to have consultations with representatives of trade unions and employers’ organisations in the appointment of the Registrar.

**Registration**

Within thirty days of the establishment of a trade union, the committee of management or trustee acting of their behalf is required to make an application for the registration of such trade union3. Failure to comply with this requirement makes every member of the trade union guilty of an offence.

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3 Trade Unions Act section 6.
Curiously, neither Section 13 of the *Trade Unions Act, 1959* which deals with provisions for registration nor any other section establishes a minimum membership threshold for registration of a trade union. Section 13 merely provides for a list of the titles and names of the officers of the trade union to be submitted with the application to the Registrar.

**Appeal**
Section 24 of the *Trade Unions Act, 1959* provides for the right of appeal to a Judge in Chambers to any person aggrieved by the refusal of the Registrar to register a trade union, by the withdrawal or cancellation of the certificate of registration of a trade union.

**Constitution**
The second schedule to the Trade Unions Act provides guidelines regarding the rules of trade unions. These are:
1) The name of the trade union and place of meeting.
2) The whole of the objects for which the trade union is to be established, the purpose for which its funds shall be applicable and the conditions under which any member may become entitled to any benefit assured thereby and the fines and forfeitures to be imposed on any member of the trade union.
3) The manner of making, altering, amending and rescinding rules.
4) A provision for the appointment and removal of a general committee of management, of a trustee, treasurer and other officers.
5) The keeping of books and accounts as required by the Act and the investment of funds of the trade union.
6) The inspection of the books and names of members of the trade union by every person with an interest in its funds.

**Annual return**
The treasurer is required to submit to the Registrar of Trade Unions in the prescribed form an annual return for the preceding twelve months showing all additions and amendments to the rules and all changes to the officers and trustees of the trade union during the preceding year⁴.

**Legal status**
A trade union is not considered to be a body corporate. It is an unincorporated association. It can only acquire or hold property or take legal action in the name of its trustees.

**Amalgamation**
By virtue of section 28 of the *Trade Unions Act*, two or more trade unions may with at least two-thirds consent of each of the trade unions become amalgamated together as one trade union with or without any dissolution or division of the funds subject to the rights of any creditor.

⁴ Trade Unions Act section 16
Federation
There is no statutory provision relating to the right of a trade union to join or be affiliated to an international federation of trade unions. However, this should not be interpreted to mean that such a right does not exist.

Safeguards for Members of Organisations

Compliance with constitution & Improper elections
The provisions of the CARICOM Model Legislation concerning compliance with the constitution and improper elections are not addressed in the Trade Unions Act.

Deposit and safeguard of funds
The treasurer and officers of a trade union have a duty to render a just and true account of all monies paid and received and a statement of assets and liabilities during an accounting year. The accounts are required to be audited by some fit and proper person to be appointed. Officers and members of a trade union are to be held liable for any misapplication of the union’s money or other property. In addition the treasurer of every trade union has a statutory duty to deliver before 1st August each year to the Registrar of Trade Unions a statement of revenue and expenditure and the audit certificate verifying that such statement has been audited in accordance with legal requirements.

Recognition of Bargaining Rights

Tripartite Body for Certification
Applications for recognition and certification of trade unions as the bargaining agent of workers in a bargaining unit are normally considered by the Minister of Labour has statutory responsibility for certification where a union is not recognised by an employer. It is only where there is a dispute following a ballot to determine the recognised trade union that the matter is referred to the Tribunal. The Tribunal is appointed by the Minister of Labour after consultations with representatives of trade unions and employers’ organisation.

It should be noted that this particular system for having a tripartite body for certification is not in conformity with the CARICOM Model Law, since the tripartite body does not make this certification unless there is a conflict, where the tribunal intervenes. It is submitted that the CARICOM Model Law requires the tripartite body to consider all applications for certification.

Application procedures
Section 4 (A) of the Labour Relations and Industrial Disputes Act provides that an employer may recognise a trade union for the purposes of bargaining rights on

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5 Trade Unions Act section 11
6 Trade Unions Act section 12
behalf of his employees where that trade union has a majority of members within the bargaining unit.

Section 5 of the *Labour Relations and Industrial Disputes Act* provides that if there is any doubt as to whether the workers or the claimant trade union has bargaining rights or which of two claimant trade unions should be recognised as having bargaining rights, the Minister of Labour may have the issue determined by a ballot.

