# BERMUDA LABOUR AND EMPLOYMENT LAW

## I. Hiring

### *A. At-Will v Just Cause*

Until the Employment Act 2000 ("EA 2000") came into force in March 2001, the employer was entitled to terminate an employee's employment on whatever basis the employer deemed appropriate, provided that sufficient notice of termination was given and human rights legislation was not violated. The employer's right to terminate was constricted only by the terms of the contract. Of course if the employer terminated the employee summarily for cause, the employer had to justify the summary termination by showing proper cause.

The effect of section 18 of the EA 2000 is that, in addition to giving proper notice, the employer must have a qualifying reason before it terminates the contract (*see* paragraph 2 below).

#### 1. Common Law Claims

Contractual terms agreed to between the parties may, of course, restrict the circumstances under which an employer may terminate an employment contract. Written terms may be contained either directly in the contract or they may exist separately (e.g., in the letter of engagement, a staff memo, the Employee Handbook, on the Intranet or in a collective agreement). They may be construed to be incorporated into the contract by express reference or implication.

To form an effective part of the contract, the employer should ensure that the employee has signed or otherwise initialed to confirm that such terms have been brought to his or her attention. If the employer does not want these terms incorporated in the contract, it should use clear and conspicuous disclaimers that they do not form part of the contract. If the terms of the written contract are ambiguous, they will be construed against the party who drafted the agreement (usually the employer).

In addition, express oral promises or statements may vary the employer's right to terminate. Employers should take steps to train their supervisors not to make oral promises or representations that contradict the written contract between the parties. To avoid these problems, the written contract should stipulate that it forms the "whole contract," and supersedes and takes precedence over any prior oral representations or statements.

A related area of the common law is that of negligent representations made by the employer to the employee regarding the terms, conditions, or other material facts in the course of negotiating the employment contract. This tort may have particular relevance in Bermuda where many employees were induced to give up careers elsewhere to come to Bermuda, only to find that realistically they cannot afford to complain about the situation in which they find themselves. The principle has not yet been tested in local courts.

In rare cases, customary or "notorious" terms in a given industry or profession may be implied into the contract, but only if they are sufficiently well defined as to be certain and universally applied in the trade or profession in question. Thus, for example, if it is proved to be customary in a certain industry to give at least six months' notice to terminate, the employer will be bound to give such notice, notwithstanding that the Statement of Employment (*see* Section I.D below) contains a term providing for a shorter period of notice.

It is important to note that, in all employment contracts, there is an implied term of mutual trust and confidence that the employer will not conduct itself in such a way as to undermine the fundamental trust and confidence that exists between it and the employee. If the employer breaches this trust, such action will give rise to the right of the employee to terminate the contract by reason of constructive dismissal. The conduct must be sufficiently serious in nature such that it is not reasonable to expect the employee to continue working for the employer.

**2. Statutory Claims**

In addition to common law claims, the employee can now file a statutory complaint if the employer breaches the termination provisions of the EA 2000. The EA 2000 limits the circumstances under which the employer may now terminate the contract. Section 20 prescribes minimum periods of notice that must be given and section 18 provides that, subject to other sections of the Act, there must be a valid reason for termination connected with:

- The ability, performance, or conduct of the employee; or
- The operational requirements of the employer's business.

Section 22 of the EA 2000 provides that, if the employee requests it, the employer must provide him or her with a "Certificate for Termination" containing the reason(s) for the termination.

In addition, section 28 of the EA 2000 ("Unfair dismissal") protects employees from disciplinary action or termination on the following grounds:

- An employee's race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, disability, or marital status;
- An employee's age, subject to any other enactment or any relevant collective agreement regarding retirement;
- Any reason connected with an employee's pregnancy, unless it involves absence from work that exceeds the allocated leave entitlement;
- An employee's trade union activity;
- An employee's temporary absence from work because of sickness or injury, unless it occurs frequently and exceeds the allocated leave entitlement;
- An employee's absence from work for any of the reasons mentioned in section 13 (public duties), or due to service as a volunteer fire officer;
- An employee who removes himself or herself from a work situation which he or she reasonably believes presents an imminent and serious danger to life or health;
- An employee's participation in any industrial action that takes place in conformity with the Labour Relations Act 1975;
- Filing a complaint or participating in proceedings against an employer involving alleged violations of this Act.

***B. Discrimination***

The Human Rights Act 1981 is of general application and wide in scope. It expressly applies to employers, who must not discriminate in any of the ways proscribed by the Act. Any term of a contract of employment that contravenes the Act is void and of no effect. The Act provides a regime for investigating alleged abuses and complaints, and seeks to achieve a reconciliation and compensation for the injured party.

Many of the rights protected in the Human Rights Act have also been protected under the EA 2000, reviewed above. The Act is an independent regime designed to give redress for discriminatory behaviour, and the remedies under the EA 2000 are to redress unfair employment practices. There may be a degree of overlap in some cases, but the purpose of each statute is distinct and their respective procedures are very different.

Discrimination in employment is not permitted in recruitment, termination, training, transfer, probation, apprenticeship, promotion, or classification or inclusion of special terms in contracts of employment. Discrimination occurs if less favourable treatment is given to employees because of their race, place of origin, colour, ancestry, sex, marital status, disability, legitimacy, or religious or political belief. Employers should not impose restrictions on employment to one group within the workforce that do not apply to others with respect to these protected characteristics.

Where a complaint is made to the Human Rights Commission, the Commission will investigate the complaint and attempt to resolve the grievance through conciliation and mediation. Where the Commission concludes that it is unlikely to be able to settle the dispute or has been trying for 9 months to settle the dispute but has been unsuccessful, and the complaint is not so serious as to warrant a prosecution, the Commission must refer the matter to the Minister of Labour, who will then decide in his or her discretion whether to refer it to a Board of Inquiry. Board of Inquiry proceedings follow the procedure delineated in the Commissions of Inquiry Act 1935.

The Board has wide powers to award compensation and make orders for redress, including awards for injury to feelings. There is an appeal to the Supreme Court from a finding or award of the Board on matters of fact or law. Criminal penalties are imposed upon conviction for unlawful discrimination or for aiding, abetting or wilful infringement of the Act.

