

Bermuda Employment law in a Nutshell

Employment law in Bermuda comprises local legislation (statutes enacted by Parliament) and English and Bermuda common law (case law decided by courts over the years).

The relevant legislation is:

- 1 The Employment Act 2000 (as amended) which:
 - 1.1 applies to all employees working wholly or mainly in Bermuda, including foreign employees;
 - 1.2 sets out minimum statutory entitlements, including notice of termination rights and various leave benefits (vacation, sick leave, maternity, bereavement, public duty leave, etc.);
 - 1.3 mandates that there be a written contract (“Statement of Employment”) in place setting out fundamental terms of the employment relationship . If the contract contains more favourable terms than the Act, then the contract prevails. Parties cannot contract out of the Act’s minimum requirements;
 - 1.4 provides that an employee can only be dismissed for a valid reason, such as ability, performance, conduct or business operational requirements (redundancy);
 - 1.5 provides that statutory redundancy pay(“severance allowance”) must be paid if conditions of redundancy are made out (capped at 6 months’ wages);
 - 1.6 protects employees from disciplinary action or termination (“unfair dismissal”) on human rights related grounds or for being a whistle-blower;
 - 1.7 defines constructive dismissal (also “unfair dismissal”) and provides compensation for same based on the employer’s unreasonable conduct;
 - 1.8 provides for a mandatory warning process for employees engaging in misconduct (short of serious misconduct)or unsatisfactory performance and time to improve (employees engaged in serious misconduct related to the employment relationship can be summarily dismissed);
 - 1.9 provides a complaint process for breach of the statute –to an Inspector and then to the Employment Tribunal, with a 3 month

limitation period. Compensation is limited to 6 months' wages or reinstatement; and

- 1.10 provides that either side can terminate the contract for any reason and without notice during a contractual probation period (if there is one, the contract must state whether there is one or not).
 - 1.11 gives priority to an employee's claims for unpaid wages and accrued vacation pay in a winding up action.
- 2 The Bermuda Immigration and Protection Act 1956 (as amended) provides that employees who are not Bermudian or a spouse of a Bermudian or a Permanent Resident's Certificate (PRC) holder must have a work permit issued by the Department of Immigration to work in Bermuda. These can range from 3 months to 10 years in time (the latter subject to several stringent criteria) and are renewable. The time for processing is approximately 8 to 10 days (for "fast track" or "temporary permits") or 6 to 10 weeks (for standard permits of 1 year or more);
- 2.1 a work permit will not be issued where a qualified Bermudian, spouse of a Bermudian, non-Bermudian dependant of a Bermudian, Permanent Resident Certificate holder or other person with a qualifying connection to Bermuda applies for the position;
 - 2.2 employees are generally subject under Bermuda immigration policy to a maximum of 6 years of working under a permit in Bermuda ("terms limits");
 - 2.3 certain positions can be deemed "key" to a business and the holder of that position can be exempted from term limits or receive an extension of to their term limit of up to 3 additional years;
 - 2.4 other grounds for exemption can be made out (e.g. worldwide shortage in that industry, company hardship, etc.).
- 3 The Human Rights Act 1981 prohibits discrimination and harassment in the employment sector on the basis of race, place of origin, colour, ancestry, sex (gender), marital status, disability, legitimacy, religious belief or political belief. Sexual harassment is also prohibited and made a criminal offence.
- 4 The Labour Relations Act 1975 & the Trade Dispute Act 1992 provides for the hearing of a labour dispute by the Minister or an Arbitration Panel/Trade Disputes Tribunal. Governs strike actions. This applies to unionised employees (note that virtually all employees of international companies in Bermuda are non-unionised).
- 5 The Worker's Compensation Act 1965 provides for compensation by employers to workers who are injured on the job, regardless of fault. If

negligence on the part of the employer is involved, the employee can sue in the Court for damages.

6 Common Law allows an employee to elect to pursue a breach of employment contract claim (including wrongful dismissal) in the Courts for damages. The limitation period is 6 years. The damages obtainable are dependent on common law principles derived from Court decided cases over the years.

7 Miscellaneous:

7.1 there is no statutory minimum wage in Bermuda. Wages are determined by agreement between the parties as set out in the individual contract of employment or collective agreement (if unionised);

7.2 employers must provide a health insurance plan for their employees and each employee's uninsured dependant (spouse or child) at the minimum "hospital insurance benefit" standard. Many employers provide a higher level "major medical" coverage, paying 50% of the premium;

7.3 employers must provide a private pension plan for Bermudian employees and employed spouses of Bermudians at the rate of 10% of "pensionable earnings" as defined in the relevant Act – 5% can be deducted from the employee's earnings;

7.4 social insurance (government contributory pension) is also payable at a minimum fixed amount per month;

7.5 payroll tax is payable on salary and benefits; the percentage rate depends on the total remuneration payable to employees in the company. Generally tax on remuneration is around 14 to 16% of the remuneration package and the employer can claw back 5.25% from the employee.

7.6 the typical work week is Monday to Friday from 9 a.m. to 5 p.m. with an hour for lunch. At least 24 hours of consecutive rest must be provided each week.

7.7 Overtime pay is mandatory for hours worked in excess of 40 hours at 1.5 times basic pay unless the parties have contracted out of the requirement or unless the employee is professional/managerial whose contract states that the salary has been calculated to reflect that over 40 hours a week will be required on occasion;

7.8 non-competition clauses are only enforceable to the extent that they are reasonable to protect the employer's legitimate business interests (e.g. trade secrets or key personnel). Non-solicitation clauses (of the

former employer's clients and employees) are more readily enforceable;

7.9 employers cannot conduct involuntary drugs test on applicants or employees. It is up to the employee/applicant as to whether they agree to submit to it in order to become/stay employed; and

7.10 there are no laws that specifically protect an employee's right to privacy. The employer's policies should be clear in setting out the employer's right to monitor and act on employee communications.

For more detailed advice regarding these basic rights and obligations, please contact Juliana Snelling at jsnelling@canterburylaw.bm or Paul Harshaw at paul.harshaw@canterburylaw.bm

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