

CANTERBURY LAW'S BERMUDA EMPLOYMENT LAW HANDBOOK - 2015

In this Handbook any reference to the masculine “him” is intended to include all other genders unless stated otherwise and words importing the singular include the plural and vice versa. Further, any reference to a statutory provision is intended to include a reference to any statutory modification or re-enactment of it.

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 in its current form can be viewed at <http://www.bermudalaws.bm>.

I. THE EMPLOYMENT CONTRACT – GENERAL

Things said and done during the hiring process may affect an employer’s ability to later fire someone lawfully. Since March of 2001 when the [Employment Act 2000](#) (“EA 2000”) came into effect, employers in Bermuda are required to have a valid reason to terminate the contract by reason of s.18. A clause in the contract that purports to give the employer the right to terminate “at will” (i.e. without just cause) is unlawful and thus unenforceable.

A1. Common Law Claims – Wrongful Dismissal

An employee may still sue his employer in court for common law breach of the contract of employment (“wrongful dismissal”). The written terms of the contract of employment may be contained either directly in the contract/statement of employment or they may exist separately (e.g. in the offer letter, a staff memo, the Employee Handbook, on the Intranet, in a Collective Agreement, etc.).

In such cases those separate terms may be construed to be incorporated into the contract of employment by express reference or implication. To form an effective part of the contract, the employer should ensure that the employee signs a document to confirm that the provisions of the separate document have been brought to his attention and are incorporated in the contract. If the employer does not want these separate terms incorporated in the contract (e.g. a discretionary bonus scheme or the Employee Handbook because he wants to be able more easily to amend their provisions at will), he should use clear and conspicuous language that the terms 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, most likely the employer (the “*contra proferentem*” rule).

In addition, separate express oral promises or statements made by the employer during the hiring negotiations may form part of the contract. Employers should not make oral promises or

representations that contradict the written contract between the parties. To help avoid this, the written contract should stipulate that it forms the “whole contract,” and supersedes and takes precedence over any prior oral representations or statements that shall have no effect.

A related area of the common law is the tort of misrepresentation arising from negligent representations or misstatements that may be made by the employer to the employee regarding the terms, conditions, or other material facts arising in the course of negotiating the employment contract. If the employee relies on such negligent statement to his detriment, he can bring an action for damages against the employer for the loss suffered. This can have particular relevance to Bermuda where an employee might be induced to sell the family home abroad and give up a job to come to Bermuda on the faith of verbal promises made by the employer (and later denied), only to find that realistically he (the employee) cannot afford to complain about the situation upon arrival in Bermuda on an immigration work permit that can be revoked if he stirs up trouble.

In rare cases, certain customary or “notorious” terms in a given industry or profession may be read/implied into the contract, but only if they are sufficiently well defined so as to be certain and universally applied in the trade or profession in question.

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 himself in such a way as to undermine the relationship of trust and confidence that exists between him 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 that employer any longer (see below).

A2. Statutory Claims – Unfair Dismissal

In addition to common law claims, the employee may file a statutory complaint of unfair dismissal if the employer breaches the provisions of the [EA 2000](#). The [EA 2000](#) limits the circumstances under which the employer may terminate the contract. S.20 prescribes minimum periods of notice that must be given and s.18 provides that, subject to other sections of the Act (ss.26 and 27 requiring a written warning in the case of unsatisfactory performance or misconduct falling short of serious misconduct), 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.

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

In addition, s.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 s.13 (public duties), or due to service as a volunteer fire officer;
- an employee who removes himself from a work situation which he 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](#);
- the employee has filed a complaint or participated in proceedings against an employer involving alleged violations of the [EA 2000](#); or
- the employee has made a protected disclosure as a whistle-blower under s.29A of the [EA 2000](#).

B. Discrimination

The [Human Rights Act 1981](#) (as amended) ("[HRA 1981](#)") has primacy over other laws and applies generally to persons in Bermuda (including employers and employees) and prohibits discrimination on any one of the following protected categories as defined in s.2, namely: race, place of origin, colour, ethnic or national origin, sex, pregnancy, sexual orientation, marital status, disability, family status, religion or beliefs or political opinions, or criminal record (except where there are valid reasons relevant to the nature of the offence that would justify the difference in treatment).

Discrimination occurs if:

- less favourable or deliberately different treatment is given to a person as compared with others generally because of one of the protected grounds; or

- someone refuses to enter into a contract or arrangement with a person on like terms and circumstances as in the case of other persons generally; or
- someone applies to another person a condition which he applies to others generally but which has a discriminatory effect on the person concerned which cannot be shown to be justifiable and which operates to the detriment of the person discriminated against because he cannot comply with that condition (e.g. the condition that all employees must work on Saturdays cannot be complied with by Jehovah's Witness employees on religious grounds).

As for employers, s.6 of the [HRA 1981](#) makes it unlawful to discriminate against a job applicant or employee in any of the above ways by:

- refusing to refer or to recruit any person or class of persons for employment;
- dismissing, demoting or refusing to employ or continue to employ any person;
- paying one employee at a rate of pay less than the rate of pay paid to another employee employed by him for substantially the same work, the performance of which requires equal education, skill, experience, effort and responsibility and which is performed under the same or substantially similar working conditions, except where the payments are made pursuant to—(i) a seniority system; (ii) a merit system; or (iii) a system that measures earnings by quantity or quality of production or performance;
- refusing to train, promote or transfer an employee;
- subjecting an employee to probation or apprenticeship, or enlarging a period of probation or apprenticeship;
- establishing or maintaining any employment classification or category that by its description or operation excludes any person or class of persons (as defined in s.2) from employment or continued employment;
- maintaining separate lines of progression for advancement in employment or separate seniority lists, in either case based upon criteria specified in s.2, where the maintenance will adversely affect any employee; or
- providing in respect of any employee any special term or condition of employment.

Certain express statutory exceptions are made in the Act including, most importantly, subsection 6(6) which provides that the provisions prohibiting discrimination, limitation, specification or preference for a position or employment based on sex, marital status, family status, religion, beliefs or political opinions, or any related advertisement or inquiry, do not apply where a particular sex or marital status, religion, belief or political opinion, or availability at any particular time, as the case may be, is a *bona*

fide and material occupational qualification and a *bona fide* and reasonable employment consideration for that position or employment.

However the Act makes clear that nothing in it confers the right on any person to be given, or to be retained in, any employment for which he is not qualified or which he is not able to perform, or of which he is unable to fulfil a *bona fide* occupational requirement, or any right to be trained, promoted, considered or otherwise howsoever treated in or in relation to employment, if his qualifications or abilities do not warrant such training, promotion, consideration or treatment.

Disabled persons are protected in that they are not considered disqualified for employment by reason of their disability if it is possible for the employer / prospective employer to modify the circumstances of the employment so as to eliminate the effects of the disability in relation to the employment, without causing unreasonable hardship (as defined in the Act) to the employer.

Further the Act allows an exception to give preference in hiring to Bermudians and also to take into account someone's nationality *bona fide* for reasons of national security.

Other exceptions are made in the context of employment involving physical strength/stamina of the prospective employee and in hiring by religious, charitable and social non-profit organizations.

Any term of a contract of employment that contravenes the [HRA 1981](#) is not rendered void or unenforceable by reason only of breaching the Act, but may be rectified by a Court upon application so as to secure compliance with the Act going forward if it appears to the Court that it is feasible to do so without affecting the rights of persons who are not parties to the contract.

The Act provides a regime for filing complaints about breaches of human rights with the Human Rights Commission. The Commission's Executive Officer has the power to investigate and collect evidence if he has reasonable grounds for believing that an employer has breached the Act. He also has a duty to seek to settle the causes of the complaint (through mediation or conciliation by mutual consent of the parties) or to endeavour to cause the breach to cease, as the case may be. He may dismiss the complaint at any stage of the proceedings after giving the complainant an opportunity to be heard, if in his opinion the complaint is without merit.

Where it appears to the Executive Officer that it is unlikely in the circumstances that the causes of a complaint will be settled or he has been trying for nine (9) months to settle the causes but has been unsuccessful, and the complaint is not so serious as to warrant a prosecution, he must refer the complaint to a Tribunal appointed under the Act.

The Tribunal will hear the complaint and decide whether or not a party has breached the Act and may do any one of more of the following:

- order the party in breach to come into compliance with the Act and rectify any injury caused to the complainant by the breach and to make financial restitution (except for any loss which the complainant could have avoided had he acted reasonably);
- if an offence has been committed and it is satisfied that its order will not be complied with, refer the complaint for prosecution; and/or
- order any party to the dispute to pay any other party or the Commission costs of the proceedings before the Tribunal up to \$1000.

If the Tribunal decides after hearing a complaint that it is frivolous or vexatious and unjustified, the Tribunal may order the complainant to pay compensation to the respondent, not exceeding the reasonable costs incurred by the respondent to defend himself against the complaint.

There is a right to appeal to the Supreme Court from an order of the Tribunal on matters of fact or law or both. In addition, criminal penalties of fines or imprisonment are imposed upon conviction for offences of wilful and unlawful discrimination, or for aiding, counselling or procuring another person to discriminate against a person in breach of the Act.

As an alternative to bringing a complaint under the [HRA 1981](#), a complainant may opt to sue in Court for breach of statutory duty under the Act in civil tort proceedings as permitted by s.20A of the Act. Damages for unlawful discrimination may include compensation for injury to feelings.

It can be seen that the [EA 2000](#) overlaps somewhat with the [HRA 1981](#) in rendering unlawful a dismissal based on a protected human rights ground. The aims of the Acts are different however; the termination provisions of the [EA 2000](#) are aimed at compensating the employee for unfair dismissal whereas the [HRA 1981](#) is aimed at bringing the person who has discriminated against another into compliance with the Act and compensating the complainant for injury caused to him, including to his feelings. Unlike the Human Rights Tribunal, the Employment Tribunal has no jurisdiction to order costs against a losing party.

On the issue of racial discrimination, the Human Rights Commission is charged with additional functions relating to equality in an effort to work towards the elimination of such discrimination. It has a duty to maintain a register of employers from information received from the Government's Department of Statistics which records the race of every employee in Bermuda. All employers must register with the Bermuda Government and provide information each year as required by the [Statistics Act 2002](#) relating to the makeup of their workforce by category of race, job category, hours worked,

age and gender. Employers with more than 10 employees must also record gross annual income and benefits as well as information on recruitments, promotions and departures.

In addition, the Commission has the power to issue codes of practice containing practical guidance towards eliminating racial discrimination and promoting equality of opportunity in the workplace. The code of practice must be approved by both Houses of the Legislature before it becomes enforceable. No such codes of practice are in place currently.

C. Employment Applications

The [HRA 1981](#) provides that no person shall use any employment application or make any written or oral inquiry that expresses (either directly or indirectly) any discriminatory limitation, specification or preference based on any of the protected human rights grounds (see above section I.B.), or that requires a job applicant to furnish any information concerning any of the protected grounds. The prohibition does not apply to applications used or inquiries made by the Government for the purpose of administering certain provisions of law. Another exception is made in respect of persons proposing to hire someone from abroad in which case the hirer may make inquiries regarding the applicant's gender, marital status and the number of his dependent children.

Bermuda immigration policy provides that a work permit will not be issued to a foreigner to work in Bermuda if there is a Bermudian or spouse of a Bermudian or Permanent Resident Certificate holder who is qualified and applies for the position. When applying to the Department of Immigration for a work permit to hire an expatriate worker and a Bermudian (etc.) has applied for the job but was rejected, the prospective employer must include details about the Bermudian and their application along with clear, satisfactory reasons why they were deemed not suitably qualified for the position. They must also demonstrate that they have informed the Bermudian of the outcome of his application (see section I.C. Work Permits below).

D. Use of Employment Contracts

Employment relationships are created by a contractual agreement. In the past, such agreements could be wholly verbal; there might not be any written contract at all such that the terms of the relationship had to be defined solely by reference to the spoken word between the parties.

Since March of 2001 when the [EA 2000](#) took effect, s.6 mandates that not later than one week after an employee commences employment, the employer must give him a written Statement of Employment which must be signed and dated by both parties. The statement must contain particulars of:

- the names of the employer and employee;

- the date when the employment began;
- the job title and brief description of the work;
- the place(s) of work;
- the gross wage or the method of calculating it and the intervals at which it is to be paid;
- the normal days and hours of employment or shift patterns;
- holiday entitlement;
- sick leave;
- the length of notice to terminate that must be given by each party;
- the details of any pension provided;
- the disciplinary and grievance procedures (if any);
- where the employment is not expected to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date on which it is to end;
- the probationary period (if any);
- the dress code (if any); and
- whether there is any collective agreement which directly affects the terms and conditions of employment.

Any agreed variations to the terms of employment that are contained in the Statement of Employment must be embodied in an amendment document or revised Statement that is signed and dated by the parties, and given to the employee within one month from the change having been agreed.

Employment contracts will often contain more than the above-mentioned required fundamental terms.

When drafting employment contracts, Bermuda employers should be aware that non-compete clauses will not be enforceable in Bermuda unless they are considered reasonable in protecting the employer's legitimate business interests, such as trade secrets or other highly confidential information. Non-compete clauses must be reasonable in relation to time, geographical scope and scope of the prohibited work (see below).

Arbitration clauses may be included in Bermuda employment law contracts (typically in relation to more sophisticated senior business positions). Otherwise, disputes are adjudicated via the statutory mechanism prescribed by the [EA 2000](#) or in the Courts.

Whilst few employers do so in practice, employment agreements should be stamped with Government stamp duty in compliance with the [Stamp Duties Act 1976](#) in order to be enforceable in Court. Currently the stamp duty payable on an employment contract is \$25. Exempt companies are exempt from paying such tax.