The Human Rights Commission is charged with additional functions relating to racial inequality in an effort to work towards the elimination of racial discrimination. It must establish and maintain a register of employers from information received from the Department of Statistics and it may issue codes of practice containing practical guidance towards eliminating racial discrimination in the workplace. The code of practice must be approved by both Houses of the Legislature before it becomes enforceable. A failure by a person to observe a code of practice does not of itself render that person liable to proceedings; but in any other proceedings before a board of inquiry or court, the code of practice may be taken into account as relevant evidence.

All employers who employ 10 or more employees must register and provide information each year relating to the makeup of their workforce by category of race and remuneration, promotion and training of all employees, and reasons for termination of employment. A record of these statistics and information is maintained by the Ministry of Development and Opportunity.

### *C. Employment Applications*

The effect of Bermuda's human rights legislation is that employment applications should not solicit information concerning race, place of origin, colour, ancestry, sex, marital status, disability, legitimacy, or religious or political belief.

Employers, however, are entitled to give preference to Bermudians applying for jobs.

### *D. Use of Employment Contracts*

All employment relationships are created by a contractual agreement. In the past, such agreements could be wholly oral; there might not be any written contract at all and the terms of the relationship had to be defined by reference to other documents or just the spoken word between the parties.

Presently, section 6 of the EA 2000 mandates that everyone who is employed must be given a document by his or her employer that sets out certain fundamental terms of employment ("the "Statement of Employment"). The terms that must be included are: the names of the employer and employee, the date of the commencement of employment, details of the position, hours of work, holidays, wages, sickness allowance, notice period, probation period, dress codes, the relevant collective bargaining agreement (if any), and details of disciplinary procedures and pension scheme contributions and rights. Any variation to the terms of employment that are contained in the Statement must be embodied in an amended Statement that is signed by both parties, thereby indicating their mutual agreement, and given to the employee within one month from the change having been made.

When drafting employment contracts, Bermuda employers should be aware that non-compete clauses are generally unenforceable in Bermuda unless they are considered reasonable in protecting the employer's legitimate business interests, such as trade secrets or other confidential information.

Arbitration clauses are not often included or invoked in Bermuda employment law contracts. Disputes are usually resolved either internally or via the statutory mechanism prescribed by the EA 2000 or in the courts.

### *E. Advertising/Recruitment*

The effect of Bermuda's human rights legislation is that employers should not publish advertisements that indicate a preference for, or limitation of, applicants for jobs.

No forms or questionnaires should solicit information concerning an applicant's race, colour, place of origin, sex, etc. Exceptions are permitted for government surveys relating to immigration and labour and the collection of statistics, or for the purposes of an immigration application from a resident outside Bermuda regarding his or her sex, marital status, and number of children only.

Where a particular job is of such a nature that it would put the average female at a disadvantage by reason of her strength, stamina, or physique, discrimination in favour of males is permitted. Exceptions are also made for religious, philanthropic, and fraternal non-profit organizations.

Disabled persons may be considered ineligible for employment in circumstances where it would give rise to unreasonable hardship on the part of an employer to modify the premises or the circumstances of employment to accommodate the disabled employee.

Special programmes recognized and approved by the Minister for Labour for the training and development of specific groups of people in the community may be exempted from the requirements of the Act if the purpose is to:

- Relieve hardship or achieve equal opportunity; or
- Increase the employment of members of a specific group or class of persons because of the race, colour, nationality, or place of origin.

### *F. Employment References/Background Investigations*

There are no specific laws in Bermuda relating to employment references or background investigations of employees.

The common law defence of qualified privilege protects employers from defamation claims when they are asked to provide a reference for a former employee to a potential new employer. Nevertheless, employers must be careful when giving a reference on behalf of an employee.

When a prospective employer contacts a former employer to inquire about the character, fitness, or capacity of an employee, or the reason for his or her dismissal, the employer has a moral and social duty to state all that it knows either positively or negatively about the employee. If the former employer provides information honestly and without malice towards the former employee, the information will be privileged and therefore protected from a defamation claim made by the employee.

The duty is continuing. Thus, if a former employer discovers, after giving a reference, that the employee is dishonest and that the reference was misleading, it is that employer's duty to communicate its discovery to anyone who relied on the original reference. And even though this later communication is offered voluntarily, it is also considered privileged and protected.

## II. Compensation and Benefits

### *A. Minimum Wage*

Bermuda does not have a minimum wage and, accordingly, wages are determined by the contract between the employer and employee. Often, collective agreements will specify the minimum wage to be paid to certain classes of employees.

### *B. Minimum Age*

The Age of Majority Act 2001 defines a minor as a person under the age of 18 years.

The Employment of Children and Young Persons Act 1963 places restrictions on the ability to employ minors between the ages of 13 and 18 years, depending on the nature of the occupation. Children under the age of 13 are not permitted to work at all unless the work is of an agricultural or a horticultural or domestic character where

the parent or guardian of the child is the employer, or the employment is in the nature of carrying and delivering light goods (e.g., a messenger).

Children under the age of 16 cannot be employed during school hours on school days, and may only be employed for up to two hours on such days outside of school hours.

Young persons under the age of 18 cannot be employed at night unless they are over the age of 16 years, and then only until midnight. If such person is female, then the employer must make adequate arrangements for her safe return home after work.

### *C. Wage Payments*

Pursuant to section 6(e) of the EA 2000, the employer must provide the employee with a written "Statement of Employment," which includes the employee's gross wage or the method of calculating it, and the intervals at which it is to be paid.

In addition, section 7 of the EA 2000 states that an employer must provide each employee with a written itemized pay statement at or before the payment of any wages. The statement must contain details as to the period of time or the type of work that the wages cover; the rate of wages to which the employee is entitled; the number of hours worked if they vary from week to week; the gross amount of wages to which the employee is entitled; the amount and purpose of any deduction made from that amount; any bonus, gratuity, living allowance, or other payment to which the employee is entitled; and the net amount of money being paid to the employee.

Section 8 prohibits an employer from making a deduction from an employee's wages unless the deduction is required or authorised to be made by virtue of a statute, collective agreement or provision of the employee's contract; by order of any court or tribunal; or the employee has previously signified in writing his or her agreement or consent to the deduction. Where the employer pays the employee less than what is owed, the amount of the deficiency is considered an unauthorized deduction.

Reimbursements for overpayments, deductions made as a result of any disciplinary proceedings, and deductions made in consequence of an employee's participation in a strike or lockout are not considered unauthorized deductions.

### *D. Child Labour*

*See* Section II.B above.