Where a ballot is taken to ascertain which, if any, of two or more trade unions should have bargaining rights and the results of the ballot show that two or three of the trade unions receive at least thirty per cent of the votes, the Minister at the request of the trade unions involved shall inform the employer in writing that those trade unions wish to be recognised as having joint bargaining rights in relation to the bargaining unit. ILO jurisprudence requires a trade union that does not have a majority support to have the right to bargain collectively at least on behalf of their members. This should not be limited to the condition that more than one trade union should apply for recognition.

The Minister shall issue a certificate to the employer and the trade unions involved a certificate showing the results of the poll.

In the event of a dispute regarding the ballot, the matter is referred to the Tribunal for determination.

There is no statutory provision dealing with the appropriateness of a bargaining unit.

Attention is drawn to the comments of the ILO CEACR concerning the denial of the right to negotiate collectively in the case of workers in a bargaining unit when these workers do not amount to more than 40% of the workers in the unit as well as the need to take measures to amend the legislation so that a ballot is possible where one or more trade unions are already established as bargaining agents and another trade union claims that it has more affiliated members in the bargaining unit than the other trade unions.

Compulsory recognition and duty to negotiate in good faith

The *Labour Relations and Industrial Disputes Act* section 5(5) provides for the compulsory recognition by the employer of the trade union certified by the Minister as having majority support from among the workers balloted in respect of the bargaining unit.

Section 5 A of the *Labour Relations and Industrial Disputes Act* imposes a duty on the employer to negotiate in good faith with the recognised trade union. Such trade union shall give to the employer within fifteen days of recognition or such longer period as may be agreed by the trade union and the employer notice of the trade
union’s intention to negotiate a collective agreement on behalf of workers in the bargaining unit.

**Successor**
Section 23 of the *Labour Relations and Industrial Disputes Act* provides that where a change occurs in ownership of an undertaking while an industrial dispute exists in that undertaking the dispute shall not be taken to be terminated by reason only of such change and the successor employer shall assume all obligations of the predecessor employer for the purposes of such dispute.

**Collective agreements**
Collective agreements are required to be in writing and must contain some provision for settlement of disputes.

**Enforceability of collective agreements**
There is no provision in the *Labour Relations and Industrial Disputes Act* regarding the enforceability of collective agreements.

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7 Labour Relations and Industrial Relations Act section 6
IV. Equality of Opportunity and Treatment in Employment and Occupation

**Objectives**

The stated objectives of the CARICOM Model Harmonisation Act regarding Equality of Opportunity and Treatment in Employment and Occupation (hereinafter referred to in this chapter as “CARICOM Model Labour Law”) are:

a) to give effect to the provisions of the National Constitution; to the ILO Convention concerning Equal Remuneration, No. 100 (1951); to the ILO Convention concerning Discrimination In Employment and Occupation, No. 111 (1958) and; and to certain provisions in the UN Convention on the Elimination of All Forms of Discrimination Against Women;

b) to eliminate, as far as possible, discrimination in employment and occupation against persons on the grounds of race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, political opinion, disability, family responsibilities, pregnancy or marital status;

c) to promote recognition and acceptance of the principle of equal opportunity and treatment on the above grounds in employment, occupation and other related activities including education, vocational training, employment services, provision of goods and services, partnerships and professional trade organisations.

**Status of ILO Conventions**

All thirteen CARICOM Member States, whose laws are reviewed in this study, except Suriname have ratified ILO Convention concerning Discrimination in Employment and Occupation, No. 111 (1958) and ILO Convention concerning Equal Remuneration, No. 100 (1951). All thirteen CARICOM Member States have ratified or acceded to the UN Convention on the Elimination of All Forms of Discrimination against Women.

**Principles**

The fundamental principles underlying the CARICOM Model Legislation insofar as protection against unlawful discrimination is concerned are:

(i) any discrimination in employment or occupation based on race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, political opinion, disability, family responsibilities, pregnancy, marital status or age except for purposes of retirement and restrictions on work and employment of minors shall be unlawful;

(ii) the scope of application of the principles shall include all workers in the public and private sectors, professional partnerships, professional or trade organisations, qualifying bodies, vocational training bodies and employment agencies;
(iii) the principles of unlawful discrimination and equality of opportunity shall also apply to the provision of goods, services and facilities, advertisements and application forms;

(iv) the prohibition against unlawful discrimination applies both to workers and to persons seeking employment;

(v) the prohibition against unlawful discrimination extends to terms and conditions of employment, including conditions of work or occupational safety and health measures, workplace facilities, and career development opportunities;

(vi) measures to promote equality of opportunity of a temporary nature shall not be deemed unlawful discrimination;

(vii) employers have a duty to ensure equal pay for work of equal value; except where otherwise provided, the person alleging a violation shall bear the evidential burden of presenting a prima facie case of discrimination and thereafter the burden shall shift to the respondent to disprove the allegation.