E. Advertising/Recruitment

The [HRA 1981](#) makes it unlawful for any person to publish, display, circulate or broadcast any advertisement for a position or employment for or on behalf of an employer that contains any words, symbols or other representation, or that is under a classification or heading, indicating directly or indirectly any discrimination against any person in any of the ways protected by the Act (see above section I.B.) in respect of any limitation, specification or preference for the position or employment.

Pursuant to the Government's Work Permit Policy published by the Department of Immigration effective March 1st, 2015, each advertisement for employment must include the following details:

- the name, telephone number and mailing address of the employer;
- the title of the job being filled and the minimum standards of qualification and experience;
- a brief job description of the job to be filled that is consistent with the normal functions associated with the job (an advertisement is invalid if it contains a description which seems tailor-made for an expatriate applicant); and
- notice of the deadline for application.

Before an employer in Bermuda will be granted a work permit by the Department of Immigration to hire an expatriate worker or renew their current work permit, the employer is generally required to advertise the position for a minimum of three (3) days in the local daily newspaper within an eight (8) workday period. Electronic advertisement is not considered as fulfilling part of the three (3) day requirement. The advertisement that appeared in the local newspaper must be included in the immigration application to hire the overseas worker. Effective March 1st, 2015, employers must also post a notice regarding the position to be filled on the Government Job Board at www.bermudajobboard.bm for at least eight (8) consecutive days.

The work permit application must be submitted within three (3) months of the date on which the position was last advertised; alternatively within six (6) months where the length of the recruitment process does not permit the employer to submit an application within three (3) months of the date the position was last advertised, upon payment of an Advertisement Extension Fee.

If a Bermudian or a spouse of a Bermudian or a Permanent Resident Certificate holder applies for the job and is qualified for the position, then permission to hire the expatriate worker will, as a matter of immigration policy, be denied.

The requirement to advertise does not apply to any job filled by a Bermudian, spouse of Bermudian, divorced parent of a Bermudian child who has obtained an Extension of Spouse's Employment Rights, or to a Permanent Resident Certificate holder.

An employer may apply to the Department of Immigration for a waiver from the advertising requirements if he believes that he has justification for doing so. A waiver from the Board/Minister may be granted in cases, for e.g., where the person is uniquely qualified for the position; or the position would not exist in Bermuda if it were not for the applicant filling the job; or the success of the business would be detrimentally affected if the person were to leave the business; or the employee is integral and key to income generation for the business by brokering deals or attracting/retaining clients or funds.

The decision of the Board/Minister may be appealed to the Minister upon payment of the requisite fee.

Automatic waivers to the requirement to advertise will be granted for:

- CEO and other Chief Officer posts;
- Resort Hotel General Manager posts (175 or more beds);
- Periodic, Occasional, New Business, Global and Global Entrepreneur Work Permits and certain other permits granted with listed restrictions.

F. Employment References/Background Investigations

There are no specific laws in Bermuda relating to employment references or background investigations of potential employees. Some contracts of employment will make the employment conditional upon passing background criminal, employment/educational and credit checks.

While consideration of a criminal background is appropriate in some circumstances, employers must obtain the job applicant's written consent to obtain information about his criminal background or the Bermuda Police Service will not release the information. An applicant's criminal record can be checked either through the Magistrates' Court or through the Bermuda Police Service.

The [HRA 1981](#) provides that an employer cannot refuse to hire an applicant because of their criminal record, except where there are valid reasons relevant to the nature of the offence for which he was convicted that would justify treating him differently for consideration of that type of job (s.2.(2)).

In respect of employment background checks, the applicant's consent is not legally mandated. Prospective employers will routinely approach former employers without the job applicant's consent for employment references / background information. Conversely the job applicant is often required to provide contact details for referees in his job application thereby consenting to the prospective employer contacting such persons for background information.

When an employer provides information about a former employee to a prospective new employer, he has a legal duty to state what he knows either positively or negatively about the employee. The

common law defence of qualified privilege protects employers from defamation claims when they provide a reference that contains defamatory statements. If the employer provides information to the prospective new employer honestly in good faith and without malice towards the former employee, the information will be privileged and therefore protected from a defamation claim.

The duty of honesty and good faith is continuing. Thus if the former employer discovers, after giving a positive reference, that the employee was in fact a dishonest employee, it is that employer's duty to communicate its discovery to the new employer who relied on the original reference. Even if this later communication is offered voluntarily, it is also considered privileged and protected.

In addition, employers must be careful not to make false, careless or reckless statements when giving references or they can face liability for a negligent misstatement that causes loss to the new employer (e.g., by giving a positive reference in saying the employee was wonderful, when in fact the employee performed unsatisfactorily and was terminated as a result).

Many employers in Bermuda refuse to provide reference letters for outgoing employees, invoking an internal policy that they will only confirm in writing the formal details required by a Certificate of Termination under s.22 of the [EA 2000](#). The Certificate must be provided if the employee requests it and must contain: (a) the name and address of the former employer; (b) the nature of the employer's business; (c) the length of the employee's period of continuous employment; (d) the capacity in which the employee was employed; (e) the most recent level of wages and other remuneration payable to the employee as at the date of termination of the contract; and (f) if the employee requests it, the reason for termination. Accordingly a prospective employer may request a copy of the employee's Certificate of Termination with his former employer (if one was provided) as a starting point.

Educational institutions from abroad will invariably require a former student's consent before they release any information about that person to a third party including employers.

An applicant's consent to screening for his credit or financial history is not legally required. Such information may be obtained by a paid up member of the Bermuda Credit Association which is the only organization in Bermuda that provides such information (traditionally covering checks in the retail, banking and utilities industries). A member has access to their data base and can therefore be provided with credit information about anyone in the data base. A job applicant may inquire of the Bermuda Credit Association if any credit checks have been made on him in which case the Bermuda Credit Association will confirm the information.

G. Work Permits & Visas – Immigration

In Bermuda an expatriate (foreign) employee requires a work permit issued by the Ministry of Home Affairs' Department of Immigration in order to work in Bermuda. The [Bermuda Immigration and Protection Act 1956](#) requires that all persons must obtain specific permission from the Minister responsible for Immigration if they are to engage in gainful occupation in Bermuda unless they are Bermudian; a spouse, widow or widower of a Bermudian; or a permanent resident holding a Permanent Resident Certificate; certain other exceptions apply. The Department of Immigration and the Board of Immigration administer the Act. The Minister has the discretionary power to waive specific policies upon written request.

The Bermuda Government's comprehensive work permit policy is set out in its published "Work Permit Policy" (effective March 1st, 2015) which is annexed to this Handbook. The Policy seeks to find the right balance between assisting businesses in obtaining the best employees they can in a competitive marketplace, while also ensuring that qualified Bermudians are given priority in hiring.

Standard work permits ranging from 1 year to 5 years in length, Short Term Work Permits for up to six (6) months and Seasonal, Occasional, Emergency and Periodic Work Permits (allowing multiple visits to the Island over a period of time for less than 30 days per visit) are all on offer if the requisite immigration policy conditions for hiring are met.

In addition the Global Work Permit (for up to 5 years) allows a person who is already employed by a global company in another jurisdiction to transfer to the Bermuda office without the requirement to advertise the position. The company must demonstrate that the Global Work Permit holder is not being transferred to fill a pre-existing position in Bermuda.

A new type of work permit called the Global Entrepreneur Work Permit has been introduced that will be available to new exempted companies and start-up companies in Bermuda, allowing their employees to reside and work in Bermuda for up to one (1) year when planning and setting up their new business, allowing them to engage in planning, seek appropriate regulatory approvals, fulfil compliance or financial requirements, raise capital, etc.

In addition, a new Business Work Permit has become available for exempted companies who are new to Bermuda to receive automatic approval of work permits without having to advertise the position for the first six (6) months of their existence; certain restrictions apply.

Business visitors coming to the Island for up to twenty-one (21) days for various business activities (attending meetings, presenting seminars, interviewing for a job, visiting clients and customers, etc.)

do not require a work permit for such purpose but must be in possession of a return ticket. Extensions of time may be granted.

To help alleviate unemployment, employers must advertise all jobs on the Government Job Board for at least eight (8) days, and businesses may be asked to participate in certain initiatives to boost the number of Bermudians employed in job categories where there are high numbers of work permit holders in those businesses.

Further, the Department of Immigration will henceforth be issuing work permit cards (to replace the current paper-based work permit) for all work permit holders and to sponsored dependants of those work permit holders (for eg., spouses and children). The primary aim of the work permit card is to facilitate travel to/from Bermuda. Paper-based work permits will only be issued to employers and for the Department of Immigration's files.

There is no requirement for Bermuda entry visas and visa waivers for persons who plan to travel to Bermuda as a tourist or business visitor or as a work permit holder. Consequently, all tourists, business visitors, and all work permit holders who require a multiple re-entry visa (MRV) for the UK, US or Canada will be permitted to land in Bermuda without a Bermuda entry visa or visa waiver. Such persons must, however, possess a passport that is valid for 45 days past the expiration of travel and/or of the work permit; otherwise they will not be permitted beyond the airport to enter Bermuda.

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 the employee who may or may not be represented by a union negotiating wages on his behalf.

In respect of certain classes of employees hired from abroad who are deemed to need protection from potential employer abuse (e.g., child caregivers), immigration policy may specify that a certain minimum wage per hour (as well as overtime pay at the rate of time and a half his normal hourly wage) must be included in the Statement of Employment as a condition for granting work permit permission to an employer to hire such a person. The employer must include a signed copy of the Statement of Employment in the application submitted to Immigration for the work permit.

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 thirteen (13) and eighteen (18) years, depending on the nature of the occupation. Children under the age of thirteen (13) are not permitted to work at all unless the work is of an agricultural or a horticultural or domestic character and 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 or a grocery packer).

Children under the age of sixteen (16) cannot be employed during school hours on school days, and may only be employed for up to 2 hours on such days outside of school hours.

Persons under the age of eighteen (18) cannot be employed at night unless they are over the age of sixteen (16) years, and then only until midnight. If such person is female, then the employer must make adequate arrangements for the employee's safe return home after work.

C. Wage Payments

Pursuant to s.6(e) of the [EA 2000](#), the employer must provide the employee with a written Statement of Employment which must give particulars of the employee's gross wage or the method of calculating it, and the intervals at which it is to be paid. Under s.3 of the [EA 2000](#), wages are defined as all sums payable to an employee under his contract of employment (by way of weekly wage, annual salary or otherwise) or otherwise directly in connection with his employment, including any commission. The definition excludes tips or bonuses and expenses or the monetary value of any benefits in kind.

In addition, s.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 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.

S.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 a provision of the employee's contract; by order of any court or tribunal; or the employee has previously signified in writing his agreement or consent to the making of the deduction. Where the employer pays the

employee less than what is owed, the amount of the deficiency is considered an unauthorized deduction.

Deductions made for the purpose of reimbursing the employer for overpayments of wages or overpayments in respect of expense reimbursements, 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 [Health Insurance Act 1970](#) sets out the compulsory obligation of employers to provide a health insurance plan for themselves, their employees, and their employees' non-employed spouses.

The Act provides that an 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, with the loss being recovered as a civil debt.

The [Health Insurance Act 1970](#) provides for the most basic mandatory level of coverage known as the Standard Hospital Benefit ("SHB"). Whilst the employer is responsible for paying the total cost of the premium, the Act allows the employer to deduct 50% of that cost from his employee's wages. The Government subsidizes this coverage for children, seniors and the indigent. The SHB currently covers the majority of local hospital services.

The next level of coverage is the Hospital Insurance Plan ("HIP") which is available to all individuals above eighteen (18) years of age. HIP covers local hospital services plus doctor's home visits and various other benefits, in addition to overseas care for emergency procedures that are not offered in Bermuda, reimbursed at 60% of usual and customary costs, provided an overseas referral is obtained from a Bermuda registered physician. As HIP offers more benefits than SHP, HIP is often chosen by employers to meet the letter of the law. The employer usually pays approximately 50% of the monthly premium.

HIP benefits are markedly lower than "major medical" insurance coverage which is the highest level of coverage available. Most private health insurance plans in Bermuda provide for major medical (including visual and dental) coverage. The employee will usually pay 50% of the premium cost to

obtain such benefits, depending on the terms of his contract of employment. The contractual benefit is subject to the terms of the plan that is negotiated between the insurance provider and the employer.

All employers should make their employees familiar with what is, and is not, covered by their medical insurance plan. They will usually provide their employees with a summary plan booklet highlighting the major provisions of the plan and level of benefits payable.

Following the termination of employment, employees in Bermuda are automatically covered as a matter of law for four (4) weeks at the statutory basic level of coverage at no cost to either party.

F. Disability Benefits

Government Disability Benefits

Ss.12(f) and 12(g) of the [Contributory Pensions Act 1970](#) (“CPA 1970”) as read with ss.17A and 17B provide for disability benefit payments to persons which are either contributory or non-contributory in nature. These sections benefit “insured persons”, namely persons over school leaving age (i.e. over 18) who are gainfully occupied in Bermuda.

S.4 provides that persons who are over eighteen (18) and under sixty-five (65) years of age (pension age) must pay weekly contributions at the rate set out in the Act for every contribution week or for any part thereof during which any part they are gainfully occupied. The contribution is matched by the employer. Persons gainfully occupied in Bermuda over the age of sixty-five (65) do not have to pay the employee contribution; the employer does. Self-employed persons must also pay contributions (double the amount of the normal employee contribution if they are between eighteen (18) and sixty-five (65) years of age since there is no separate employer contribution). Self-employed persons over the age of 65 must pay the normal employee contribution amount.