### *E. Health Insurance*

The Hospital Insurance Act 1970 sets out the compulsory obligations of all employers to provide a health insurance plan for themselves, their employees, and their employees' non-employed spouses for at least the standard full hospital insurance benefit or "HIP" (as defined in the Act).

While the employer is responsible for paying the total cost of the premium, the Act allows the employer to deduct 50% of that cost from the employee's wages.

The employer must promptly provide a new employee with a written statement setting out the name and address of the licensed insurer with whom the employee's contract of hospital insurance has been made, the date the insurance came into effect, and the insurance number. Failure to do so constitutes an offence, and the employer can be sued for any lost benefits, recovering the loss being recovered as a civil debt.

HIP coverage is regarded as being the basic minimum health insurance coverage with no frills. It nowhere near approaches the coverage afforded under a typical major medical plan.

Most private health insurance plans provide a considerable range of additional benefits. The employee will contribute a portion or all of the additional premium (usually 50%) to obtain such benefits, depending on the terms of his or her contract of employment. Employees should take note that most plans provide that they can be terminated or varied at any time.

Most of the issues surrounding the extent and cost of coverage are matters of interpretation of the individual plan, and may often be subject to negotiation and resolution between the employer and the insurer. All employees should become familiar with what is, and is not, covered by the medical insurance plan offered by the employer.

The Health Insurance Act also establishes the Hospital Insurance Plan (and the Hospital Insurance Commission to administer it) to offer health insurance coverage to the public for those who otherwise do not have access to private insurance.

### *F. Overtime Issues*

Although the EA 2000 does not provide for a minimum wage, it does provide for mandatory overtime pay. Pursuant to section 9, an employee who works in excess of 40 hours in a week is entitled to be paid at the overtime rate of one and one-half times his or her normal hourly wage. Alternatively, the employee may be paid his or her normal hourly rate for the overtime and further compensated by being given a number of hours off from work in lieu of overtime.

These overtime provisions do not apply to the "professional or managerial employee" whose Statement of Employment specifies that the annual salary for that position has been calculated to reflect the fact that the regular duties of the position are likely to require, on occasion, work in excess of 40 hours per week. Overtime is also not payable where the employer and the employee agree that it should not apply and therefore parties can contract out of the overtime requirement.

However, in respect of certain classes of employee that require protection such as childcarer, the Minister in charge of Immigration will not issue a work permit to an employer to employ a foreign employee unless overtime pay is provided for in the contract.

The Minister of Labour has the power to modify the effect of the mandatory overtime provisions by prescribing a different number of hours for certain specified jobs, taking into account various factors, including the customary work schedule in a particular industry.

### *G. Workday/Workweek/Work hours*

Typically, employees in Bermuda work a 40 hour week, from Monday through Friday from 9 a.m. to 5 p.m. including an hour's break for lunch (i.e., 35 paid hours). Employees in professional or managerial positions inevitably work longer hours than this standard work week.

Pursuant to section 6(f) of the EA 2000, the employer must provide the employee with a written "Statement of Employment," which must contain the normal days and hours of employment or, where the job involves shift work, the normal pattern of shifts.

Section 7 of the EA 2000 provides that the written pay statement provided to the employee must contain details as to the period of time or the work that the wages cover, the rate of wages to which the employee is entitled, and the number of hours worked, where that number varies from week to week, in addition to other details.

Under section 10 of the EA 2000, an employer must provide each employee with a rest period of at least 24 consecutive hours in each week. This requirement does not apply in the case of certain categories of employees, including police officers, prison officers, fire officers and medical practitioners and nurses employed at the hospitals.

The EA 2000 excludes from its provisions part-time employees who work fewer than 15 hours per week.

## III. Time Off/Leaves of Absence

### *A. Paid Vacation*

Section 12 of the EA 2000 provides that an employee is entitled to two weeks of annual paid vacation after he or she has completed the first year of continuous employment and a further two weeks after completing each subsequent year of continuous employment. However, such periods of vacation are not cumulative, and thus may not be "carried over" from one year to the next.

Whether or not the employee is entitled to pro-rata paid holiday during the first year of employment is not clear; employers argue that the employee must have completed the first year to earn the paid holiday, while employees argue that, even if they do not complete the first year, they are entitled to pro-rata holiday during that first year.

Where an employee is entitled to more than two weeks of annual holiday by reason of any statute, agreement, contract of employment, and/or custom or practice, the more favourable provision shall prevail over the two-week minimum requirement set out in the EA 2000 (section 2).

Section 12 further provides that, where practicable, an employer shall grant the employee's request to take his or her annual vacation at a particular time, subject to the requirements of the business and to requests for vacation by other employees.

If the employee requests it, and it is practicable to do, the employee is entitled to be paid his or her holiday wages prior to going on holiday.

### *B. Paid Sick Leave*

Section 14 of the EA 2000 provides that an employee who has completed at least one year of continuous employment, and who is unable to work due to sickness or injury, shall be entitled to be paid his or her normal hourly wage for up to eight days per year.

An employee shall not be entitled to be paid his or her normal wages if he or she is absent from workfor a period of two or more consecutive days unless, upon request by the employer, the employee provides the employer with a medical certificate stating that a doctor has determined that he or she is unable to work due to sickness or injury.

Where an employee is entitled to more than eight sick days per year by reason of any statute, agreement, contract of employment, and/or custom or practice, the more favourable provision shall prevail over the eight-day minimum requirement set out in the EA 2000 (section 2).

### *C. Paid Time Off (Public holidays, Public duties)*

Section 11 of the EA 2000 provides that employees are entitled to time off from work with pay on all public holidays unless the parties agree otherwise. The Public Holidays Act 1947 provides the mechanism for declaring which days shall be public holidays. There are certain restrictions on opening shops on holidays without a licence.

Employees are not entitled to such pay if they do not work on the working day before and after the holiday, unless they are on vacation or sick leave. If the holiday falls on an employee's normal day off ("rest day"), then he or she can either take the next working day as his or her holiday or another day, as agreed to with his or her employer.

If the employee is required by his or her employer to work on a public holiday, he or she must be paid at a rate equal to at least the usual overtime rate (e.g., time and one-half). Alternatively, he or she could be paid his or her regular rate and then given an extra day of paid leave on a date agreed with the employer.

There are other instances when an employer, where practicable, must permit employees who have completed at least one year of continuous employment to take paid time off during their working hours. Such instances include, for example, having to carry out responsibilities in connection with serving on a Government Board, the Bermuda Regiment, the Reserve Police, the Senate or House of Assembly, jury duty, and voting in parliamentary elections. Where the employee receives any payment in connection with such duties, the employer is entitled to deduct these earnings from the wages payable to the employee for such time off (section 13).

