

Ministerial Statement on the setting of Rates and Conditions of Labour in the Construction Sector

Made by Hon. Colin E. Jordan, M.P.,
Minister of Labour, Social Security and the Third Sector
in
The Honourable The House of Assembly
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Mr. Speaker, over many years allegations have been made of unacceptable people management practices in various sectors of the economy. In recent decades it has been particularly acute in the construction industry. The allegations include rates of pay by some companies that are lower than rates generally paid in the sector, the engaging of workers under the guise of sub-contracting when the workers are really employees, not making deductions of contributions for National Insurance Scheme as required by law, not paying the employer amounts to the National Insurance Scheme, deducting contract retention – a matter that relates only to contractors – from the wages of employees, forcing employees to procure and pay for their own uniforms, among others.

For clarity, retention amounts are withheld by those who engage contractors as a safeguard for good work. There is normally a period attached to the retention provision so that a contract may include a retention of 5% for a period of three months. During the three months the individual or organisation that has engaged the contractor will inspect the work done and ensure that it is of an acceptable standard. This is known as snagging. The retention period is also the time when the contractor is able to complete matters that were his responsibility but that may have been overlooked.

As a party in Government we are conscious of and closely align to our roots, those roots lying in the work of the now Right Excellent Sir Grantley Herbert Adams, and he and his colleagues' fight on behalf of workers for decent conditions of work and reasonable rates of pay. That rooting ever in the forefront of our minds, we

determined on coming to office, that we could not allow this state of affairs to continue.

Actions taken so far by Government in the protection of workers

We set about discharging our moral responsibility in 2020 when Parliament debated and passed the Employment (Prevention of Discrimination) Act. This legislation was enacted to ensure that the diversity of workers in Barbados was respected and that they were protected against discrimination on the grounds of race, origin, political opinion, trade union affiliation, colour, creed, sex, sexual orientation, social status, marital status, domestic partnership status, pregnancy, maternity, family responsibility, medical condition, disability, age or physical feature, subject to situations that involve genuine occupational qualification, unjustifiable hardship, measures intended to achieve equality, care of minors, religious bodies and educational institutions administered in accordance with particular religious beliefs.

In 2021, The Cabinet established, for the first time in the country's history, a national minimum wage of \$8.50 per hour, as well as a sectoral minimum wage for security officers of \$9.25 per hour. This was done recognizing that, even in the middle of a pandemic, workers and their families were being severely impacted by rising prices and the imported inflation that is its principal driver.

The rate used by many employers as the floor prior to the establishment of the national minimum wage was the rate set by virtue of the Shops Act for the category of workers known as Shop Assistants, that rate being \$6.25 per hour.

We did not stop there. Government, recognizing that while the Safety and Health at Work Act provided for establishing Regulations to address in greater detail and give greater clarity in certain matters identified in the Act, there were no Regulations. In 2022 we gazetted eight Regulations. These Regulations cover noise, workstations, personal protective equipment, general duties, drinking water, sanitary conveniences, and washing facilities. A Regulation was also Gazetted to address the plight of one of the groups of workers we considered as a forgotten group – workers at fuel stations. This particular Regulation, medical supervision, mandates that workers at fuel stations are entitled to certain medical tests on an annual basis at no cost to themselves.

These, Mr. Speaker, represents some of what Government has done to recognise the value of workers and protect them as they seek to be engaged, productive citizens who are able to lead fulfilling lives for their own benefit and the benefit of their dependents.

This Government operates on the principle that policy is one of the options at its disposal as it seeks to manage the affairs of the State. The setting of a national minimum wage was one policy option to do right by the people of this country.

Additionally, Government has taken the position that those benefitting from contracts paid for by the public purse, that is to say, the taxpayers of this country, must be held to the highest standards with respect to the rates of pay and conditions of work offered to their workers.

We therefore turned our attention to the Labour Clauses (Public Contracts) Act, Cap 349, of the Laws of Barbados.

The Labour Clauses (Public Contracts) Act, Cap. 349 was passed in 1952 under then Premier Grantley Adams, and last amended in 1976 under then Prime Minister J.M.G.M. “Tom” Adams.