S.17A provides that an insured person over 18 years of age and under the age of 65 years (pension age) shall be entitled to a contributory disability benefit if that person is incapacitated from gainful employment by reason of any physical or mental disability or terminal illness and:

- he has made at least one hundred and fifty (150) contributions;
- the yearly average of contributions paid by or credited to him is not less than fifty (50); and
- he produces a certificate from a registered doctor certifying incapacity or terminal illness, provided that where the yearly average of contributions is twenty-five (25) or over, but less than fifty (50), the benefit is reduced pro rata.

If the disability is in the form of a terminal illness, a doctor must certify that the employee suffers from a progressive disease, and his death in consequence of that disease can reasonably be expected within twelve (12) months.

A non-contributory disability benefit is available to a person under s.17B who are incapacitated from gainful employment who have not paid any contributions only if: he is over the age of eighteen (18) years and under age sixty-five (65); he has been ordinarily resident in Bermuda for ten (10) years immediately preceding the application for the benefit; he produces a certificate from a registered doctor certifying that he is incapacitated from gainful employment; and the incapacity is of a permanent nature.

An applicant for a disability benefit must make a claim in writing on the prescribed form within thirteen (13) weeks after the day on which the commencement of the benefit is claimed, but the period may be extended if good cause for the delay can be shown.

Private Disability Benefits

Private long term and short term disability benefits are often provided by the employer as part of an employee's benefit package. Half the costs of the premiums may be deducted from the employee's pay.

After the employee's sick leave benefit is exhausted, the employer may offer a short term disability benefit in respect of illness/injury lasting up to six (6) months. The employee must be unable to perform the duties of his position and be under the care of a registered doctor during this time. The employee will most likely remain employed whilst on short term disability (either on full pay or part pay or unpaid, depending on the terms of the policy) and enjoy continued full employee benefits (health insurance, life insurance etc.).

In the event of long term illness or injury for eligible employees, the employer's long term disability benefit, if offered, will take effect after the short term benefit expires. The long term benefit is a percentage (usually 2/3) of normal monthly base salary up to a maximum monthly benefit amount. Depending on the terms of the policy, an employee on long term disability will either remain employed or will be terminated by the employer due to their long term inability to carry out their normal job functions. In such circumstances, the contract of employment may be deemed frustrated and thus terminated, and the losses will lie where they fall.

The long term benefit continues throughout the duration of the disability subject to certain exceptions in the policy (e.g., shortened if the disability is mental in nature). If the employee remains employed, then he may or may not also receive the full regular benefits (health insurance, life insurance, etc.). If

terminated, then the employee loses these other regular benefits unless exceptions are made in the policy. In such case the employee finds himself having to pay the full cost of his health insurance out of his disability pay which can be financially stressful.

G. Overtime Issues

Although the [EA 2000](#) does not provide for a minimum wage, it does provide for mandatory overtime pay, unless the parties expressly contract out of the requirement.

Pursuant to s.9, an employee who works in excess of 40 hours a week is entitled to be paid at the overtime rate of one and a half times his normal hourly wage. Alternatively, the employee may be paid his normal hourly rate for the extra hours and further compensated by being given the same number of hours off in lieu.

These overtime provisions do not apply to the professional or managerial employee whose Statement of Employment provides that his annual salary has been calculated to reflect that his regular duties are likely to require him to work, on occasion, more than 40 hours a week.

Overtime is also not payable where the employer and the employee agree that it should not apply and therefore the parties can contract out of the overtime requirement altogether.

However, in respect of certain classes of overseas employees who require protection from abuse such as child caregivers, the Department of Immigration will not issue a work permit to an employer to employ the foreigner unless overtime pay is provided for in the contract, a signed copy of which must be filed with the Department.

Many Collective Agreements provide for overtime pay for unionised employees including double pay for hours worked on Sundays and public holidays.

The Minister of Home Affairs 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.

H. Workday/Workweek/Work hours

Typically, employees in Bermuda put in a forty (40) hour workweek, from Monday through Friday from 9 a.m. to 5 p.m. including an hour's break for lunch (thus effectively working thirty-five (35) hours per week). Employees in professional or managerial positions inevitably work longer hours than the standard workweek.

Pursuant to s.6 of the [EA 2000](#), the employer must provide the employee with a written Statement of Employment which must include details of the normal days and hours of employment or, where the job involves shift work, the normal pattern of shifts.

S.7 of the [EA 2000](#) provides that the written pay statement provided to the employee must contain details as to the period of time 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 s.10, 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 Island's hospitals.

The [EA 2000](#) does not apply to part-time employees who work less than 15 hours per week.

III. TIME OFF/LEAVES OF ABSENCE

A. Paid Vacation

S.12 of the [EA 2000](#) provides that an employee is entitled to two (2) weeks (ie. 10 days) of annual paid vacation after he has completed the first year of continuous employment and after each subsequent year of continuous employment (such periods of vacation are not cumulative).

Where an employee is entitled to more than two (2) weeks of annual holiday by reason of any statute, contract of employment, custom or practice, the more favourable provision prevails (see s.2).

S.12 further provides that, where practicable, an employer shall grant the employee's request to take his 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 holiday wages in advance of the vacation.

B. Paid Sick Leave

S.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 normal hourly wage for up to eight (8) days per year.

An employee shall not be entitled to be paid his normal wages if he is absent from work for a period of two (2) or more consecutive days unless, upon request by the employer, the employee provides the employer with a medical certificate certifying his inability to work due to sickness or injury.

Where an employee is entitled to more than eight (8) sick days per year by reason of any statute, agreement, contract of employment, custom or practice, the more favourable provision shall apply (s.2).

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

S.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 Government declaring which days are public holidays.

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 scheduled day off, then he can either take the next working day as his holiday or another day, as agreed with his employer.

If the employee is required by his employer to work on a public holiday, he must be paid at a rate equal to at least the usual overtime rate (e.g., time and a half). Alternatively, he may be paid his regular rate and then be given an extra day of paid leave on a date agreed with the employer. Again, the parties may agree to contract out of these requirements.

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 pursuant to the [EA 2000](#). Such instances include, by way of example, an employee 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 (s.13).

D. Bereavement Leave

If a member of an employee's immediate family dies (i.e., spouse, child, parent, sibling, or co-habitee), the employee is entitled to up to three (3) consecutive days of bereavement leave (up to five (5) days if the funeral is overseas). The employee must advise his employer as soon as possible 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, custom or practice, then the more favourable provision prevails (s.2).

E. Medical Leave

The [EA 2000](#) does not provide for medical leave other than sick leave, as set out above.

F. Ante-Natal and Maternity Leave

S.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.

Pursuant to s.16 of the [EA 2000](#), a pregnant employee is entitled to twelve (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 submit an application for maternity leave at least four (4) weeks before she intends to commence her leave. Of the twelve (12) weeks, eight (8) weeks are paid leave and the other four (4) weeks are unpaid leave. If the employee has been employed for less than one year, her benefit is eight (8) weeks of unpaid leave. Maternity leave pay is paid directly by the employer to the employee.

If the employee intends to return to her position following her period of maternity leave without loss of seniority, she must notify her employer at least two (2) 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 comparable 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 (2) weeks in advance of the date she intends to resume work, the employee shall be deemed to have terminated her employment.

Where an employee is entitled to more than the above statutory entitlements by reason of any statute, agreement, contract of employment, or custom or practice, then the more favourable provision prevails (s.2).

There is no law providing for paternity leave (whether paid or unpaid) in Bermuda. Some employers voluntarily provide paternity leave, generally around a week or less.

G. Workers' Compensation

In Bermuda, the [Workers' Compensation Act 1965](#) (as amended) provides for workers' compensation to be paid to employees who are injured on the job or who suffer occupational disease which renders them unfit for work. For further explanation of the statute, see Section IX below.

IV. TERMINATION ISSUES

Until the [EA 2000](#) came into force in March of 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 contract would either expressly provide the period of notice that had to be given or a reasonable period of notice would be implied into the contract by the court based on all the circumstances of the case.

Thus if the employer terminated the employee summarily (without notice) for cause, the employer had to justify the summary dismissal by proving gross misconduct on a balance of probabilities standard of proof. Contractual terms agreed between the parties could also restrict the circumstances and procedures under which an employer was able to lawfully terminate an employment contract.

Today, the effect of s.18 of the [EA 2000](#) is that, in addition to giving proper notice, the employer must have a valid reason in order to terminate the contract (see below).

A. Wrongful /Constructive Dismissal Claims

An employee is entitled to bring a common law court action for wrongful dismissal (breach of contract) if the employer has breached a term of the contract of employment that causes the employee to suffer damage. Examples of breaches include but are not limited to 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., 3 months) and dismissed without the proper amount of notice or payment in lieu of notice;
- the employer fired the employee summarily without sufficient cause (i.e., there was no proven gross misconduct);
- 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 on the agreed upon terms of employment (e.g., by cutting pay, demoting, changing the reporting lines, etc.) such that the employee could not be expected to work for the employer any longer.

A Supreme Court decision has rejected the assertion that the statutory framework for resolving employment disputes under the [EA 2000](#) has 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 right to pursue his statutory remedies for unfair dismissal under the [EA 2000](#).

An employee has six (6) years from the date of the alleged breach of contract by the employer in which to institute his common law action for wrongful dismissal in the courts.

In respect of unfair dismissal claims, the [EA 2000](#) provides employees with statutory remedies when the employer has violated a provision in the Act relating to termination. Save for cases of constructive dismissal, the burden of proof is on the employer to prove that the dismissal was fair (s.38). An employee who claims constructive dismissal has the burden of proving the reason which made continuation of the employment relationship unreasonable (s.29).

The employee must file his complaint under the [EA 2000](#) within three (3) months of the alleged breach of duty by the employer (s.36).

S.37 provides that the complaint is made to an inspector employed by the Department of Workforce Development, who must inquire into the matter if he has reasonable grounds to believe that an employer has failed to comply with any provision of the Act. He may compel production of information and documents from either party if he requires it for the purposes of his inquiry. After making such inquiries as he considers necessary in the circumstances, the inspector must endeavour to conciliate the parties and to effect a settlement by all means at his disposal.

Where the employer has a contractual grievance procedure in place to deal with employees' complaints, the inspector must not, except with the consent of all parties, attempt to settle the complaint or refer the complaint to the Employment Tribunal unless and until there has been a failure to obtain a settlement by means of that contractual grievance procedure.

Where the inspector has reasonable grounds to believe that an employer has failed to comply with any provision of the Act but is unable to effect a settlement, he must refer the complaint to the Employment Tribunal which will hold a hearing on the matter as soon as practicable after the referral (s.38). The Tribunal must give the parties or their representatives a full opportunity to present evidence on oath and make submissions.

If the Tribunal determines that an employer has breached the Act, it must notify the parties in writing of the reasons for its decision and has power to order various remedies, including compliance with the [EA 2000](#) and payment to the employee of any unpaid wages or other benefits owing to the employee.

If the Tribunal upholds an employee's complaint of unfair dismissal, it shall award either reinstatement or re-engagement of the employee in comparable work, or (much more likely) a compensation order of such amount as is considered just and equitable in all the circumstances of the case, having regard to the loss sustained by the employee that is attributable to action taken by the employer, and the extent to which the employee caused or contributed to the dismissal.

The amount of compensation ordered to be paid shall not be less than two (2) weeks' wages for each completed year of continuous employment (for employees with no more than two (2) completed years of continuous employment) and four (4) weeks wages for each completed year of continuous employment for longer serving employees, up to a maximum equivalent of twenty-six (26) weeks' wages.

Examples of unfair dismissal claims under the [EA 2000](#) include where:

- the required amount of notice to terminate was not given by the employer, or it was given during prohibited leave times. S.18 of the [EA 2000](#) provides that an employee's contract of employment shall not be terminated by an employer unless the employer complies with the notice requirements of s.20. Pursuant to s. 6, the amount of notice that must be given to terminate must be stated in the contract (note that no notice need be given 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 (4) weeks).
- the employee was terminated for an invalid reason. S.18 of the [EA 2000](#) states that an employee's contract of employment shall not be terminated by an employer unless there is a valid reason for termination connected with: (a) the ability, performance, or conduct of the employee; or (b) the operational requirements of the employer's business.

Further s.18 provides that no lawful termination may occur unless the provisions in s.26 (dismissal for repeated misconduct within a six (6) month period after a written warning has been issued to the employee), and s.27 (dismissal for unsatisfactory performance that has not improved within a six (6) month period after a written warning and instructions on how to improve performance have been issued to the employee) have been complied with.

If the termination is for an invalid reason, it is an unfair dismissal meriting a complaint being made under the Act.

As to disciplinary action falling short of dismissal, s.24 of the [EA 2000](#) provides that an employer is entitled to take disciplinary action including issuing a written warning or suspending the employee when it is valid to do so. The factors an employer is entitled to take disciplinary action are as follows:

- the nature of the conduct in question;

- the employee’s duties;
- the terms of the contract of employment;
- any damage caused by the employee’s conduct;
- the employee’s length of service and his previous conduct;
- the employee’s circumstances;
- the penalty imposed by the employer;
- the procedure followed by the employer; and
- the practice of the employer in similar situations

S.22 of the [EA 2000](#) states that the employer must provide the employee with a “Certificate of Termination” stipulating the reason for the termination if the employee makes such a request (see above Section I.F.).

In addition to listing valid reasons for termination stipulated in s.18, s.28 of the [EA 2000](#) provides that an employee’s dismissal is unfair if it is based on any of the reasons listed in that section (see Section I.B. above). Many of the invalid reasons listed are human rights related grounds.