### *D. Family and Other Medical Leave*

If a member of an employee's immediate family passes away (i.e., spouse, child, parent, sibling, or co-habitee), the employee is entitled to three consecutive days of bereavement leave (up to five days if the funeral is overseas). The employee must advise his or her employer as soon as possible of the date of the death and the expected dates of leave. The bereavement leave is unpaid, unless the contract of employment stipulates otherwise.

Where an employee is entitled to more than the above entitlement by reason of any statute, agreement, contract of employment, and/or custom or practice, then the more favourable provision prevails over the minimum entitlements set out in the EA 2000 (section 2).

The EA 2000 does not provide for medical leave other than sick leave, as set out above.

### *E. Disability Leave*

Section 17 of the Contributory Pensions Act 1970 (as amended) provides for disability payments to persons who are incapacitated and unable to work by reason of any physical or mental disability or terminal illness.

To qualify for disability benefits, the incapacity must be of a continuous nature extending over a period of 52 weeks or more. If the disability is in the form of a terminal illness, a doctor must certify that the employee suffers from a progressive disease, and that his or her death from that disease can reasonably be expected within 12 months.

There are two types of disability benefits -- contributory and non-contributory. To qualify for contributory disability benefits, an employee must be insured and over the age of 18 years, but under the age of 65 years (pension age). In addition, the employee must be gainfully employed immediately preceding the date of becoming incapacitated; must have made at least 150 contributions and a yearly average of at least 50 contributions; and must produce a certificate from a registered doctor certifying incapacity or terminal illness.

If the employee's yearly average of paid contributions is between 25 and 49, then he or she will still be entitled to contributory disability benefits, but the benefits will be reduced pro rata.

A non-contributory disability benefit is available to persons who have not paid any contributions. Such persons must meet certain residency requirements in order to be eligible.

### *F. Pregnancy Leave/Paternal Leave*

Section 15 of the EA 2000 provides that a pregnant employee who has completed over one year of continuous employment is entitled to take paid time off during working hours to attend ante-natal appointments. If her employer requests it, the employee must produce a medical certificate and appointment card verifying the pregnancy and the appointment in order to obtain this benefit. Employees who have worked less than one year are entitled to the time off, but without pay.

A pregnant employee is entitled to 12 weeks of maternity leave after one year of continuous employment (as of her expected due date) if she provides her employer with a medical certificate verifying the pregnancy and specifying the estimated date of birth. To receive the entitlement, the employee must also submit an application for maternity leave at least four weeks before she intends to commence her leave. Of the 12 weeks, 8 weeks are paid leave and the other 4 weeks are unpaid leave. If the employee has been employed for less than 1 year, she is only entitled to 8weeks of unpaid leave.

There is no governmental organization in Bermuda that provides for the employee's payment of wages during maternity leave. All paid maternity leave is paid directly by the employer to the employee.

If the employee intends to return to her position following her maternity leave without loss of seniority, she must notify her employer at least two weeks in advance of the date on which she intends to resume work. If the employee's position no longer exists, the employer must provide the returning employee with a similar position with at least the same level of wages and benefits as she was receiving before her maternity leave. If the employee fails to notify her employer at least two weeks in advance of the date she intends to resume work, the employer is entitled to assume that the employee has resigned (section 16).

Where an employee is entitled to more than the above entitlements by reason of any statute, agreement, contract of employment, and/or custom or practice, then the more favourable provision prevails over the minimum entitlements set out in the the EA 2000 (section 2).

### *G. Workers' Compensation*

In Bermuda, the Workmen's Compensation Act 1965 governs compensation to employees who are injured on the job and, thus, are unable to work. For further explanation of the Workmen's Compensation Act 1965, *see* Section IX below.

## IV. Termination Issues

### *A. Wrongful Termination Claims*

An employee is entitled to bring court action for wrongful dismissal if the employer has breached a term of the contract of employment that causes the employee to suffer a loss. Examples of breaches include the following.

- The employee was engaged for a fixed period of time and was dismissed before the expiration of that fixed period;
- The employee was engaged for a period terminable by notice (e.g., three months) and dismissed without the proper amount of notice or payment in lieu of notice;
- The employer fired the employee summarily without sufficient cause;
- The employer failed to follow the disciplinary procedures stipulated in the contract before terminating the employee;
- The employer "constructively dismissed" the employee by substantially refusing to continue employing him or her on the agreed upon terms of employment (e.g., by cutting pay, demoting, changing the place of employment, etc.).

A Supreme Court decision rejected the assertion that the statutory framework for resolving employment disputes under the EA 2000 deprived the courts of jurisdiction to entertain wrongful dismissal claims. Accordingly, it is open to an employee to pursue a common law claim in the courts, notwithstanding his or her right to pursue his or her statutory remedies under the EA 2000

An employee has six years from the date of the alleged breach of contract by the employer in which to institute his or her common law action in the courts.

Presently, the EA 2000 employees with statutory remedies for unfair dismissal when the employer has violated a provision of the Act relating to termination. Except in cases of constructive dismissal, the burden of proof is on the employer to prove that the dismissal was fair (section 38).

The employee must file his or her complaint under the EA 2000 within three months of the alleged breach of duty by the employer. The complaint is made to an inspector, who must try to settle the dispute between the parties. If the inspector is unable to do so, and reasonably believes that the employer has failed to comply with the Act, he or she must refer the employee's complaint to the Employment Tribunal, which will hold a hearing on the matter. The Tribunal has power to order various remedies, including compliance with the EA 2000, reinstatement of the employee, or compensation awards up to a maximum of 26 weeks of wages.

Examples of wrongful termination claims under the EA 2000 would include:

- **The required amount of notice to terminate was not given by the employer, or it was given during prohibited periods**.

Section 18 of the EA 2000 states that an employee's contract of employment shall not be terminated by an employer unless the employer complies with the notice requirements of section 20. The amount of notice to be given must be stated in the contract (this does not apply during any probationary period). The employer is not allowed to give notice of termination during an employee's absence on annual vacation, maternity leave, bereavement leave, or sick leave unless the period of sick leave extends beyond four weeks. Breach of any of these provisions could lead to a complaint being filed under the Act.

- **The employee was terminated for an invalid reason**.

