

Employment Discrimination

Being Dismissed Because You're LGBT

Brief Note on International Human Rights Law

Dismissal on the basis of sexual orientation, if upheld by the Courts, violates the International Covenant on Economic, Social and Cultural Rights which provides for the right to work in Article 6. The right to work encapsulates a right to equal opportunity to work as well as freedom from discrimination in the workplace. As Jamaica has ratified the ICESCR, the provisions therein are legally binding on the state.

Model Anti-Discrimination Provisions for Employment

The St. Lucia Labour Code of 2006 should be used as a benchmark for the first steps towards bolstering Jamaican employment laws. The SL Labour Code, in addition to a general prohibition on discrimination in Section 7 of the code, directly prohibits discrimination on specific bases in Section 131(1)(a). Those are as follows:

- A. an employee's race, sex, religion, colour, ethnic origin, national extraction, indigenous origin, social origin, political opinion or affiliation, trade union affiliation or activity, disability, **sexual orientation**, serious family responsibility or marital status;
- B. an employee's age, subject to any other enactment in force, or collective bargaining provisions or contractual provisions regarding retirement;
- C. a female employee's maternity leave or benefits, pregnancy or a reason connected with her pregnancy;
- D. an employee's exercise of any of his or her organizational or associative rights as specified under this Code;
- E. an employee's temporary absence from work because of sickness or injury, unless it occurs frequently and is found to be an abuse of sick leave provisions under this Code;
- F. the perception that the employee has or is carrying the HIV/ AIDS unless the employee is engaged in work established as putting other persons at risk of contracting the HIV/AIDS or unless the inherent requirements of the job permit the removal of that employee to other duties;

Employment Discrimination

Being Dismissed Because You're LGBT

- G. an employee's absence from work due to compulsory military service, national service, public duty or other civic obligation in accordance with any enactment or practice in force;
- H. an employee's exercise or proposed exercise of the right to remove himself or herself from a work situation which he or she reasonably believes presents an imminent or serious danger to life, health or safety;
- I. an employee's participation, or proposed participation, in industrial action, including strikes;
- J. the filing of a complaint or the participation in proceedings against an employer involving alleged violations of this Code;
- K. an employee's refusal to do work usually performed by another employee or employees currently engaged in industrial action where that work does not form part of his or her contract of employment; or
- L. a conviction which is spent in accordance with the Criminal Records (Rehabilitation of Offenders) Act 2004, No. 2.

J-FLAG is a human rights and social justice organization focused promoting the rights, well-being and livelihood of LGBT Jamaicans