A. Constructive (Unfair) Dismissal

S.29 of the [EA 2000](#) provides that an employee is entitled to terminate his 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. An employee who terminates his contract due to constructive dismissal is deemed to have been unfairly dismissed under the Act. The burden of proof is on the employee to prove why continuing the employment relationship would be unreasonable (s.38).

B. Discrimination Claims

See Section I.B. above.

C. Severance Allowance

Where an employee has completed at least one continuous year of employment and his employment is terminated by reason of redundancy (defined in s.30 of the [EA 2000](#) see below), or 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 or his estate, as the case may be, is entitled to be paid severance allowance under s.23 of the [EA 2000](#).

The amount of severance allowance depends on the employee's length of service, and is set out in s.23, namely two (2) weeks' wages for each year of completed service up to ten (10) years, and three (3) weeks' wages for each year of completed service over ten (10) years, subject to a maximum of twenty-six (26) weeks' wages.

Where an employee is entitled to more than the statutory minimum by reason of any statute, contract of employment, custom or practice, the more favourable provision prevails.

Severance allowance is not payable in certain specified circumstances, the most common scenario being where the employee unreasonably refuses to accept an offer of re-employment by the employer at the same place of work under no less favourable terms than he was employed prior to the termination.

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 & Sexual Harassment

S.6B of the [HRA 1981](#) provides that no employee shall be harassed in the workplace by the employer or his agent or by another employee, based on any of the [HRA 1981](#) protected grounds (see above Section I.B.). The Act provides that harassment occurs when a person persistently engages in comment or conduct towards another person that is vexatious and that he knows, or ought reasonably to know, is unwelcome.

S.9 of the [HRA 1981](#) prohibits any person from abusing any position of authority which he occupies in relation to another person employed by him or by any concern which employs both such persons, for the purpose of harassing that other person sexually.

S.9 further provides that employees have a right to freedom in their workplace from sexual harassment by their employer, or by an agent of the employer, or by a fellow employee, and employers must take such action as is reasonably necessary to ensure that sexual harassment does not occur in the workplace.

The section clarifies that a person sexually harasses another person if he engages in sexual comment or conduct towards that other person that is vexatious and that he knows, or should know, is unwelcome.

Complaints of harassment are made to the Human Rights Commission under s.15 of the [HRA 1981](#). See above Section I.B (Discrimination) for the complaints procedure regime stipulated in the [HRA 1981](#).

E. Whistle-blower Protection

Effective October 21st, 2011, s.28(1)(j) of the [EA 2000](#) prohibits termination of employment or the imposition of disciplinary action on the ground that the employee made a “protected disclosure” as a “whistle-blower” under s.29A of the Act.

The latter section provides that a person makes a protected disclosure if, in good faith, he notifies a certain category of listed person that he has reasonable grounds to believe that: (a) his employer or any other employee has committed, is committing, or is about to commit, a criminal offence or breach of any statutory obligation related to the employer’s business; or (b) that he himself has been directed, either by his employer or by one of his supervisors, to commit such a criminal offence or breach of statutory obligation; or (c) that information tending to show any matter falling within paragraph (a) or (b) has been, is being, or is likely to be, altered, erased, destroyed or concealed by any person.

S.29(4) renders void any contractual term that seeks to preclude a person from making a protected disclosure.

Further s.3 of the [Good Governance Act 2012](#) (effective since July 3, 2012) provides that a person commits an offence if he terminates a contract with another person because that person or any of his officers or employees has made a protected disclosure; or if he withholds any payment due under a contract to another person because that person or any of his officers or employees has made a protected disclosure. A person (including a corporate body) who commits such offence is liable on summary conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding twelve (12) months, or to both.

A “listed person” for the purposes of s.3 includes but is not limited to the person’s employer, manager or supervisor, a police officer and various other official Government-appointed positions.

F. Public Access to Information

The [Public Access to Information Act 2010](#) (“[PATI 2010](#)”), (being made effective in 2015), is aimed at increasing accountability of government agencies by allowing the public to request information from over 200 publicly funded bodies, ranging from Government ministries and departments to quangos and the Corporations of Hamilton and St. George’s. Personal information, sensitive commercial information and various other types of documents will not have to be disclosed.

V. LAYOFFS/WORKFORCE REDUCTIONS/REDUNDANCIES

A. Layoffs and Redundancies

S.32 of the [EA 2000](#) provides that an employer who lays off an employee must do so in accordance with the Act.

S.30 provides that where any of the specified conditions of redundancy exist, the employer may lay off an employee for a continuous period not exceeding four (4) months.

An employee is redundant for the purposes of this Act where his termination is, or is part of, a reduction in the employer's workforce which is a direct result of any of the conditions of redundancy existing, namely:

- the modernisation, mechanisation or automation of all or part of the employer's business;
- the discontinuance of all or part of the business;
- the sale or other disposal of the business;
- the reorganization of the business;
- the reduction in business which has been necessitated by economic conditions, contraction in the volume of work or sales, reduced demand or surplus inventory; or
- the impossibility or impracticality of carrying on the business at the usual rate or at all due to: shortage of materials; mechanical breakdown; act of God; or other circumstances beyond the control of the employer.

A lay off that exceeds a period of four (4) months amounts to a termination by reason of redundancy.

S.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 reason(s) 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 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

S.23 of the [EA 2000](#) provides that the amount payable if an employee is terminated by reason of redundancy is two (2) weeks' wages for each year of completed service up to ten (10) years, and three (3) weeks' wages for each year of completed service over ten (10) years, subject to a maximum cap of twenty-six (26) weeks' wages.

Where an employee is entitled to more than the statutory minimum payable by reason of any statute, contract of employment, custom or practice, the more favourable provision prevails ([s.2 EA 2000](#)).

C. Benefits

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

D. Use of Separation Agreements

Separation/severance agreements agreed between the parties 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. Stamp duty of \$25 should be applied to the agreement in order to be enforceable in court (unless the employer is an exempted company), pursuant to the requirements of the [Stamp Duties Act 1976](#).

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 concerning 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 insert express restrictive covenant clauses in the contract.

Trade secrets, trademarks, copyright, and other types of highly confidential information are viewed by the courts as an employer's legitimate business interests which the employer is entitled to protect by means of restrictive covenants.

B. Covenants in Restraint of Trade & Garden Leave clauses

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. Bermuda law follows English common law on this subject but, obviously, the facts and circumstances of the Bermuda labour market are different, and judges will have regard to this when construing restraint of trade clauses and analysing whether they are enforceable.

The law starts from the premise that covenants in restraint of trade are *prima facie* unlawful and accordingly are to be treated with suspicion. The court will enforce the covenant only if it goes no further than is reasonably necessary to protect the trade secrets or other legitimate interests of the employer.

It is for the employer to identify a legitimate business interest that is capable of protection and, further, to show that the covenant extends no further than is reasonably necessary to protect that interest. The legitimate interests that will justify the imposition of a covenant in restraint of trade are: (i) trade secrets or confidential information akin to a trade secret; (ii) trade connections; and (iii) workforce stability.

In order to determine whether an item of information is a trade secret or confidential information akin to a trade secret, the court will have regard to a number of factors, including the nature of the employment and the nature of the information itself.

The court will scrutinise more carefully covenants in employment contracts given the usual inequality of bargaining power between the parties as compared with normal commercial contracts. The covenant is interpreted in the context of the employment agreement as a whole so as to give effect to the intention of the parties. 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 unreasonably wide in terms of time, geographic extent, and scope of restricted activity.

In addition to being reasonable, the clause must be founded on good consideration in the contract 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 post-termination non-compete clause, particularly for a key employee, is the inclusion of an express “garden leave” clause in the employment contract. This clause allows the employer to prohibit the employee from working during the notice period whilst he continues to receive his normal wages and benefits. The employee is thereby precluded from accepting employment elsewhere (and competing) until the expiry of the notice period.

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 or disclose the confidential information of his former employer. However, inasmuch as this implied duty is often difficult to define and enforce, employers are advised to instead use express non-competition clauses to protect their interests.

As for other forms of restrictive covenants, the courts will enforce reasonable non-solicitation clauses that prevent the employee from soliciting the business of customers or suppliers of the former employer and thus protect trade connections. A trade connection is established where it can be shown that, by virtue of his position with the employer, the employee has had contact with customers or suppliers, such that the employee is likely to acquire knowledge of, and influence over, the customers or suppliers.

Courts will also prevent the poaching of key employees in order to protect the stability of the employer’s workforce. Thus a clause prohibiting a former employee from soliciting his former colleagues to join him in his new employment may well be upheld, again if it is reasonable in scope. The clause is more likely to be upheld where the prohibition is against poaching a senior employee as opposed to someone in an administrative position whose loss is not going to materially affect the stability of the workforce.

In all of these cases, the legal principles must be considered carefully in light of the facts of the particular case, and care must be taken when drafting these types of covenants to ensure that they are reasonable and therefore enforceable under Bermuda law.

VII. PERSONNEL ADMINISTRATION

A. Required Postings

Bermuda immigration work permit policy (effective March 1st, 2015) provides that employers must post a notice regarding job positions to be filled on the Government Job Board for eight (8) days (www.bermudajobboard.bm). Most often the issue of any required postings will be dictated by the contract of employment. Postings are more likely to be required in contracts taking the form of a

union collective agreement (e.g. contractually required postings that allow for internal recruitment amongst union member employees when a position becomes available before advertising the position locally).

S.3B of the [Occupational Safety & Health Act 1982](#) requires employers to post a copy of the Act and any Regulations made under the Act at a conspicuous place at the place of employment; or at a place that is easily, readily and conveniently accessible for use by the employer and all employees.

S.20 of the same Act requires employers with more than ten (10) employees to establish a health and safety committee and to post the names of the health and safety committee members in a prominent place at the workplace.

S.7 of the [Occupational Safety and Health Regulations 2009](#) requires employers with five (5) or more employees to prepare a written statement of the occupational safety and health policy governing the place of employment and post a copy of the statement at a location that is accessible to every employee at the place of employment.

S.15 of the Regulations requires the health and safety committee at work to keep accurate records of all matters that come before it, as well as minutes of its meetings which must be signed by two (2) chairpersons and posted by the employer in a conspicuous place at the relevant place of employment.

The [Occupational Safety and Health Regulations 2009](#) contain a host of detailed provisions requiring posting by the employer in respect of various health and safety at work matters in the workplace, namely:

- The posting of a warning sign in relation to a stairway that is so close to a traffic route used by vehicles or to a machine or any other hazard as to be hazardous to the safety of an employee using the stairway (s.34);
- A legible sign with the words "Danger-High Voltage" in letters that are not less than 5 cm (2 inches) in height on a contrasting background shall be posted in a conspicuous place at every approach to live high voltage equipment (s.73);
- Notices that set out the details of the emergency evacuation plan and emergency procedures must be posted at locations accessible to every employee at the place of employment (s.86);
- Signs shall be posted in conspicuous places at all entrances to a fire hazard area at a place of employment - (a) identifying the area as a fire hazard area; and (b) prohibiting the use of an open flame or other source of ignition in the area (s.92);
- If there is a risk that an employee may be exposed to unsafe levels of sound at a place of employment, all noise hazard areas in the place of employment must have warning signs posted (s.98) which are in conspicuous locations so as to provide adequate warning that unsafe levels of sound may be encountered (s.101);

- Where a hazardous substance is used, handled or stored in a place of employment, clearly legible signs shall be posted in conspicuous places warning every person granted access to the place of employment of the presence of the hazardous substance and of any precautions to be taken to prevent or reduce any safety or health risk (s.150);
- Where a hazardous substance in a place of employment is hazardous waste, the employer shall disclose the generic name and hazard information in respect of the hazardous waste by applying a label to the hazardous waste or its container, or posting a sign in a conspicuous place near the hazardous waste or its container (s.154). Also warning signs must be posted at approaches to any materials handling area while materials handling operations are in progress (s.214);
- Where an aisle, corridor or other course of travel that is a principal traffic route intersects with another route, warning signs marked with the words "DANGEROUS INTERSECTION" in letters not less than 5 cm (2 inches) in height on a contrasting background, shall be posted along the approaches to the intersection (s.225);
- Where an employee is at risk of being struck by moving vehicles while carrying out any work, the employer must post suitable signs warning drivers of vehicles of the work (s.255);
- Where the employer is a construction contractor, ss.265 and 351 require the posting of notices and signs containing a myriad of information about the contractor and various safety procedures and warnings.

B. Required Training

S.3 of the [Occupational Safety and Health Act 1982](#) places a duty on every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all of his employees, which duty extends to the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the safety and health at work of his employees.

S.7 of the [Occupational Safety and Health Regulations 2009](#) requires employers with five (5) or more employees to prepare a written statement of the occupational safety and health policy governing the place of employment, establish an organization for carrying out the policy and updating it annually; and provide information, education and training to employees with regard to their role in the organization.

S.8 provides that where training is required under the Regulations, the employer must ensure that the person who provides the training or instruction prepares and signs a written record of same. The record must include the name of the employee who received the training or instruction and the date on which the training or instruction took place, and be signed by the employee.

Members of the health and safety committee at work are entitled to take time off during their regular working hours without penalty to perform their duties and to undergo training with regard to the performance of those duties (s.18).