Section 18 of the EA 2000 states that, except as otherwise provided by sections 25 (summary dismissal for serious misconduct), 26 (dismissal for repeated misconduct within a six-month period), and 27 (dismissal for unsatisfactory performance that has not improved within a six-month period), an employee's contract of employment shall not be terminated by an employer unless there is a valid reason for doing so, such as:

- The ability, performance, or conduct of the employee; or
- The operational requirements of the employer's business.

such that it would be unreasonable to expect the employer to continue the employment relationship.

If the termination cannot be justified for either of these reasons, it is an unfair dismissal.

Section 22 of the EA 2000 states that the employer must provide the employee with a "Certificate for Termination" stipulating the reason for the termination if the employee makes such a request.

Section 28 of the EA 2000 provides that an employee's dismissal is unfair if it is based on any of the invalid reasons listed in that Section (*see* Section I.B above).

- **Constructive (Unfair) Dismissal**.

Section 29 of the EA 2000 provides that an employee is entitled to terminate his or her contract of employment without notice where the employer's conduct has made it unreasonable to expect the employee to continue working for the employer, keeping in mind the employee's duties, length of service and circumstances. This also amounts to an unfair dismissal for the purposes of the Act. In such situations, the burden of proof is on the employee to prove why continuing the employment relationship unreasonable (section 38).

### *B. Discrimination Claims*

*See* Section I.B above.

### *C. Severance Pay*

Where an employee has completed at least one continuous year of employment, and his or her employment is terminated by reason of redundancy (defined in s. 30 of the EA 2000), the winding up or insolvency of the employer's business, the death of the employer, or the death of the employee from an occupational disease or accident resulting from that employment, the employee is entitled to be paid a severance allowance under section 23 of the EA 2000. The amount of such severance depends on the employee's length of service, and is set out in section 23, namely two weeks' wages for each year of completed service up to 10 years, and three weeks' wages for each year of completed service over 10 years, subject to a maximum cap of 26 weeks' wages. .

Severance allowance is not payable in certain specified circumstances, for example, where the employee unreasonably refuses to accept certain offers of re-employment or enters into new employment in certain circumstances.

Where severance allowance is payable, it is in addition to the employee's entitlement to notice, or payment in lieu of notice, arising out of termination.

### *D. Harassment*

Section 6B of the Human Rights Act 1981 (as amended) provides that no employee shall be harassed in the work place by the employer or another employee, whether such harassment is based on race, colour, ancestry, or place of origin. Harassment occurs when a person persistently engages in comment or conduct towards another person that is vexatious; and that he or she knows, or ought reasonably to know, is unwelcome.

Sexual harassment by employers, by fellow employees, by landlords, and by fellow occupants of the same building, is prohibited by section 9 of the Act. Employers have a duty to take whatever action is reasonably necessary to ensure that sexual harassment does not occur in the workplace. A person sexually harasses another person if he or she engages in sexual comment or conduct towards that other person that is vexatious and that he or she knows, or should know, is unwelcome.

Complaints of harassment are made to the Human Rights Commission under section 15 of the Human Rights Act 1981 (as amended). The Commission investigates the complaint and, if it fails to resolve the grievance, it must refer the matter to the Minster for Labour, who will then decide whether to refer it to a Board of Inquiry. The Board has wide powers to award compensation and make orders for redress, including awards for injury to feelings.

## V. Layoffs/Work Force Reductions/Redundancies

### *A. Advance Notice*

Section 32 of the EA 2000 provides that an employer that is laying off an employee must do so in accordance with the Act.

Where any of the specified conditions of redundancy exist (these are defined in section 30 of the EA 2000 and include, for example, the modernisation or discontinuance, or sale or reorganisation of the business), the employer may lay off an employee for a continuous period not exceeding four months.

A lay off that exceeds a period of four months amounts to a termination by reason of redundancy.

Section 30 of the EA 2000 mandates that, before terminating an employee for redundancy, as soon as practicable, the employer shall inform the employee's trade union or other representative (if any) of the following information:

- The existence of the relevant condition of redundancy;
- The reasons for the termination contemplated;
- The number and categories of employees likely to be affected; and
- The period over which such termination is likely to occur.

In addition, the employer must consult the employee's trade union or other representative (if any) on:

- The possible measures that could be taken to avert or minimise the adverse effects of such redundancy on employment; and
- The possible measures that could be taken to mitigate the adverse effects of any termination on the employees concerned.

Often, there will be a collective bargaining agreement between the employer and the relevant union that delineates the requirements to be followed and the benefits (if any) to be paid in the event of an intended layoff or redundancy.

### *B. Severance Pay*

See Section IV.C above.

### *C. Benefits*

Employers are not required to provide benefits for employees who are laid off (beyond the notice and severance allowance requirements), unless they have contracted to do so

### *D. Use of Separation Agreements*

Separation agreements are enforceable in Bermuda, and arise in the context of termination of employment generally; they do not arise specifically in the context of layoffs and redundancies. Separation agreements are construed and enforced in accordance with normal contract law principles. .

## VI. Unfair Competition/Covenants Not to Compete

### *A. Trade Secrets*

Implied into the employment contract is a duty on the part of the employee not to misuse or disclose confidential information from the employer or former employer, including trade secrets. However, because this implied duty is often difficult to define and enforce, employers who are concerned about their trade secrets being disclosed often use express non-competition clauses.

Trade secrets, trademarks, copyright, and other types of confidential information are viewed by the courts as an employer's legitimate business interests, all of which the employer is entitled to protect by means of a non-competition clause

### *B. Covenants not to Compete*

An issue that often arises for consideration is the employer's ability to enforce an express term prohibiting an employee from competing with the employer after the employee's contract has ended. Normally, a covenant in restraint of trade is only enforceable to the extent that it is reasonable in seeking to protect an employer's legitimate business (for example, trade secrets).

The court generally is vigilant in ensuring that only the minimum protection needed to serve the employer's legitimate business interests will be afforded; as such, it will often strike down clauses that are unlimited as to time, geographic extent, and scope. The court also will not uphold clauses that seek to stifle bona fide competition or prevent the employee from using his or her own skills and knowledge, even if gained while in the former employer's service.

In addition to being reasonable, the clause must be founded on good consideration and not be too vague. The burden of establishing the validity of the term is on the party seeking to uphold it. Therefore, covenants that restrict the employee's freedom to work must be carefully drafted, or they will not be effective in achieving their purpose.