Scope of application
Jamaica’s legislative framework on equality of opportunity and treatment in employment and occupation resides in its Constitution.

Section 24 (1) provides that subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision, which is discriminatory either of itself or in its effect.

Section 24 (2) states that subject to the provisions of subsection (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

Section 24 (3) defines the expression "discriminatory" to mean affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

It should be noted that Subsection (1) does not apply to any law so far as that law makes provision inter alia with respect to persons who are not citizens of Jamaica.\(^8\)

In addition, Subsection (5) states that nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to qualifications for service as a public officer, police officer or as a member of a defence force or for the service of a local police officer.

\(^8\) Section 24 (4) of the Constitution
government authority or a body corporate established by any law for public purposes.

Any person alleging that any of the provisions of section 24 has been, is being or is likely to be contravened in relation to him or her may apply to the Supreme Court for redress.

**Gaps in legislative framework**

The scope of the constitutional protection against discrimination is restricted to public authorities.

It does not include pregnancy, marital status, family responsibilities, disability, sex, national extraction, social origin or age as grounds for the prohibition of discrimination in employment. There is no legislation which prohibits discrimination in employment in the private sector on any of the grounds contained in Convention No. 111.

The scope of application of the principles does not include all workers professional partnerships, professional or trade organisations, qualifying bodies, vocational training bodies and employment agencies. In addition, the principles of unlawful discrimination and equality of opportunity do not apply to the provision of goods, services and facilities, advertisements and application forms. Moreover, the prohibition against unlawful discrimination does not apply to persons seeking employment.

There is also the absence of legislation prohibiting sexual harassment at the workplace.

In addition, section 2 of the *Employment (Equal Pay for Equal Work) Act of 1975* only applies the principle of equal remuneration to “similar” or “substantially similar” job requirements, whereas the Convention provides for equal remuneration for work which is different but which is still of equal value.
V. Occupational Safety and Health and the Working Environment

Unlike the other model laws, CARICOM Model Law on Occupational Safety and Health and the Working Environment (hereinafter referred to in this Chapter as “the CARICOM Model Labour Law”) does not have among its objectives the incorporation of any ILO Conventions. It is an Act to provide for the occupational safety and health of workers in the working environment.

Jamaica has not ratified any of the 18 core OSH nor the Protocol to Convention No. 155, but in 2005 it did ratify the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152).

Content of CARICOM Model Labour Law
There are provisions relating to:
(i) registration of industrial establishments and mines;
(ii) administration;
(iii) general occupational safety and health requirements;
(iv) duties of employers, workers and other persons;
(v) hazardous chemicals, physical agents and biological agents;
(vi) enterprise safety and health representatives and committees;
(vii) notices of injury, accidents and explosions;
(viii) enforcement; and
(ix) offences and penalties.

Scope of Application
The Jamaica Factories Act 1943 as amended (hereinafter referred to in this section on Jamaica as “the Act”) and the Factories Regulations of 1963, which makes provision for occupational safety and health, does not apply to all branches of economic activity. There is no definition of employer, or contract of employment.

Registration of Industrial Establishments and Mines
Section 6 of the Act requires all existing and new factories to be registered with Minister of Labour (hereinafter referred to as “the Minister”) within 30 days of commencement of the Act or the commencement of operations where applicable. The particulars of registration application shall include the names and addresses of the owner and employer, address and location of the industrial establishment, the nature and object of the process to be carried out, the nature of the mechanical power, if any, used in the factory and the number of employees. There is no requirement for the employer to indicate whether factory is a major hazard installation.

Administration
Section 3 provides for the appointment of inspectors to administer and enforce the Act and regulations. They are to ensure that employers and other relevant persons
are provided with information and advice concerning the Act and the protection of the occupational safety and health of workers generally.

There is no statutory requirement for the appointment of a tripartite National Advisory Council on Occupational Safety and Health with technical or professional persons with expert knowledge to advise and make recommendations to the Minister and to promote awareness, including enforcement and the implementation of a national policy on occupational safety and health.

General Occupational Safety and Health Requirements
There are regulations in place dealing with dangerous machines, protective clothing devices, emergency drills and exits, cleanliness and sanitary conveniences, disposal of waste, noise and vibrations, overcrowding, ventilation, availability of drinking water, washing and change facilities, first-aid provisions and restrooms.