The Regulations contain a host of requirements with respect to training in relation to various health and safety issues including training on various subjects in relation to:

- having to enter a confined space at work (s.52);
- the use of insulated protective equipment and tools during the performance of electrical work (s.62);
- the climbing or working on any pole or elevated structure that is used to support electrical equipment (s.64);
- the training of emergency officers and monitors with respect to the emergency evacuation plan and the emergency procedures and location and use of fire protection equipment and emergency equipment provided by the employer (s.89);
- where employees may be exposed to unsafe levels of sound at work (s.98);
- where there is a risk of a work process at a place of employment causing an employee to be exposed to unsafe levels of vibration (ss.112 and 114);
- where there is a risk of a work process at a place of employment causing an employee to develop a musculoskeletal injury (s.117);
- where employees are likely to be exposed to a hazardous substance at work (s.147);
- where employees operate, maintain or repair the assembly of pipes (s.148);
- the safe and proper inspection, maintenance and operation of all machinery and tools that employees are required to use (s.160);
- the operation of materials handling equipment in relation to inspection, fuelling (if applicable) and safe and proper use (s.201);
- where the use of protective clothing and equipment is required (s.259);
- where the employee operates an elevating work platform (s.321); and
- where an employee is using an explosive actuated fastening tool (s.329).

Also on the issue of training, as a matter of Government immigration policy, employers' work permit 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. The National Training Plan calls

for employers to play a key role in ensuring that Bermudians and Spouses of Bermudians are developed and employed in specific occupations which have a high number of work permit holders, such as registered nurses, qualified accountants, waiters/waitresses, masons, landscape gardeners and chefs. Employers who employ more than ten (10) work permit holders in those occupations may be invited by the Department of Immigration to participate in National Training Board initiatives to boost the number of Bermudians and Spouses of Bermudians employed in those categories. Employer participation will be considered by the Board and the Minister when considering work permit applications.

Certain types of employers carrying out regulated activities as defined by Bermuda's anti-money laundering laws, require regular training of staff in anti-money laundering and anti-terrorist financing procedures.

C. Personnel Records

See also Section I.G below (Record-keeping).

The [Public Access to Information Act 2010](#) ("PATI 2010") (being made effective in 2015), is aimed at increasing accountability of government agencies by allowing the public to request certain information from over 200 publicly funded bodies in Bermuda. Personal information will be exempt from the disclosure requirements.

In the employment field, as a matter of practice, employees are usually allowed to review their personnel file upon appointment with their employer's human resources department and under supervision. It is not yet known how the legislation will affect, if at all, personnel records held by government bodies.

D. Meal and Rest Periods

There is no Bermuda legislation governing meal periods. Contractual obligations regarding meal breaks are often included in Collective Agreements involving unionised employees.

Under s. 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, namely police officers, prison officers, fire officers, and medical practitioners and nurses employed at the hospitals. Collective Agreements will often provide for contractually agreed upon rest periods in various industries employing unionised employees.

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 s. 20, an employee is entitled to at least one week's notice if he is paid on a weekly basis, two weeks of notice if he is 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 more favourable contractual provisions will apply (s.2).

An employer may in his discretion elect to make payment in lieu of requiring the employee to work out his notice period. In such cases, the employee is entitled to his full salary along with all other normal benefits that accrue during this time, including vacation and sick leave, housing allowance, car, pension and other benefits.

If the employee leaves without giving proper notice, the employer only has to pay salary plus any accrued but unused vacation and benefits, up to the last day worked. If the employer suffers loss as a result of the employee's breach, he may sue the employee for damages. Practically this rarely, if ever, happens.

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 his legal representatives) "severance allowance" in addition to giving the requisite notice (see above Section V.B).

Normal statutory deductions will be made from payments in lieu of notice, e.g., for payroll tax, health insurance coverage, government pension (social insurance) and private pension. In respect of severance payments (e.g. contractual termination payments), only payroll tax will be payable.

Payment in lieu of notice and severance allowance do not have to be paid when the employee is summarily dismissed for serious misconduct or for repeated misconduct within six (6) months after receipt of a written warning, or for continued unsatisfactory performance within six (6) months after receipt of a written warning along with instructions on how to improve performance. However, the dismissed employee is still entitled to accrued but untaken vacation and pay and benefits due to him as at the date of termination. The same applies when an employee is terminated during a probationary period.

F. Employment References

Bermuda law does not require employers to provide employment references. See Section I.F above for the law in relation to job references.

G. Record-keeping

There are a host of detailed provisions requiring recordkeeping by employers in respect of various records related to their employees, pursuant to the following statutes:

S.8(5) of the [Contributory Pensions Act 1970](#) requires employers to keep records of social insurance (government pension) contributions paid by the employer on an employee's behalf and any information as required by Director when employment comes to an end.

S.29 of the same Act allows an inspector to enter into an employee's workplace and demand production of all the relevant documentation as reasonably required, including wage and salary records, in accordance with his functions under the Act.

S.12 of the [Payroll Tax Act 1995](#) requires an employer to make an assessment of the notional remuneration of a deemed employee which represents a fair and equitable valuation of his services to the business. In order to make this assessment, the employer must use financial records that he has retained showing the services of any deemed employee which generate revenue for the business, and allocation of benefits to that employee from the business. A deemed employee is defined in the Act as a partner, shareholder, member of the governing body of an association, members of Senate and the House of Assembly, and a person holding government office in set out in Schedule 2 to the Ministers and Members of the Legislature (Salaries and Pensions) Act 1975.

S.14 of the [Taxes Management Act 1976](#) requires that the employer paying payroll tax keep documents of account and other books, records or documents as are necessary to show compliance with the Taxes Acts (including the Payroll Tax Act 1995). These records must be kept for five (5) years commencing on the last day of the financial year in which any transaction took place. S. 20 of the same Act provides that an assessment (regarding the amount of tax or to further tax to which such person is chargeable) may be made at any time not later than five (5) years after the end of the tax period to which the assessment relates.

The [Tax \(Accounts and Records\) Regulations 1991](#) require that the employer keep the records specified in the Schedule and any records reasonably necessary to prove or verify any information contained in any records so specified (Regulation 4). The Schedule (to Regulation 4) provides that employers must keep:

- (1) payroll records setting out the gross salary or wage for each employee, with deductions, and the net salary or wage paid to each employee including bonuses, commissions, allowances, etc.; and
- (2) records of the amounts of all benefits conferred on each employee or deemed employee, the nature of each benefit, and details as to how each of those amounts was calculated.

Records to be kept by self-employed persons and employers of deemed employees for payroll tax are the same but also include financial records as set out in s.12 of the Payroll Tax Act 1995 as mentioned above. Self-employed persons are “deemed employees” and are required to keep records under s.12(3)(e) of that Act and s.1(a) and 1(b) of the above Regulations.

S.13 of the [Electronic Transactions Act 1999](#) states that where certain documents, records or information are required by law to be retained, that requirement is met by the employer (or his agent) retaining electronic records if the information contained in the electronic record is accessible and is retained in the original format with the original information.

S.14 of the same Act provides that in any legal proceedings, nothing in the rules of evidence shall apply as to deny the admissibility of an electronic record in evidence, solely on the ground that it is an electronic record, or if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the ground that it is not in its original form.

Information in the form of an electronic record will be given due evidential weight and in assessing the evidential weight of an electronic record, regard shall be given to the reliability of the manner in which the electronic record was generated, stored or communicated; the reliability of the manner in which the integrity of the information was maintained; the manner in which the originator was identified; and any other relevant factor.

S.3C of the [Occupational Safety and Health Act 1982](#) requires that every employer shall keep documents and data on work processes, material, equipment, working conditions and any other documents or data that affect the safety and health of persons at work as the Minister may specify and in such form as the Minister may direct.

Further the [Occupational Health and Safety Regulations 2009](#) require that employers keep records of certain information regarding health and safety in the workplace as follows:

- Every employer is to maintain records and documents required by the Regulations and make them readily available for examination by the Safety and Health Officer and by the safety and health committee in a form prescribed by the Regulations, for a minimum of three (3) years; unless the document relates to an employee, then it shall be maintained for three (3) years or longer if their employment exceeds three years (reg.6).
- A written and signed record by the instructor shall be kept of all training sessions provided for employees which are required by the Regulations, including the name of the instructor and date of training, along with the employees’ signatures (reg.8).
- Every health and safety committee (formed under reg.10) shall ensure that accurate records, which must be provided to the employer and posted by the employer, are kept of all matters that come before it, and shall keep minutes of its meetings in a conspicuous place (reg.15).

- Every employer shall keep a record of any minor injury to their employees which they are aware occurred on their premises including a detailed description of their employee, the date, location, severity, cause and treatment of the injury, and preventative or remedial action taken by the employer (reg.27). All injury reports are to be kept for a minimum of ten (10) years; or the duration of an employee's employment, whichever is longer (reg.29).
- Every employer must, no later than March 1 in each year, submit to a Safety and Health Officer a written report setting out the number of accidents, dangerous occurrences and minor injuries that were reported or recorded by an employer during the 12 month period ending on December 31 of the preceding year (reg.30).
- Every employer must keep a record of every emergency evacuation from their place of employment for a period of three (3) years from the date of the evacuation (reg.87).
- A record of all instruction and training given to emergency officers and monitors in their responsibilities in reference to emergencies must be kept in the place of employment for three (3) years from the date of instruction (reg.89).
- The employer must keep a record of each meeting held between emergency officers and monitors and employees requiring special assistance and of any evacuation or emergency drill that is conducted for the employees for a period of three (3) years from the date of the meeting or drill (reg.91).
- Every employer shall establish and maintain a record of all hazardous substances that are used, produced, handled or stored in a place of employment which must be readily available in the place of employment for examination by parties permitted under the Regulations (reg.143).
- Where there is a risk that the concentration of an airborne chemical agent may exceed the allowed amount, tests shall be carried out and a record of each test conducted shall be kept by the employer for a period of three (3) years after the date of the test; these test records shall include date, location, descriptions of hazardous materials tested, the methods and results of those tests, and the name and occupation of the employee who conducted the tests (reg.151).
- Every employer shall ensure that a record is kept of all inspections, tests, maintenance and modifications carried out on machinery and tools used at their place of employment (reg.162).
- The employer must also ensure that every operator of materials handling equipment has been instructed and trained by a qualified person in the procedures to be followed for its inspection, fuelling (if applicable) and safe and proper use, and the employer must keep a record of any instruction or training given to an operator of materials handling equipment for as long as the operator remains in the employ of the employer (reg.201).

The [Health 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 (reg.4). 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 (reg.3).

In accordance with the [National Pension Scheme \(Occupational Pensions\) Act 1998](#), employers must establish and maintain a pension plan for their Bermudian employees and spouse-of-Bermudian 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.

S.16 of the same Act specifies that where employers are the administrator of their employee's pension plan, they must keep and maintain specified records pertaining to the plan, as prescribed by the Act and its Regulations.

Similarly, regulation 16 of the [National Pension Scheme \(General\) Regulations 1999](#) requires employers who assume the responsibility of administrators to make information relating to their pensions available on request to persons for whom the information is specifically applicable.

S.14F of the [HRA 1981](#) stipulates that the Human Rights Commission may require employers to furnish such information about employees and applicants for employment as the Commission may reasonably require in order to discharge its functions of seeking to eliminate discrimination.

VIII. PRIVACY

There is no general right to privacy under Bermuda law.

There is no Bermuda equivalent of Article 8 of the [European Convention on Human Rights](#) which provides that everyone has the right to 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, no domestic legislation has been passed to specifically implement the Convention in Bermuda to make it directly enforceable by the Bermuda courts. Therefore, the force of law to be applied by the Bermuda courts is the [Bermuda Constitution Order 1968](#), and not the Convention. However the courts will construe Bermuda legislation and the Constitution consistently with European Court of Human Rights case law as much as possible.

With respect to privacy, s.7 of the [Bermuda Constitution Order 1968](#) 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 s.7, and which must be shown to be reasonably justifiable in a democratic society.

The right to prevent the disclosure of information received in confidence is considered a reasonable restriction on the fundamental right of freedom of expression, save insofar as this can be shown not to be reasonably justifiable in a democratic society (s.9 of the [Bermuda Constitution Order 1968](#)).

In addition to these constitutional rights, s.61 of the [Telecommunications Act 1986](#) provides that privacy of communication shall be inviolable except under certain circumstances (see below). S.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, s.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 knows that such access is unauthorised.

See also Section VII.C on Personnel records.

A. Drug Testing

Although the possession and use of prohibited drugs in Bermuda is a criminal offence, there are no laws that allow employers to conduct involuntary drug tests on job applicants or employees. Some private employers provide for drug testing as a mandatory condition of employment and it is up to the employees whether they wish to contractually bind themselves to this condition of employment (if they refuse, then they will not be hired or may be dismissed if they fail drug tests during their employment). Employment policies that are contractually agreed to by the employee may provide for drug testing for cause or random drug testing. Usually this will be in industries where job safety is a feature of the employment position (e.g., persons operating construction machinery or medical professionals).

B. Personnel Records and Information

See above Section VII.G (Record-keeping).

In 2015 Bermuda is implementing for the first time data protection legislation (the [Public Access to Information Act 2010](#)) that will enable the public to access information from publicly funded bodies. An Independent Commissioner will hear appeals when requests are refused. The legislation will be designed to “lift the veil” around government records, whilst protecting information protected by legal

professional privilege and matters of national security. It is as yet unknown how this will affect access to personnel records.

C. Off-Duty Conduct

Employers cannot dismiss an employee for engaging in even serious misconduct out of the workplace unless the misconduct is directly related to the employment relationship or has a detrimental effect on the employer's business such that it would be unreasonable to expect the employer to continue the employment relationship (s.25 EA 2000).

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.