An alternative to a formal covenant in restraint of trade, particularly for a key employee, is the inclusion of a "garden leave" clause in the employment contract. This clause subjects the employee to a lengthy notice requirement (e.g., six months), during which the employer continues to pay the employee his or her normal wage and benefits, but does not require him or her to actually work. In return, the employee is precluded from

accepting employment elsewhere until the expiry of the notice period. While a “garden leave” clause may reduce an employer’s risk of losing business to competitors, due primarily to the fact that the key employee is barred from seeking new employment, taking such action comes at a cost.

Even if the contract does not contain either a restraint-of-trade or garden leave clause the employer may try to rely on the implied duty of confidentiality as it applies after the termination of employment. As stated above, a former employee has an implied duty not to misuse the confidential information of his or her former employer. However, inasmuch as this implied duty is often difficult to define and enforce, employers are advised to instead use express non-compete clauses.

### *C. Non-Solicitation of Employees and Customers*

It is lawful for employers to keep key employees by means of a covenant that prohibits a former employee from soliciting other employees to join him or her in his or her new employment.

In certain circumstances, it may be legitimate to protect against the solicitation of a former employer’s customers and clients; however, there are limitations on the extent to which the court may regard such terms as in fact protecting the employer’s business. The legal principles must be considered carefully in light of the facts of a particular case, and care must be taken when drafting these types of covenants to ensure that they are, in fact, enforceable under Bermuda law.

## VII. Personnel Administration

### *A. Required Postings*

The Health & Safety at Work Act 1982 requires employers to establish a health and safety committee, and to post the names of the committee members in a prominent place at the workplace.

There is no other legislation in Bermuda in the employment law context that requires notices to be posted. Most often, the issue will be dictated by the contract of employment. Postings are more likely to be required in contracts taking the form of a collective agreement (e.g., postings that encourage internal recruitment when a position becomes available).

### *B. Required Training*

Bermuda does not mandate employment-related training for employees or managers. However, as a matter of government policy, employers’ applications to the Department of Immigration to hire non-Bermudians are more likely to be approved where a training programme for Bermudians exists in the workplace.

### *C. Personnel Records*

Data protection legislation that would allow employees to have access to their personnel records is currently under consideration in Bermuda. The legislation also would prohibit the employer from disclosing these records to third parties without authorization from the employee.

### *D. Meal and Rest Periods*

There is no Bermuda legislation relating to meal periods. Contractual obligations regarding meal breaks are often included in collective agreements.

Under section 10 of the EA 2000, Bermuda employers must provide their employees with a rest period of at least 24 consecutive hours each week. This requirement does not apply to certain categories of employees, such as police officers, prison officers, fire officers, and medical practitioners and nurses employed at the hospitals. Collective agreements often will govern rest periods in various industries.

### *E. Payment Upon Discharge or Resignation*

The EA 2000 introduced the concept of a minimum period of notice of termination that must be given to every employee. Pursuant to section 20, an employee is entitled to at least one week's notice if he or she paid on a weekly basis, two weeks of notice if he or she paid every two weeks, and in all other cases, to one month's notice. If an employment contract stipulates a greater amount of notice, then the contractual provisions shall apply.

An employer may in its discretion elect to make payment in lieu of requiring the employee to work out his or her notice period. In such cases, the employee is entitled to his or her full salary along with all other normal benefits that accrue during this time, including but not limited to accrued but unused vacation, housing allowance or cash benefits.

If the employee leaves without giving proper notice, the employer only has to pay salary, any accrued but unused vacation and benefits, including any housing allowance or cash benefits, up to the date of termination.

No notice need be given by either side if the employment is terminated during the probationary period (s.19 EA 2000).

For certain types of termination (e.g., redundancy, the closing or insolvency of the employer's business, the death of the employer, or the job-related death of an employee), the employer must pay the employee (or, in the case of an employee's death, his or her family),"severance allowance" in addition to giving the requisite notice. The amount payable is two weeks wages for each year of completed service up to 10 years, and three weeks' wages for each year of completed service over 10 years, subject to a maximum cap of 26 weeks' wages.

Although it is not expressly stated, the usual deductions have to be made from this amount, under the relevant statutory provisions in other legislation, for payroll tax, health insurance coverage, private pension, and government pension (social insurance).

It should be noted that payment in lieu of notice and severance does not have to be paid when the employee is summarily dismissed for serious misconduct or for repeated misconduct within six months after a warning, or is terminated for unsatisfactory performance after receiving a written warning, and the performance has not improved within six months. However, the dismissed employee is still entitled to any accrued vacation and benefits due to him or her prior to the date of termination.

No additional payment over accrued salary is due when an employee is terminated during a probationary period.

### *F. Giving Employment References*

Bermuda law does not require employers to provide employment references. *See* Section I.F above for additional discussion on this issue.

### *G. Recordkeeping*

- The Hospital Insurance (Inspection of Records) Regulations 1971 direct employers to maintain employment and wage records relating to all employees that contain specified information, as stipulated in the Act. Government inspectors have the authority to enter an employer's premises to examine these records and make inquiries to ensure that the requirements of the Act are being met.
- Employers are required by the National Pension Scheme (Occupational Pensions) Act 1998 to establish and maintain a pension plan for their employees. They are further required to provide the administrator of the pension plan with any information that is needed in order to comply with the terms of the plan, the Act, or its regulations. Where employers are the administrator of their employee's pension plans, they must keep and maintain specified records pertaining to the plan, as prescribed by the Act and its regulations.
- Under the Human Rights Act 1981, the Human Rights Commission may require employers to furnish such information about employees and applicants for employment as the Commission may reasonable require in order to discharge its functions of seeking to eliminate racial discrimination. An employer who refuses to furnish the required information or provides false information commits a criminal offence.
- The Health & Safety at Work Act 1982 gives the Minister authority to make regulations imposing requirements on the submission and maintenance of certain records, including plans and maps. Government inspectors can demand the production of such records, but are obliged to keep the information confidential.
- The Notification of Accidents and Dangerous Occurrences Regulations 1985requires employers to keep written records of accidents and dangerous occurrences at the workplace for at least six years.

## VIII. Privacy

There is no general right to privacy under Bermuda law.

Article 8 of the European Convention on Human Rights provides that everyone has the right of respect for his private and family life, his home, and his correspondence. The Court of Appeal for Bermuda has noted that, although the Convention was extended to Bermuda by the United Kingdom (before the Bermuda Constitution took effect in 1968), no domestic legislation has been passed to specifically implement the Convention in Bermuda. Therefore, the force of law to be applied by the Bermuda courts is the Bermuda Constitution, and not the Convention.