The provisions of the Act closely mirror the Articles of the International Labour Standard, Convention C94 – Labour Clauses (Public Contracts) Convention, 1949, which was ratified by Barbados on 8th May, 1967.

The Purpose of Cap. 349 (and C94)

The Act, Cap 349, serves to address certain terms and conditions of work for persons engaged in employment, where that employment is directly related to construction, alteration, repair or demolition of public works, the manufacture, assembly, handling or shipment of materials, supplies or equipment, and the performance or supply of services under a contract with any ministry, department or agency of Government, including secondary schools.

The provisions of the Act, include:

- the requirement for a contractor to ensure the payment of wages and setting hours of work that are commensurate with the standard in a particular trade or industry;
- the provision for the Chief Labour Officer, in the absence of existing standards, to consult with representatives of workers and employers to establish fair wages and conditions of employment;
- certification by the contractor, that the terms and conditions offered to employees are fair and reasonable;
- a mechanism for dispute resolution in the case of a dispute concerning wages and working conditions;
- the maintenance by the contractor of records concerning wages and time worked by employees;
- the prohibition of sub-letting, the transfer or reassignment of a contract or a portion of it without the prior approval of the Chief Labour Officer;
- the prohibition of home-work except where such is the custom or practice within the industry;
- recognition of the right of employees to be members of a trade union;
- the conditions that are to be met to facilitate payment to a contractor; and
- the binding of sub-contractors to conform to all conditions contained in the main contract and to which the main contractor is held, and the responsibility of the main contractor to ensure that sub-contractors abide by said conditions.

The ILO opines that the objectives of C94 are twofold. The first objective is to eliminate labour costs being used as an element of competition among bidders for public contracts by requiring that all bidders respect, at the minimum, country-specific established standards.

The second objective is to assure that public contracts do not exert a downward pressure on wages and working conditions, that is, workers employed under public contracts are entitled to receive wages and enjoy working conditions that are no less favourable than those established for the same work in the area where the work is being done. Collective agreements, arbitration awards and national laws and regulations are described as being important in establishing equality regarding wages and conditions of work.

The principles underpinning ILO Convention C94 remain of relevance today. As a matter of fact, the ILO Committee of Experts on the Application of Conventions and Recommendations in 2007 was moved to say, in light of globalization and intense competition, “the objectives of the Convention are even more valid today that there were 60 years ago...”

Issues found in the local context

Due to its own inspections as well as from reports made to it, the Labour Department has become aware of certain malpractices in the industry.

Three of these are (1) non-adherence to the fundamental principle of equal pay for work of equal value, (2) the misclassification of workers who are employees as sub-contractors, and (3) the resulting breaking of the law with respect to deducting National Insurance contributions and the remitting of those deductions along with the employer contributions.

I have given clear instructions to the Chief Labour Officer and the Director of National Insurance that their respective inspectorates must intensify their efforts to ensure the workers of this country are protected, and that employers adhere to the legislation.

Recently it has been reported that in the construction sector, there are entities/contractors who are attempting to circumvent the law and seek to apply less than the set minimum rates. Some of those entities and contractors, we are informed, practice a business model where workers who are employed to transport materials and equipment across the island, are paid a rate which is below the national minimum, and are then told that they must complete a certain number of trips per day or per week, in order to earn a reasonable wage that would then enable them to meet or exceed the minimum wage. This model could create a risk to the safety of the employee and the travelling public, as this type of approach encourages employees to travel on the roads in a manner that may endanger road users.

Setting Rates and Conditions for the Construction Sector

Section 3 of the Labour Clauses (Public Contracts) Act provides that every public contract must be devised in accordance with the Schedule to the Act.

Paragraph 2 of the Schedule stipulates that, in the absence of established rates and conditions of work for a particular trade or industry, the Chief Labour Officer is authorised to consult with representatives of employers and employees, to prepare and make available, a schedule of fair and reasonable rates and conditions of employment for that trade or industry. In this context, the Barbados Workers' Union and the Barbados Employers' Confederation were engaged in the process of establishing fair wage rates for the construction sector.