E. Searches

S.7 of the [Bermuda Constitution Order 1968](#) protects persons from unlawful searches. There are, however, various public interest exceptions to this protection, which are set out in s.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 (for example, as part of its drug policy) the employer should disseminate a clearly written policy allowing the employer to search such property on the work premises at his discretion and that the employee must comply with such policy as a condition of his employment.

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. Employees are assigned a social insurance (government pension) number and make contributions out of their salary during the life of their employment. Upon retirement, they receive a Bermuda government pension in certain specified circumstances. Upon becoming disabled, they may also become entitled to a Government disability benefit in certain defined circumstances.

1. Surveillance and Monitoring

S.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 in evidence.

Exceptions are made in the case of police officers investigating telecommunications offences and also in the case of the 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 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 review the content of such communications in his discretion, he, should state this clearly in written policies disseminated to all employees who are made aware that they must comply with such policies as a condition of their employment.

IX. EMPLOYEE INJURIES/WORKERS' COMPENSATION

The [Workers' Compensation Act 1965](#) provides for compensation to be paid by the employer to workers who suffer personal injuries by accident arising out of and in the course of the employment (whether partially or totally incapacitated), or who suffer fatal injuries or occupational disease which is due to the nature of their employment. The scheme is supervised by the Ministry of Home Affairs, although rights under the Act can be determined and enforced by the Supreme Court. The parties to an employment contract are not permitted to opt out of the provisions of the Act.

Compensation is not payable under the Act in respect of any injury which does not incapacitate the worker for a period of at least three (3) consecutive days from earning full wages, or if the injury is attributable to the serious and wilful misconduct of that worker, provided that where the injury results in death or serious and permanent incapacity, the court on a consideration of all the circumstances

may award the compensation provided for by the Act or such part thereof as it shall think fit. The employee and employer may agree in the employment contract to a different amount of workers' compensation payable, provided it is equal to or exceeds the amount payable under the Act; such agreement may be made an order of the court.

Where temporary incapacity (whether total or partial) results from the injury, the normal compensation ordered is a weekly payment of half the difference between the weekly earnings which the worker was earning at the time of the accident and the weekly earnings which he is earning or is capable of earning in some suitable employment or business after the accident, capped at a maximum of \$170 compensation per week. Higher sums are payable in the event of permanent partial or total incapacity as set out in the act.

If the employee's injury was caused by the negligence or wilful act of the employer, the employee may bring an action in court and seek Workers' Compensation at the same time; if liability is not established in court, the court may still award Workers' Compensation and deduct costs as necessary for the other action. Given the relatively low sums that are paid out under the Workers' Compensation legislation, injured employees will fare better if they pursue regular court action, assuming they can prove the relevant breach of duty on the part of the employer and have the resources to do so.

No compensation is payable under the Act in respect of any incapacity or death resulting from a deliberate self-injury, or from personal injury, if the worker has at any time represented in writing to the employer that he was not suffering or had not previously suffered from that or a similar injury, whilst knowing that the representation was false.

If a deceased worker leaves any dependants wholly dependent on his earnings, the amount of compensation payable is the "actual earnings" of the deceased in the three (3) years prior to the incident, or the average of national per capita income over three (3) years. If the deceased worker leaves any dependants who were only partly dependent on the deceased, the amount of compensation must be proportional and reasonable to the injury, not exceeding what would be due if they were wholly dependant, as determined by the courts. If the deceased worker leaves no dependants, the reasonable expenses of the burial of the deceased worker not exceeding the sum of \$2,000 and the reasonable expenses of medical attention must be paid by the employer.

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

X. UNEMPLOYMENT

Bermuda does not have an unemployment benefits system. Some years ago, the then Government of Bermuda considered establishing an Unemployment Insurance (“UI”) Scheme in order to provide financial security to workers faced with involuntary employment, but such scheme has never been implemented.

However, Bermuda does have a Department of Financial Assistance which is mandated to ensure that individuals with insufficient financial resources are assisted in order to maintain a minimum standard of living. The Director of Financial Assistance has the power to grant assistance awards under the [Financial Assistance Act 2001](#) in accordance with the [Financial Assistance Regulations 2004](#).

Section 6 of the [Financial Assistance Act 2001](#) describes a person who is qualified to apply for an award as one who possesses Bermudian status, or who is the spouse of Bermudian status holder and has co-habited in Bermuda with that person for a period not less than three (3) years, or who is the guardian of a dependant who possesses Bermudian status and who is not serving a sentence of imprisonment. In order to be eligible for an award, regulation 3 specifies that the allowable expenses of the household (head of the house and all those who reside with him in his home) must exceed the qualifying income of the household, and the value of the investments and assets of the household must not exceed \$500.

Regulation 4A(2) requires that if an application is made due to the termination of an applicant’s employment, payment of an award of financial assistance may not commence until three (3) months after the date of termination. “Termination” of an applicant’s employment means either termination for cause or resignation, but does not include termination due to circumstances which are the basis of a complaint brought by the applicant under the Human Rights Act 1981.

Regulation 4A(4) indicates that if an application is made due to the termination of an applicant’s employment for reasons of redundancy, and the applicant receives a redundancy payment, payment of an award of financial assistance may not commence until the end of the period which is determined by the Director as a reasonable period for him to meet all of his financial needs from that redundancy payment.

[XI. HEALTH & SAFETY AND UNIONS – INDUSTRIAL RELATIONS](#)

[A. Health and Safety](#)

The [Occupational Safety and Health 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 (e.g. offices, factories, warehouses, hotels, and construction sites all have their own special health and safety issues).

Most working environments are covered by the [Occupational Safety and Health Regulations 2009](#). 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 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 believes that doing otherwise poses a danger to the health and safety of employees.

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

The Regulations further mandate that employers notify the Government Safety and Health Officer of any accidents or dangerous occurrences at the worksite that result in the death of or major injury to an employee within 24 hours of its occurrence. In addition, employers must keep detailed written records of all workplace accidents for at least ten (10) years. A breach of these duties can result in criminal penalties being imposed.

B. Unions

The [Trade Union Act 1965](#) establishes the basis of the legal existence and purposes of trade unions, their registration, their power to bring and defend actions, their duty to keep accounts, and provides for their 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 govern the issue of a strike or lockout action.

The Act gives every worker the right to belong or not to belong to a trade union and for union members to take part in trade union activities and run for union office. It is a criminal offence for an employer to seek to prevent or deter a worker from exercising these rights.

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 contributions to a union in lieu of membership or, alternatively, to a charity of their choice. 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 against workers who refuse to comply with the agency shop agreement. The trade union has a right to apply to the court to enforce the agency shop.

The [Trade Union Act 1965](#) was amended in 1998 to add provisions regulating the bargaining rights of trade unions and the certification and decertification of unions to act as exclusive bargaining agents on behalf of appropriate bargaining units. Previously, the employer had to voluntarily 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 Amendment Act has the effect of requiring employers to certify the union as the bargaining agent where the requisite number of employees votes in favour of such action (over 50% of those participating in the ballot). There are penalties stipulated for attempts by employers or unions to influence the outcome of the vote. The statutory procedure for a ballot by the members of the appropriate bargaining unit to cancel the union's certification is also prescribed by the Act.

The [Labour Relations Act 1975](#) 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 1975 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 may refer the matter to the Minister of Labour. If both parties consent, the Minister may, in turn, refer the dispute to arbitration 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.

A strike is lawful when it complies with the requirements of the [Labour Relations Act 1975](#), 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 relevant strike or lockout becomes unlawful.

A strike/lockout that would be lawful for an ordinary trade or industry is 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 of 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 (2) years.

The Act further establishes an Essential Industries Disputes Settlement Board to adjudicate labour disputes in essential service industries. The Act also empowers the Minister of Labour (if he 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 agreement. The Board's work is an immediate priority and, where practicable, must deliver a decision within 21 days. Their 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.

C. Limitation Periods Affecting Employers

There are various statutes of limitations that apply to employers in Bermuda.

S.4 of the [Limitation Act 1984](#) limits the time in which actions in tort can be made to six (6) years from the date on which the cause of action accrued (e.g. the date of breach of the employer's duty at common law or his breach of statutory duty). It is recommended that employment records for employees be kept for a minimum of six (6) years to cover the prescribed time limits in which actions may be brought.

S.7 of the [Limitation Act 1984](#) limits the time for which a breach of contract claim can be made to six (6) years from the date when the cause of action accrued (i.e. six (6) years from the breach), (for e.g. common law wrongful dismissal or breach of a term in a contract a contract of employment). It is recommended that employment records for employees be kept for a minimum of six (6) years to cover the prescribed time limits in which actions may be brought.

S.9 of the [Limitation Act 1984](#) limits the time to bring an action to enforce an arbitration award (where not under seal) to twenty (20) years from the date on which the cause of action accrued.

S.12 of the [Limitation Act 1984](#) limits the time to bring a personal injury action to six (6) years from the date on which the cause of action accrued or the date of knowledge (if later) of the person injured (e.g. asbestos claim for contaminated employer's premises can be much later). The limit can be extended in certain circumstances.

S.12 also limits the time to bring an action in the case of death (Survival of Actions Act 1949) to three (3) years from the date of death or the date of the estate representative's knowledge, whichever is later (which can also be extended in certain circumstances). It is important to note, however, that s.4 of the [Survival of Actions Act 1949](#) specifies that an action in tort against the estate must be brought within twelve (12) months of the death assuming the cause of action arose not earlier than six (6) months before death.

S.13 of the [Limitation Act 1984](#) limits actions brought under the Fatal Injuries (Actions for Damages) Act 1949 to three (3) years from the date of death or the date of knowledge of the person for whose benefit the action is brought. The time limit under this section can also be extended in certain circumstances.

S.26 of the [Limitation Act 1984](#) limits the time in which one can bring an action to enforce a judgment to 20 years from the date on which the judgment became enforceable. Further to this, no arrears of interest in respect of any judgment may be recovered after the expiration of six (6) years from the date on which interest became due.

In all cases of fraud by the defendant or deliberate concealment by the defendant or mistake, time is extended and begins to run when the plaintiff has discovered the fraud, concealment or mistake, or could with reasonable diligence have discovered it.

S.36 of the [Employment Act 2000](#) provides an employee with three (3) months (from the date of breach) to make a complaint to the inspector that the employer has failed to comply with any provision in the Act (eg. unfair dismissal under the Act, failure to pay redundancy pay, failure to grant paid leave, etc.)

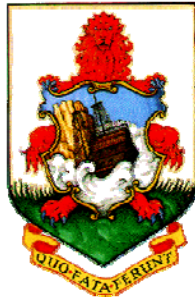
S.14H of the [Human Rights Act 1981](#) stipulates that a complaint must be made within six (6) months after an alleged contravention of the Act takes place. This time limit can be extended up to two (2) years if there are good reasons for the delay and if neither party will be prejudiced by the delay (eg. employer discriminated in hiring, demoting, firing, etc. or failed to provide workplace free of sexual harassment).

S.12 of the [Workers' Compensation Act 1965](#) provides for compensation for an employee in the event of death or personal injury or occupational disease arising during the course of employment. Notice of an accident at work must be given by the employee as soon as practicable after the accident happened, and a claim for compensation must be made within twenty-six (26) weeks from the date of the accident causing injury or from the date of death, but, can be extended in certain circumstances for up to three (3) years.

Canterbury Law Limited is the exclusive Bermuda member of the Employment Law Alliance and can access the Handbook on employment laws of other overseas jurisdictions all around the world at your request. For further information regarding labour and employment law in Bermuda, please contact:

Juliana M. Snelling, Director
Alsha J. Wilson, Associate Attorney

Canterbury Law Limited
1st Floor, Swan Building
26 Victoria Street, Hamilton
HM 12 Bermuda
jsnelling@canterburylaw.bm
www.canterburylaw.bm



MINISTRY OF HOME AFFAIRS DEPARTMENT OF IMMIGRATION WORK PERMIT POLICY

VERSION EFFECTIVE 12th MARCH 2015

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1.0 INTRODUCTION

The Bermuda Immigration and Protection Act 1956 (“the Act”) requires that all persons must obtain specific permission by or on behalf of the Minister responsible for Immigration if they are to engage in gainful occupation in Bermuda unless they are Bermudian; a spouse, widow or widower of a Bermudian; or a permanent resident. The purpose of this document is to provide details about how the Department of Immigration (“the Department”) and Board of Immigration (“the Board”) administers the Act.

1.1 Mission

The mission of the Ministry of Home Affairs (“the Ministry”) is *“to improve the economy by addressing the needs of the local and international business community and the career aspirations of Bermudians.”*

1.2 About the Department of Immigration

The Minister responsible for Immigration is Senator the Honourable Michael M. Fahy, JP (“Minister”) and the Permanent Secretary is Mr. Randy Rochester.

Under the direction of the Chief Immigration Officer, the Department is comprised of three (3) core operations sections, which include the Corporate Services Section, the Personal Services Section, and the Compliance Section, together with the Finance & Administration Section and the Policy and Planning Section.

The Corporate Services Section

In pursuit of the Ministry’s mission, the Corporate Services Section (“the Section”) is committed to working as a team in the performance of its duties to ensure that it responds to the needs of its customers in an efficient, effective and timely manner.

More specifically, the Section is responsible for administering Part V (Regulation of Engagement in Gainful Occupation) of the Act and the policies for processing work permits and permissions to reside while seeking employment or attending school or college. To this end, the Section is responsible for processing a wide range of applications (including related landings). The Corporate Services Manager, Industry Relationship Officers and Customer Service Representatives liaise directly with employers and work in conjunction with the Board, the Permanent Secretary and the Minister to make recommendations on each application.