With respect to privacy, section 7 of the Bermuda Constitution only goes so far as to provide protection against unlawful searches and trespass. The section makes it unlawful to search persons or their property or to enter onto their premises without their consent. There are various public interest exceptions to these protections, which are set out in section 7, and which must be shown to be reasonably justifiable in a democratic society.

In addition to these constitutional rights, section 61 of the Telecommunications Act 1986 provides that privacy of communication shall be inviolable except under certain circumstances. Specifically, section 62 of the Act allows the Governor, by warrant, to direct that telecommunication messages shall be intercepted, detained, or disclosed to the Governor, or prohibited altogether from being transmitted where the interests of defence, public safety, public order, or public morality so require.

In addition, section 3 of the Computer Misuse Act 1996 makes it an offence for a person to take action with the intent of securing access to any program or data held in any computer under circumstances where he or she knows that such access is unauthorised.

The Bermuda Government plans to soon introduce new data protection legislation aimed at addressing an employee's right to access information about himself or herself, the obligations of the holders of that information (e.g., employers) to keep it safe and accurate, and the circumstances under which the information may be transferred to a third party. *See also* Section VII.C.

### *A. Drug Testing*

Although the use or possession of drugs in Bermuda is a criminal offence, there are no laws that allow employers to conduct involuntary drug tests on applicants or employees. Some private employers will provide for drug testing as a condition of employment and it is up to the employee whether they wish to contractually bind themselves to this condition of employment.

### *B. Personnel Records and Information*

Bermuda will soon be implementing data protection legislation that would allow employees to have access to their personnel records and protect the unauthorized disclosure of such records to third parties.

### *C. Off-Duty Conduct*

While there are no laws on the subject, employers cannot discharge or discriminate against an employee for engaging in misconduct (e.g., smoking or drinking) away from the employer's premises unless the misconduct is directly related to the employment relationship or has a detrimental effect on the employer's business.

### *D. Medical Information*

There are no specific laws requiring employers to establish procedures that would protect medical information about employees from being disclosed, although this would be expected of employers as a matter of good practice. Bermuda is planning to implement data protection legislation that will cover such information.

### *E. Searches*

Section 7 of the Bermuda Constitution protects persons from unlawful searches. There are, however, various public interest exceptions to these protections, which are set out in section 7 and which must be shown to be reasonably justifiable in a democratic society.

There are no specific laws addressing the employer's right to search employee property brought on to company premises. If the employer wishes to avail itself of this right – which would certainly be viewed in the Bermuda context as exceptional – the employer shoulddisseminate clearly written policies stating that the employer may search such property on the premises at its discretion.

### *F. Lie Detector Test*

There are no laws that allow employers to require applicants or employees to take lie detector tests as a condition of employment or continued employment.

### *G. Fingerprints*

There are no laws allowing Bermuda employers to require applicants or employees to furnish fingerprints.

### *H. Social Security Numbers*

Bermuda does not have a social security system similar to the United States.

### *I. Surveillance and Monitoring*

Section 61 of the Telecommunications Act 1986 makes it an offence for any person to tap any wire, cable, or optical fibre, or to use a device to secretly overhear, intercept, or record such signals. The section also prohibits persons from knowingly possessing, replaying, transcribing, or communicating the contents of any records of such prohibited communications. Such communications are not admissible as evidence.

Exceptions are made in the case of police officers investigating telecommunications offences and also in the case of Governor where he is satisfied that the interests of defence, public safety, public order or public morality so require.

There are no specific laws that protect an employee's right to privacy with respect to his or her employer. The issue often arises in the context of employees' use of the Internet or electronic mail system while at work. If the employer wishes to have the right to monitor the use and content of such communications, it should state this clearly in written policies disseminated to all employees.

## IX. Employee Injuries/Workers' Compensation

The Workers' Compensation Act 1965 (as amended) provides for compensation by the employer to workers who are injured on the job (whether partially or totally incapacitated), or who suffer fatal injuries or occupational disease. The system is supervised by the Ministry of Labour, although rights under the Act can be determined and enforced by the Supreme Court. The parties are not allowed to opt out of the provisions of the Act.

If an injury was caused by the negligence or willful act of the employer, there is nothing to stop the worker from bringing an independent court action for damages against the employer, in addition to seeking Workers' Compensation. If the employee is unsuccessful in establishing liability in an independent court action, the court may proceed to determine whether the employee is entitled to Workers' Compensation. If such compensation is

payable, the court may deduct any extra costs that the employer incurred in having to defend the other set of proceedings.

Given the relatively low sums that are paid out under the Workers' Compensation legislation, injured employees will fare better if they pursue a regular court action, assuming they can prove the relevant breach of duty on the part of the employer.

There is no specific statutory protection for employees against being fired for filing workers' compensation claims.

## X. Unemployment

Bermuda currently does not have an unemployment benefits system, due to the fortunate fact thatthere is a low rate of unemployed persons on the Island.

However, the Government of Bermuda recently established a fund with a view toward establishing an Unemployment Insurance ("UI") Scheme in order to provide financial security to workers faced with involuntary employment.

Qualified participants would be afforded benefits, provided they are capable of working, available for work, and actively seeking work. The benefits are to be calculated as partial wage replacement, paid periodically to avoid creating disincentives to work.

It has not yet been determined which type of employee will qualify for UI and what entity will fund it. Employers are understandably concerned about the cost because UI benefits will be in addition to payroll tax, payment in lieu of notice, severance allowance, paid leave, and redundancy and lay-off pay, which employers are now required to pay pursuant to the EA 2000.

Other aspects of the UI scheme such as benefits, conditions for entitlement and administration have yet to be addressed or confirmed.

## XI. Health & Safety and Unions - Industrial Relations

### *A. Health and Safety*

The Health and Safety at Work Act 1982 imposes a scheme of general duties on all employers to provide basic safety at work and minimum health standards for places of employment. The employer must ensure that there are safe systems of work, safe systems for handling dangerous or hazardous substances, and training and supervision for safety. Employers also have a general duty to: (1) conduct business in such a way that third parties are not exposed to health or safety risks; (2) provide information to employees regarding the general policies on health and safety matters, and (3) carry out those policies. In turn, employees are obliged to take reasonable care to protect their own health, as well as the health of others at the workplace.