The Factories Regulations prohibit a person under the age of 18 from operating machines, which are of a dangerous character. A worker over the age of 18 shall not work at a machine unless he/she has been fully instructed as to the dangers arising from its operations and the precautions to be observed and (a) has received sufficient training or (b) is under adequate supervision.

All persons entering an area in an establishment where they are likely to be exposed to the risk of head or bodily injury, or injury from air contaminants or any other bodily injury must be provided with suitable protective clothing or devices of an approved standard and adequate instruction in the use of such protective clothing or device.

Duties of employer, workers and other persons
An employer at any workplace shall ensure that:
  a) a safe, sound, healthy and secure working environment is provided as far as is reasonably practicable;
  b) all legislative measures and procedures in relation to the Act;
  c) every reasonable precaution is taken in the circumstances for protection of worker and general public who comes into contact with the worksite;
  d) equipment, materials and protective devices and clothing as prescribed are provided;
  e) the workplace, machinery, equipment and processes are safe and without risk;
  f) machine, device, tool or equipment are in good condition;
  g) the safe use of chemicals and hazardous materials;
  h) the non exposure of pregnant women to chemicals, substances etc.;
  i) information, instruction and supervisor are provided to a worker to protect the safety and health of the worker;
  j) maintain accurate records of handling storage use and disposal of chemicals etc. and monitor levels;
  k) training; and
l) workers are subject to medical examination and treatment where required.

There is no statutory requirement for a written occupational safety and health policy.

**Duties of Owners**
The Factories Regulations provide that the owner of a workplace that is not a construction site shall ensure that:

a) such facilities as are prescribed are provided and maintained;
b) the workplace complies with Factories Act and regulations; and
c) that all reasonable precautions are taken to avoid risks to the safety and health of workers and other persons arising out of the use of the factory.

**Duties of Workers**
A worker is required to:

a) work in compliance with the provisions of the Act and regulations;
b) use or wear the equipment, protective devices and clothing required; and
c) exercise reasonable care as not to cause injury to self and others.

It should be noted here that normally it is the employer who has the provide a safe and healthy working place for the workers in compliance with the laws and regulations, and the workers have the duty to perform their work in compliance with workplace safety and health rules and requirements.

There is no statutory requirement for the worker to report to his/her employer or supervisor the absence of or defect in any equipment or protective device and clothing of which he is aware and which may endanger himself, herself or another worker or any contravention of the Act or Regulations of which he or she knows;

A worker does not have the statutory right to refuse to work where he/she has reasonable justification to believe that (a) equipment, machine, tool or device or (b) physical condition of workplace - presents imminent and serious danger to life or health. He may complain to the Inspector.

**Hazardous Chemicals, Physical Agents and Biological Agents**
The Minister may give orders to prohibit, limit or place conditions on use of hazardous chemicals, physical agents and biological agents. An employer is required to maintain an inventory of all hazardous chemical and hazardous physical agents. The inventory must contain information on the effects of the chemicals or agents. All hazardous materials are to be labelled and there must be adequate information to workers on the handling and disposal thereof so as to eliminate risks.

**OSH Committees**
There is no statutory requirement for the appointment of a Joint Occupational Safety and Health Committee in factories with twenty or more employees or a worker’s safety representative in factories with less than twenty employers.
**Notices**
The employer has an obligation to notify an inspector where a person is killed or critically injured from any cause at the workplace within forty-eight hours of such death or injury.

**Enforcement**
Inspector are vested with the power to enter, inspect any register, remove any register or article violating the Act, conduct tests, require an employer to conduct tests, make enquiries of any person in the workplace and require any equipment to be tested. The Inspector may also order an employer to comply with Act forthwith or within such time as he or she may specify.

Where an Inspector makes an order and finds that the contravention is a danger or hazard to safety and health, he/she may order that the workplace, equipment, machine, device, article or process be not used until the order is complied with. He/she may also order that work be stopped until the danger or hazard is removed.
**VI. Recommendations**

**Termination of Employment**

In order to comply with the CARICOM Model Labour Law, the following amendments to the *Employment (Termination and Redundancy Payments) Act* are required:

(i) the notice period for termination of employment set out in section 3 should be amended to provide the following notice periods:
   a. one working day – where the employee has been employed by the employer for less than one month;
   b. two weeks – where the employee has been employed by the employer for one month or more but less than one year;
   c. one month - where the employee has been employed by the employer for lone year or more but less than five years;
   d. two months - where the employee has been employed by the employer for five years or more

(ii) the provision for redundancy in section 5 should also provide for redundancy due to shortage of materials, a mechanical breakdown, a force majeure or an act of God.