Those entities worked together to draw information on wage rates from existing, negotiated collective agreements in the Sector and compiled these rates through a tripartite process of consultation and discussion with the Chief Labour Officer. The process commenced in October 2022 and concluded in January 2023.

The resulting schedule of rates sets out the "floor" rates that are to be applied for all work in the construction sector in the performing of public contracts. The schedule contains eight groupings of work and rates, taking into account job categories, skill type, tasks performed, and the type of equipment operated, where that applies.

The established rates range from \$8.50 per hour at the minimum to not less than \$30.00 per hour at the maximum.

Allow me, Mr. Speaker, to share some examples.

Category 1 – Maid or Flag Person – not less than \$8.50 per hour

Category 2 – General Worker or Pump Assistant – not less than \$11.00 per hour

Category 3 – Bobcat or Small Roller Operator – not less than \$14.00 per hour

Category 4 – Welder / Electrician B – not less than \$16.00 per hour

Category 5 – Backhoe or Low Loader Operator – not less than \$19.00 per hour

Category 6 – Caterpillar D6 Bulldozer Operator – not less than \$23.00 per hour

Category 7 – Workshop Foreman or Komatsu 450 Excavator Operator – not less than \$25.00 per hour

Category 8 – Caterpillar D9 or Komatsu D275 Bulldozer Operator – not less than \$30.00 per hour

With respect to conditions of work, the Safety and Health at Work Act is the law and will by virtue of that fact form part of the conditions of employment in the construction sector.

The Act and its already established Regulations, along with the soon-to-be established Regulation on providing guidance on the Right to Refuse Dangerous Tasks, are designed to help create a safe and healthy work environment for both employer and employee.

Mr. Speaker, allow me to inform the Chamber that we have approached some of the organisations that use best-practice in the area of safety and health at work and they have agreed to work with the Ministry to assist smaller organisations that do not have the people resources and necessary skill sets to do all that is required for compliance.

Other pieces of legislation that form part of the conditions of employment for all workers, including those in construction and those working for employers who benefit from public contracts, include Holidays with Pay Act, Employment (Prevention of Discrimination) Act, Employment Sexual Harassment (Prevention) Act, Employment of Women (Maternity Leave) Act, and of course, the Employment Rights Act.

As I mentioned earlier, and I am repeating it so that I am absolutely clear, under the Act, rates of pay and conditions of work that must be followed by main contractors must also be adhered to by legitimate sub-contractors. The main contractor is responsible for ensuring that sub-contractors adhere to the rates and conditions. Additionally, I also repeat that the contractor shall not assign any portion of a contract to another party without the consent of the Chief Labour Officer.

Mr. Speaker, the Labour Clauses (Public Contracts) Act, and rates and conditions that have been set, must be adhered to and used by all Government Ministries, Departments, Agencies and school boards as they evaluate tenders and quotations from bidders. They must liaise with the Chief Labour Officer to ensure that all of the provisions of the Act are followed.

I have spoken at some length about the process of setting rates and conditions for work performed in the execution of a public contract. Our work in the construction sector is but the beginning. Other sectors will also be addressed.

Mr. Speaker, I must also inform the House that work is well on the way in our effort to strengthen the existing Labour Clauses (Public Contracts) Act. Cabinet in 2022 approved drafting instructions for the Office of the Chief Parliamentary Counsel to prepare amendments that will provide greater clarity to Government Ministries, Departments and Agencies, contractors, and workers, while giving more “teeth” to the Office of the Chief Labour Officer which administers the Act.

The CPC has prepared a draft amendment Bill and that Bill has been reviewed by the Barbados Employers’ Confederation and the shop stewards of C.O. Williams Construction and their union, the Barbados Workers’ Union. Coming out of those consultations additional drafting instructions are being prepared for submission to The Cabinet so that the CPC can make the necessary amendments to the first draft.

We really should not have to legislate good behavior, but the practices of some necessitate that Government acts to protect workers from unscrupulous employers who, in order to satiate their greed, would wish to deprive their workers of reasonable conditions of work, correct classification, fair wages and social protection.

This bad behaviour is what we Bajans call unfairness, and it must stop.

Mr. Speaker, I am obliged to you.