All of these duties are general in the way they are expressed and how they apply to a wide variety of business situations and work conditions. The Act provides for regulations and codes of practice to be implemented, taking

into account different types of working environments (for example, offices, factories, warehouses, hotels, and construction sites all have their own special health and safety issues). Most working environments are covered by the Health and Safety at Work (General Requirements) Regulations 1986. Specifically, the workplace must provide adequate ventilation, lighting, and sanitary facilities, it must be clean, and it must ensure the safe operation of equipment and machinery, in addition to other safety duties. First aid facilities must be provided and a sufficient number of staff must be familiar with or have had basic training in administering first aid techniques. Fire extinguishment equipment, emergency exits, and training are to be provided by all employers, and fire drills should be a regular occurrence. All employers must establish a health and safety committee of employees and post their responsibilities on each floor or in common work areas.

The health and safety regulations are enforced by inspectors who have the authority to enter premises, take samples, run tests, require the production of documents, etc. If there is a contravention of the Act or regulations, the inspector can require the employer to remedy the contravention or order the activity stopped if it appears likely to involve a risk of serious injury. The Minister has authority to close a worksite or work premises if he or she believes that doing otherwise poses a danger to the health or safety of employees.

If a breach of the health and safety regulations causes damage, the person who suffers the damage can bring an action in court against the offending party.

The Notification of Accidents and Dangerous Occurrences Regulations 1985 mandates that employers notify the Minister of Labour of any accidents or dangerous occurrences at the worksite that result in the death of or major injury to an employee. In addition, employers must keep written records of all such accidents for at least six years. A breach of these duties can result in criminal penalties.

### *B. Unions*

The Trade Union Act 1965 establishes the basis of the legal existence and purposes of trade unions, registration, power to bring and defend actions, keep accounts, and general legal capacity to act in their own right. Every trade union must be registered and must establish rules setting forth the purposes for which it was established, the appointment and removal of trustees and officers, its investment of funds, audit of accounts, and the like. The rules must also provide for a secret ballot for the election of officers and for strike or lockout action.

Trade union contracts are not enforceable in court with respect to the breach of certain agreements, specifically: (1) any agreement concerning the conditions on which members shall sell goods, transact business, employ, or be employed; and (2) any collective agreement between a trade union and an employer or group of employers.

Trade unions are not liable in tort except with respect to tortious acts committed by or on behalf of a union in contemplation of a labour dispute.

Employment rights may be modified where there is an agency shop in force – i.e., where the terms and conditions of employment require employees to be members of a union or pay union dues. More specifically, an employer that is required to set up an agency shop, based on the results of a ballot, is entitled by law to discriminate by hiring only union members, and to dismiss non-union members from employment who refuse to

pay the union dues or donate them to charity. The trade union has a right to apply to the court to enforce the agency shop. In addition, protections are given to union members who are victimized by employers for giving information to or cooperating with a conciliator or an Arbitration Tribunal acting in a labour dispute.

The Trade Union Act was amended in 1998 to add provisions regulating the bargaining rights of trade unions and the certification and decertification of bargaining units. Previously, the employer had to agree to formally recognize the union as the employees' bargaining agent, even where the majority of employees wished for the union to represent them. The 1998 Act has the effect of requiring employers to certify the union as the bargaining agent in certain circumstances, provided the requisite number of employees votes in favor of such action. There are penalties stipulated for attempts by employers or unions to influence the outcome of the vote.

The Labour Relations Act 1975 Act sets out the basic right of union members to participate in a peaceful picket or demonstration at a place of employment for the purpose of peacefully obtaining or communicating information, or for persuading any person to work or abstain from work. Picketing must be in contemplation or furtherance of a labour dispute and in accordance with the Picketing Rules. Intimidation and harassment are not permitted, and may result in a conviction and fine or imprisonment.

The Act aims to ensure that all labour disputes are referred to the Labour Relations Officer for conciliation and settlement. If the Labour Relations Officer is unable to achieve settlement, he or she may refer the matter to the Minister for Labour. If both parties consent, the Minister may, in turn, refer the dispute to arbitration, which could take place before the Permanent Arbitration Panel. The Minister also has the authority to appoint a board of inquiry to look into a labour dispute and to publish a report of its findings.

Actions taken in furtherance of a labour dispute that induce a breach of contract of employment or interfere with a trade or business are immune from civil action, provided they otherwise comply with the Act and Rules.

A strike is lawful when it complies with the requirements of the Act, namely, when it is conducted by members of a trade union in a manner that complies with the Picketing Rules, and it relates to a trade or industry in which there is a bona fide labour dispute. A strike is unlawful if it is for any purpose other than furthering a bona fide labour dispute, or is intended to coerce the government or inflict hardship upon the community.

Pursuant to the Trade Disputes Act 1992, which applies to labour disputes in trades or industries, the Minister of Labour may declare by public notice that such a dispute exists in a trade or industry and may appoint a Trade Disputes Tribunal to inquire into it and make a decision and/or award. Once the Minister's notice is published, continuance of the strike or lockout becomes unlawful.

A strike/lockout that would be lawful for an ordinary trade or industry becomes unlawful for an "*essential service industry*" unless proper notice of the labour dispute and intended strike has been given to the Labour Relations Officer. If the Minister for Labour refers the dispute to the Permanent Arbitration Panel, the strike/lockout notice is suspended pending determination of the dispute by the Panel. The decision by the Permanent Arbitration Panel is final and binding upon the parties for a period of up to two years.

The Act establishes an Essential Industries Disputes Settlement Board to adjudicate labour disputes in essential service industries. It furthermore empowers the Minister of Labour (if he or she has been unable to achieve a settlement) to submit the dispute to the Board irrespective of the parties' wishes or the procedures agreed to or set forth in a contract or collective bargaining agreement. The Board's work is an immediate priority and, where practicable, must deliver a decision within 21 days. That decision is then binding and conclusive on all parties, although they may go back to the Board with questions of interpretation regarding the award.

The court has statutory power to grant temporary or permanent injunctions to restrain actual or anticipated breaches of the Trade Disputes Act, and proceedings may be brought immediately whenever any person has a sufficient interest in the relief sought. A sufficient interest includes any person whose property or business is or is likely to be injured by the breach of the Act or whose premises are being picketed.

[1] Please note that all links to legislation are as of the date stated, or in the case of legislation from the Bermuda Government's website, the most recent consolidation. Legislation may be updated at http://www.bermudalaws.bm/.