Contacting a Member of the Corporate Services Section

The Section is located in the Government Administration Building at 30 Parliament Street, Hamilton HM 12. Contact information for each team member, including the Head of Department, follows. The fax number is 441-295-4115.

Dr. Danette Ming, Chief Immigration Officer, dwming@gov.bm, 441-295-5151, extension 1444
Mr. Steven Lambert, Assistant Chief Immigration Officer, slambert@gov.bm, 441-295-5151, extension 1385

Ms. Michelle A. White, Corporate Services Manager, mawhite@gov.bm, 441-295-5151, extension 1940

Finance & Business

Ms. Darlene Smith, Industry Relationship Officer, drsmith@gov.bm, 441-295-5151, extension 1534

Ms. Nekia Richardson, Customer Service Representative, nrichardson@gov.bm, 441-295-5151, extension 1031

Ms. Marilyn Cupidore, Customer Service Representative, mdcupidore@gov.bm, 441-295-5151, extension 1942

Hospitality

Ms. Jannell Burgess, Industry Relationship Officer, jcburgess@gov.bm, 441-295-5151, extension 1388

Ms. Karen Bean, Customer Service Representative, kjbean@gov.bm, 441-295-5151, extension 1382

Ms. Meladene Harris, Customer Service Representative, miharris@gov.bm, 441-295-5151, extension 1032

Other

Ms. Zelia Paulos, Industry Relationship Officer, zpaulos@gov.bm, 441-295-5151, extension 1389

Ms. Crystal Lightbourne, Customer Service Representative, crlightbourne@gov.bm, 441-295-5151, extension 1394

Ms. Sanshae Morrissey, Customer Service Representative, slmorrissey@gov.bm, 441-295-5151, extension 1390

1.3 Service Levels and Application Forms

For applications properly submitted, employers can expect the following turnaround times:

APPLICATION TYPE	TIME <i>(for approved applications from day of submission to issuance of documentation)</i>
Standard, Seasonal and Occasional Work Permits	Twenty (20) working days
Short Term, Periodic, Global, New Business, and Global Entrepreneur Permits, Travelling Salespersons, Letters of Permission	Ten (10) working days
Landing Permits	Five (5) working days
Emergency Permit	Within Forty-eight (48) hours

* Employers should note that when the Department experiences a high volume of submissions, applications may sometimes experience processing delays.

Application forms are available for all applications in this policy on-line through the Department website at www.gov.bm. Click on the Ministry of Home Affairs and scroll to Department of Immigration. Please note: (1) application forms are NOT available at the Department; (2) Completed applications are NOT accepted by email.

1.4 Appealing a Decision of the Board of Immigration or the Minister

Employers have the right to appeal to the Minister following any decision made by the Board or the Minister. Appeals should be submitted in letter form to the Department for the attention of the Chief Immigration Officer and marked Immigration Appeal **within seven (7) working days of the date of the refusal letter**. The appeal must clearly specify the rationale for reconsideration of the application. If the appeal is in relation to a new work permit application for a work permit holder whose work permit has expired, the employee may continue to work while the appeal is being considered **provided that the appeal is submitted on time**. For the sake of clarity, if an appeal is submitted outside the said time frame then the employee **must** stop working. There is a fee for making appeals. If a work permit is revoked/withdrawn by the Minister there is a right to appeal to the Immigration Appeal Tribunal per the Act.

1.5 Payment of Government Taxes and Employee Benefits

An employer will be required to certify in the work permit application form that it is not delinquent by more than ninety (90) days in meeting its statutory obligations in respect of payments of payroll tax, health insurance, social insurance and pension contributions **for all employees**. In the event that an employer is delinquent the employer shall provide documentation that they have made the required payments before the work permit is processed and/or provide proof of an agreed payment plan with the relevant Government departments.

1.6 Penalties and Compliance

Section 71A of the Bermuda Immigration and Protection Amendment (No. 2) Act 2013 empowers the Chief Immigration Officer to impose civil penalties of up to \$10,000 on employers who abuse immigration policy. Employers and employees should review the Act to ensure they understand the consequence of making untruthful applications. See www.bermudalaws.bm. Complaints regarding behaviour of employers and/or employees abusing this policy and/or immigration law can be made to the Compliance Section of the Department headed by Ron-Michel Davis on 295-5151 extension 1395 or anonymously via the Immigration Hotline 296-5202. Please leave sufficient information for an investigation to commence. Abuse of immigration laws and policies are taken very seriously so it is incumbent upon employers and employees to read and understand this document.

1.7 Fees

All fees in relation to this policy are contained in the Government Fees Regulations 1976 (as amended) under Head 6 available on www.bermudalaws.bm.

1.8 Landing Without Correct Documentation

See Appendix II.

1.9 Responsibilities of the Employer in Filling Job Vacancies

In most cases the main criterion in assessing whether or not to grant foreign nationals permission to work in Bermuda is whether there is a suitably qualified Bermudian, Spouse of a Bermudian or PRC holder who is interested in the job and available to do it.

Consequently most work permit categories require employers to conduct a bona fide search including advertising vacancies on www.bermudajobboard.bm and in the newspaper. Additionally, employers should take care to hire suitably qualified Bermudians, Spouses of Bermudians or PRC holders who fulfil the minimum advertised requirements.

An employer who applies to employ a foreign national in a job for which there was a Bermudian, Spouse of a Bermudian or PRC holder applicant is required to give clear, satisfactory reasons for not employing the Bermudian, Spouse of a Bermudian or PRC holder. The employer of the work permit holder who signs the application documentation is responsible for its contents. This responsibility cannot be delegated under the Bermuda Immigration and Protection Amendment (No. 2) Act 2013.

It is important to note that although the Department carefully scrutinises each application submitted by employers, the Department does not possess the power to force an employer to hire Bermudians, Spouses of Bermudians, PRC holders or any particular person. The Department can only prevent the hiring of a foreign national by refusing to grant permission to work.

1.10 Responsibilities of the Work Permit Holder

An employee must at all times, be mindful of and adhere to the conditions placed on his/her work permit and of the job responsibilities placed on his/her job description. He/she must also take note of the 'General Information' listed on the back page of his/her work permit document. For work permit card holders should visit our website (www.immigration.gov.bm) for the 'General Information'. Also, where it is the responsibility of the employee to repatriate his/her dependants, he/she must honour this commitment and take immediate steps to ensure that when he/she departs Bermuda, his/her dependants will depart too unless the dependants have permission to reside and seek employment per section 5.8

1.11 Requirement for Proficiency in English Language

Persons coming to work in Bermuda under the Portuguese Accord ("the Accord") as well as those employed in the construction industry are required to have a working knowledge of the English language. This is to ensure that persons perform their work duties in a safe manner. Persons will not be allowed to work in the construction industry if their English language skills are deemed by the Minister to be inadequate to comply with health and safety standards. In

cases where English language skills are questionable, the person will be landed for seven (7) days and may be required to undergo testing by the Department. Failure may result in the person being asked to leave Bermuda.

1.12 Employer's Requirement to Repatriate

The guarantee of repatriation by the employer of the work permit holder and sponsored dependants is enshrined in law under the Bermuda Immigration and Protection Amendment (No. 2) Act.

1.13 Settling Affairs and Leaving Bermuda

In cases where permission to work has expired and persons are required to leave Bermuda, the Department allows ninety (90) days to close off personal residency arrangements i.e. accommodation lease agreements, utility bills, repatriation, transportation of personal effects. Should additional time to settle one's affairs be required, persons must submit a written request to the Department including justification for the extra time being requested (e.g. Dependants to complete the school year).

Where there is an agreement between the employer and the work permit holder to leave Bermuda and/or to vacate accommodation in a period of time less than the time frame specified above, the time frame agreed between the employer and work permit holder shall prevail. When extensions of time are granted by the Department that exceed the time period agreed with the employer to remain in Bermuda, the Department may require funds for the work permit holder and sponsored dependants (if any) for their repatriation to their country of origin to be deposited with the Chief Immigration Officer pursuant to section 130 of the Act. Persons who wish to seek alternative employment may request permission from the Department to do so.

1.14 Employer's Requirement to Inform Bermudians, Spouses of Bermudians and PRC Holders of the Outcome of their Application

Employers are required to inform all unsuccessful Bermudians, Spouses of Bermudians and PRC holder candidates of the outcome of their application prior to submitting work permit applications to the Department. Employers may be asked to provide evidence of such notification to the Department. A letter or email to the unsuccessful applicant will suffice. The reason the applicant was unsuccessful need not be given in the notification. However this information is required for the work permit application under the Recruitment Disclosure section.

1.15 Advertising Criteria

Employers are required to advertise available positions prior to applying for Short Term or Standard Work Permits (unless otherwise set out in this policy). The position must, at a minimum, be advertised three (3) times over a period of eight (8) days, in a local newspaper as well as, at a minimum, eight (8) consecutive days on the Government Job Board at www.bermudajobboard.bm. Each advertisement must include the following details:

- the title of the job being filled and the name, telephone number and mailing address of the employer;
- the title of the job being filled;
- clearly specify the minimum standards of qualification and experience;
- a brief description of the job to be filled which should be consistent with the normal functions associated with the job. An advertisement will be invalid if it contains a job description that appears to be tailor-made to fit a particular existing or potential work permit holder; and
- notice of the deadline for application.

The work permit application must be submitted within three (3) months of the date on which the position was last advertised in either the newspaper or the job board (which ever had the longest run date). However, in cases where the length of the recruitment process does not permit the employer to submit an application within three (3) months of the date the position was last advertised, employers may pay the **Advertisement Extension Fee** which will permit them to submit the application within six (6) months of the date on which the position was last advertised.

Should any advertised details change prior to the expiry of five (5) working days following the date of the last advertisement, the advertisement shall be invalid and the employer will be required to re-advertise the position. This is intended to allow sufficient time for Bermudians, Spouses of Bermudians and PRC holders to apply.

1.16 Waivers of advertising

Upon request of the employer and upon payment of the requisite fee, the Board/Minister may waive the requirement to advertise a position where a Short Term or Standard Work Permit is being applied for. A waiver of advertising may be appropriate where:

- the person is uniquely qualified for the position; or
- the position would not exist in Bermuda if it were not for the applicant filling the job; or
- the success of the business would be detrimentally affected if the person were to leave the business (detrimentally affected means that jobs of Bermudians, Spouses of Bermudians or PRC holders would be put at risk); or
- the employee is integral and key to income generation for the business by brokering deals or attracting/retaining clients or funds.

Each request for a waiver of advertising will be decided upon by its merits. The decision of the Board/Minister may be appealed to the Minister (see section 1.4) upon payment of the requisite fee.

Waivers are automatically granted in respect of:

- the post of CEO or other Chief Officer;
- the post of Resort Hotel General Manager at a hotel with greater than 175 beds;

- Periodic, Occasional, New Business, Global and Global Entrepreneur Work Permits;
- Permits granted pursuant to sections 7.3, 7.4 or 7.13 (subject to restrictions listed).

Where an employer demonstrates that it has Bermudians, Spouses of Bermudians or PRC holders training abroad to gain international experience with the plan upon completion of a specified period not exceeding three (3) years to return to Bermuda, an employer may apply for an automatic waiver of advertising for guest workers that fall outside the aforementioned categories equal to the number of Bermudians, Spouses of Bermudians or PRC holders being trained abroad for the same length of time in similar positions of employment. Such proof shall include the identity of the selected Bermudians, Spouses of Bermudians or PRC holders training abroad as well as their respective statements of employment, training program details and company organizational chart. The Department reserves the right to request further information regarding the training of the Bermudians, Spouses of Bermudians or PRC holders.

1.17 Refunds

Refunds in respect of work permit fees paid **will** be given in the following circumstances:

- Where a particular term of work permit is applied for and the Department grants a term less than that applied for, the difference in fees between the two work permit terms will be refunded less an administration fee (e.g. If a three (3) year standard work permit is applied for and a two (2) year standard work permit is granted the Department will refund the differential of one (1) year less the administration fee).
- Where a particular term of work permit is applied for and the Department refuses to grant the work permit applied for the work permit fee will be refunded less an administration fee.
- Where a work permit is cancelled prior to a decision being made, the work permit fee will be refunded less an administration fee.
- Where a work permit application has been submitted incomplete, the work permit application will be returned to the employer with a checklist identifying incorrect or missing documents; the work permit fee will be refunded less an administration fee.

Refunds in respect of work permit applications **will not** be given in the following circumstances:

- Where a work permit is applied for and granted and the work permit holder does not in fact come to Bermuda to commence employment.
- Where a particular term of work permit is applied for and granted and the work permit holder ceases employment (for whatever reason) prior to the expiry of the term of the work permit.
- Landing Permits
- Work Permit Cards

1.18 Guidelines for Issuing Work Permit Cards

New work permit cards will be issued to standard, global, new business, and periodic work permit holders, and to sponsored dependants. The card is to facilitate travel to/from Bermuda.

A work permit card will be issued under the following circumstances:

- a) if the card has been lost, damaged or stolen;
- b) if the employer's name changes (where a person moves to a new employer; in a merger, the current work permit card should remain and be changed after it expires);
- c) if the card holder's name changes; and
- d) when the card expires.

Application Process

Work permit cards will be an automatic by-product of work permit applications for standard, global, new business, and periodic work permits, and applications for sponsored dependants. In these cases, employers must submit a complete application form and the requisite documents and the fees for the work permit application and the work permit card.

In cases where work permit holders for standard, global, new business, and period work permits, and sponsored dependants are already resident in Bermuda, a letter requesting a work permit card, including the fee for all persons to whom a card is to be issued, must be submitted by employers.