(iii) there should be a statutory provision which provides that an employee’s continuous employment shall not be treated as interrupted if the employee is absent from work due to approved leave, suspension, temporary lay-off (not more than six months), inability to work on account of an occupational disease or accident.

(iv) there should be provisions relating to:
   a. the duty of an employer to prepare within fourteen days from the date of commencement of employment a written contract of employment (with certain minimum provisions) which shall be delivered forthwith to the employee;
   b. maximum probationary period not to exceed six months;
   c. dismissal in terms set out in the CARICOM Model Labour Law;
   d. constructive dismissal;
   e. summary dismissal;
   f. termination for misconduct, breach of contract, satisfactory performance;
   g. priority claim of employees’ wages and other payments over all other creditors, including the State and the social security, in the event of winding up an employer’s business;
   h. burden of proof
Registration, Status and Recognition of Trade Unions and Employers’ Organizations

In order to comply with the CARICOM Model Labour Law, the following amendments are required with respect to the Trade Unions Act:

(i) there should be a provision requiring the competent authority to have consultations with representatives of trade unions and employers’ organisations in the appointment of the Registrar;

(ii) there should be a provision establishing a minimum membership threshold for registration of a trade union (seven) and employers’ organisations (three);

(iii) there should be a provision, which prohibits an act designed to promote the establishment of an employees’ organisation under the domination of an employer or an employers’ organisation or to support employees’ organisations by financial or other means with the object of placing such organisation under the control of employers, coupled with effective and sufficiently dissuasive sanctions.

In addition, the following amendments are required of the Industrial Relations and Industrial Disputes Act:

(i) applications for recognition and certification of trade unions should be dealt with exclusively by a tripartite body;

(ii) provision should be made for determining the appropriateness of a bargaining unit in accordance with the CARICOM Model Labour Law;

(iii) section 5 (5) should be amended to allow for recognition of a trade union with at least 40% support of the bargaining unit;

(iv) there should be a new section to provide for the enforceability of collective agreements.

Equality of Opportunity and Treatment in Employment and Occupation

In order to comply with the CARICOM Model Labour Law, either the Constitution should be amended or a new Act be enacted to provide:

(i) statutory protection against discrimination to all sectors and not limited to public authorities;

(ii) statutory prohibition against discrimination to include pregnancy, marital status, family responsibilities, disability, sex, national extraction, social origin or age as grounds for the prohibition of discrimination in employment;

(iii) extend the constitutional protection against discrimination to apply to professional partnerships, professional or trade organisations, qualifying bodies, vocational training bodies and employment agencies as well as to the provision of goods, services and facilities, advertisements and
application forms. Moreover, the prohibition against unlawful
discrimination does not apply to persons seeking employment;
(iv) amend section 2 of the Employment (Equal Pay for Equal Work) Act of
1975 to make the principle of equal remuneration applicable not only to
“similar” or “substantially similar” job requirements, but to work which is
different but which is still of equal value;
(v) There is need to adopt legislation to prohibit sexual harassment at the
workplace.

**Occupational Safety and Health and the Working Environment**

In order to comply with the CARICOM Model Labour Law, the following
amendments are required of the Jamaica Factories Act 1943:

(i) the Act should be made to apply to all branches of economic activity.
There is no definition of employer, or contract of employment;
(ii) the registration procedure should include a requirement for the employer
to indicate whether factory is a major hazard installation;
(iii) there should a statutory requirement for the appointment of a tripartite
National Advisory Council on Occupational Safety and Health with
technical or professional persons with expert knowledge to advise and
make recommendations to the Minister and to promote awareness,
including enforcement and the implementation of a national policy on
occupational safety and health;
(iv) there should be a statutory requirement for a written occupational safety
and health policy in all workplaces;
(v) a statutory duty should be imposed on workers to report to his/her
employer or supervisor the absence of or defect in any equipment or
protective device and clothing of which he is aware and which may
endanger himself, herself or another worker or any contravention of the
Act or Regulations of which he or she knows;
(vi) a worker should be given the statutory right to refuse to work where
he/she has reasonable justification to believe that (a) equipment, machine,
tool or device or (b) physical condition of workplace - presents imminent
and serious danger to life or health. He may complain to the Inspector.
(vi) there should be a statutory requirement for the appointment of a Joint
Occupational Safety and Health Committee in factories with twenty or
more employees or a worker’s safety representative in factories with less
than twenty employers but at least five workers.