1.19 Ministerial Discretion and Policy Amendments

Notwithstanding any policy prescribed throughout this document, the Minister may exercise his discretion per the Act to waive specific policies upon written request or justification for the same. This is particularly the case in respect of specialised roles where there is a known shortage of Bermudians, Spouses of Bermudians and PRC Holders. The Minister has **no** discretion to waive any fees prescribed in the Act or related Regulations.

It should be noted that certain job categories are exempt from work permit control per the Act. Applicants should make reference to the Act in certain circumstances. In addition employers and employees should cross-reference this policy with updates posted on the Home Affairs website. Every effort will be made to notify the public of any such amendments via the press and electronic media. Frequently Asked Questions can be found in Appendix III and forms part of this policy.

2.0 POLICY REGULATING BUSINESS VISITORS

The purpose of this section of the policy is to regulate non-residents who visit Bermuda for business purposes.

2.1 Business Activities for which Business Visitors have the Tacit Approval of the Minister to Conduct Business in Bermuda

There is no need for an employer to obtain Department approval to land a business visitor in Bermuda provided that the:

- i. business visitor is in possession of a return ticket (as well as a valid multi-re-entry visa if the business visitor is a Visa Controlled National – see Appendix II);
- ii. total length of the stay does not exceed twenty-one (21) consecutive days (unless specified differently below); and
- iii. activities undertaken by the business visitor are limited to:
 - a) broker meetings;
 - b) director meetings;
 - c) shareholder meetings;
 - d) attending general business meetings with employees of an organisation where the visitor is not being remunerated by the Bermuda based organisation (including external examination boards);
 - e) presenting business seminars or other presentations provided the seminars and presentations are not open to the general public and are not for the purpose of promoting investment schemes or other money-making ventures;
 - f) entering Bermuda for training in techniques and work practices, provided that the training is conducted by a company affiliated by an ownership relationship and that the training is limited to observation, familiarisation and classroom instruction;
 - g) entering Bermuda for a job interview;
 - h) entering Bermuda to gather information, or make a presentation, in response to a Request for Proposal or a similar tendering process, provided the business visitor is not being paid for his/her services by the Bermuda based-organisation;
 - i) attending, presenting or exhibiting at conferences;
 - j) internal auditing, including school accreditation and certification audits;
 - k) visiting potential customers, purchasing, checking details or examining goods or services;
 - l) visiting current clients to negotiate deals, contracts, policies and other agreements as a service provider (excluding travelling salesman);
 - m) providing advice as a financial adviser, provided they are not in contravention of the

Investment Business Act 2003 and related regulations;

- n) **work lasting not greater than seven (7) days for:** a journalist, model or photographer on an assignment for an international publication or for international electronic media; or a religious official to provide services to a private wedding party; advisers, consultants, trainers, and trouble shooters provided that they are employed abroad, directly by the same company (or group of companies) to which the Bermuda client belongs but that (i) the services of such business visitors do not extend to clients of the Bermuda business and (ii) the training is for a specific, one-off purpose;
- o) interpreters or translators who are existing employees of an overseas organisation and who are accompanying the business visitors;
- p) certified installers of equipment or software entering Bermuda to deploy, troubleshoot/debug and/or enhance their products for a Bermuda company whose purchase agreement includes installation and maintenance;
- q) a fine artist creating works of art who intends to sell paintings of Bermuda abroad;
- r) sports professional(s) or professional team(s) who will be participating in a tournament or sporting event (providing they are not compensated by a person or entity resident in Bermuda);
- s) lawyers, their clients, witnesses, experts and administrative support professionals visiting Bermuda in connection with international dispute resolution and/or preparation for and participation in international arbitration proceedings, or
- t) lawyers visiting Bermuda to participate in insurance claims-related meetings (including mediations and other settlement meetings) involving insurance policies issued to policyholders located outside Bermuda and governed by laws other than the laws of Bermuda.

Business visitors who require a stay longer than twenty-one (21) days may, after landing, make a Visitor Extension application which allows visits for up to a maximum of an additional twenty-one (21) days.

Business visitors conducting activities not specified in this policy must apply for a Periodic Permit or Short Term Permit. See below.

2.2 Letter of Permission for Not-for-profit organisations, Registered Charities and Religious Institutions

A Letter of Permission may be granted to a not-for-profit organisation, a registered charity, or religious institution such as a coach or teacher of sports, clergy, a speaker or a musician or entertainer – whether they are being remunerated or not.

Such a person is given permission to stay for thirty (30) days at the time the application is made. After landing, an extension (using the Visitor's Extension application) may be granted upon application and payment of the appropriate fee provided the total stay does not exceed sixty (60) days. Should longer than sixty (60) days be required a work permit should be applied for.

In cases where a group is landed for the same purpose (e.g. an orchestra or choir or sports team) the Letter of Permission fee is payable for each member. However this fee is capped at five (5) persons (see fee regulations).

Application Process

To apply for a Letter of Permission employers must complete the Letter of Permission Application Form.

2.3 Periodic Work Permits

Purpose and Specifications

A Periodic Work Permit is to be used by employers seeking to hire non-resident individuals who will make multiple visits to the Island over a period of time, staying no greater than thirty (30) days for each visit. Advertising is not required.

Periodic Work Permits may be granted for periods of one (1), two (2), three (3), four (4) or five (5) years.

After arrival, if the holder of a Periodic Work Permit requires a stay longer than thirty (30) days, the employer may apply for an extension of up to a further thirty (30) days by submitting a Visitor Extension Application. The Periodic Work Permit holder shall not be in Bermuda for more than a total of one hundred and eighty (180) days per calendar year.

Eligibility

Employers may apply for a Periodic Work Permit for individuals who work for an overseas office of their company or for an individual who is a service provider contracted to work for the Bermuda company including travelling salesperson (see section 2.4). Other applications outside these categories will be considered on a case by case basis by the Minister.

Alternatively, in cases where a service provider is under contract to provide service to a Bermuda company (e.g. maintenance agreements, equipment warranties, training contracts) and the business visitor may not always be the same person, the employer may request that the Periodic Work Permit be issued in the name of the foreign company providing the service rather than an individual. Only one representative of the foreign company may land per Periodic Work Permit.

Application Process

To apply for a Periodic Work Permit employers must complete the Periodic Work Permit Application Form.

2.4 Periodic Permit for Travelling Salespersons

Travelling salespersons are not permitted to visit Bermuda to sell products without first obtaining a Periodic Permit.

Applications for Periodic Permits in respect of travelling salespersons will be accepted from either (a) a local business acting as an agent or (b) by the Bermuda Chamber of Commerce ("the Chamber"). The Chamber screens each application to determine if the product is already represented by one of the business firms and whether the permit will threaten that firm's interests or, if the product is not yet available on the Island, determine which businesses would have an interest in the product and set up appointments with interested firms on behalf of the visiting traveling salesperson.

Periodic Permits for travelling salespersons are valid for one (1) year only with restrictions as deemed appropriate by the Department upon recommendation by the Chamber.

3.0 POLICY REGULATING GAINFUL OCCUPATION IN BERMUDA

The Act requires that the Minister regulate the employment of all persons who are not Bermudian or the Spouse of a Bermudian (including a widow or widower) or a Permanent Resident's Certificate holder ("PRC holder"). The purpose of this section is to specify how employers can obtain work permits in various categories.

3.1 Short Term Work Permit

Purpose and Specifications

The Short Term Work Permit is used by all employers, including not-for-profit organisations, registered charities and religious institutions (unless section 2.2 or 2.3 apply), to employ an individual to work for periods of up to six (6) months.

Applications will be accepted for terms of up to three (3), four (4), five (5) or six (6) months. At the conclusion of the term of the Short Term Work Permit, the holder will be expected to leave Bermuda, unless an extension has been sought within the proper processing period. Short Term Work Permit holders will **not** normally be granted permission to reside and seek employment.

Eligibility

Short Term Work Permits will be granted to individuals to perform any type of work provided that the employer first advertises the position pursuant to part 1.14 of this policy.

An automatic exemption from the advertising requirement is granted in respect of Short Term Work Permit Applications where the purpose of the application is to:

- a) extend, for up to six (6) months, an existing Short Term Work Permit of a person who is leaving Bermuda after the expiry of the Short Term Work Permit; or
- b) utilise the services of someone employed by a Bermuda company's overseas subsidiary, affiliate organisation, or parent company; or
- c) deploy a service provider or consultant in a specialised field; or
- d) hire a specialised technician for the purpose of maintaining equipment under contract; providing repairs to pipe organs; installing an upgrade of the business' computer software; servicing inter-company communications networks; or
- e) provide services or entertainment to a private wedding function;
- f) employ featured act entertainers for a public event performing for a single period of fourteen (14) days or less (subject to section 7.12) or an entertainer(s) for a convention/conference; or
- g) utilise someone for a non-profit organisation, a registered charity or a religious institution, such as a coach or teacher of sports, clergy, a speaker or a musician or entertainer for a period greater than sixty (60) days; or

- h) land sports professionals or a professional team who is participating in an event for a single period of fourteen (14) days or less; or
- i) employ a *locum tenens* minister of religion or physician; or
- j) provide short-term in-house training offered by the Bermuda Employers' Council, the Bermuda College, Bermuda Chamber of Commerce or other recognised training bodies or institutes.

Short Term Work Permit applications for those persons for whom a Standard Work Permit application will be submitted within forty-five (45) days but whom the employer wishes to have employed immediately must include the advertisement which was published for the Standard Work Permit application together with an explanation of how the Bermudian, Spouse of Bermudian or PRC holder applications, if any, were not qualified and suitable for the role. The application must also include the reason that the Standard Work Permit application could not have been submitted earlier. Applications for Short Term Work Permits for those individuals from jurisdictions identified as high risk for tuberculosis (TB), or who have ever resided in such a jurisdiction for a period of three (3) months or more must provide a chest x-ray and a letter from a certified physician confirming they pose no health risk and are free from TB. See Appendix I for those jurisdictions.

Application Process

To apply for a Short Term Work Permit employers must complete the Short Term Application Form.

Employers that obtain a Short Term Work Permit may apply for a new Short Term Work Permit for the same individual if they wish them to stay longer (this does not apply in cases where the employer subsequently applies for a Standard Work Permit). However, the job must be re-advertised (unless automatically exempted as specified in paragraphs (a) to (j) above). The individuals will not need to leave Bermuda on extension applications (see section 4.1).

3.2 Global Work Permits

Purpose and Specifications

A Global Work Permit allows a person who is already employed by a global company in another jurisdiction to transfer to the Bermuda office without the requirement to advertise the position. **The company must demonstrate that the Global Work Permit holder is not being transferred to fill a pre-existing position in Bermuda.** The term of a Global Work Permit is one (1), two (2), three (3), four (4) or five (5) years. However, if the Global Work Permit holder falls within a job category where a statutory council must be consulted that must still be done (see section 3.10). If the employer wishes for the holder of a Global Work Permit to stay beyond the expiry of their Global Work Permit, the employer must apply for a Standard Work Permit.

Applications will be automatically approved in respect of individuals who have been employed for greater than one (1) year and who earn a gross salary greater than \$125,000 per year. Applications in respect of individuals employed for less than one (1) year and/or those earning less than \$125,000 will be considered on a case by case basis and approval will depend substantially on demonstrating that the addition of the Global Work Permit holder will add value to Bermuda. A Global Work Permit is not applicable to positions listed in the closed or restricted categories (see relevant sections below).

Eligibility

Only global employers are eligible to apply for Global Work Permits. For the purposes of this policy a global employer is defined as any company in Bermuda that employs people in jurisdictions outside of Bermuda. Franchise businesses that operate in Bermuda are not global employers for the purpose of this policy.

Application Process

To apply for a Global Work Permit employers must complete the Global Work Permit Application Form.

3.3 New Business Work Permit

Purpose and Specifications

A New Business Work Permit allows an exempted company (per the definition in the Companies Act) that is new to Bermuda to receive automatic approval of work permits for the first six (6) months of obtaining the first new business permit. There is no need to advertise the positions (which is the requirement of the Standard Work Permit). New 114B companies to Bermuda (per the definition in the Companies Act 1981) will be granted New Business Work Permits – however these will be limited to five (5) New Business Work Permits within the first six (6) months of obtaining the first New Business Work Permit. New Business Work Permit holders may be employed in any job category provided that their position is not an entry level position, a graduate position or trainee position or specified in a closed or restricted category (see sections below). However, if the New Business Permit holder falls within a job category where a statutory council must be consulted that must still be done (see section 3.10).

Although there is not a maximum number of permits that can be issued under this policy, new businesses that anticipate requiring greater than ten (10) work permits within the first six months of operation (e.g. relocating an existing business from another jurisdiction) and 114B companies will be required to present to the Minister their Bermuda office staffing plan including their projections for hiring and developing Bermudians as well as engaging local service providers to support their organisation. When considering 114B New Business Work Permits the Minister shall take into account such plans as aforementioned.

New Business Work Permits will be issued for one (1), two (2), three (3), four (4) or five (5) years. At the end of the New Business Work Permit term, if the employer wishes the incumbent to remain in Bermuda, they must apply for a Standard Work Permit.

Eligibility

To qualify for a New Business Work Permit, employers must provide a certificate of incorporation of a Bermuda exempted company or section 114B certificate and, in cases where the first day of operation is not the same as the date of incorporation, state the date that the company has or will commence operating.

Application Process

To apply for a New Business Work Permit employers must complete the New Business Work Permit Application Form. The ultimate decision on what constitutes a new business lies with the Minister.

3.4 Global Entrepreneur Work Permit

The Global Entrepreneur Work Permit may be issued to person(s) for a one (1) year period to work and reside in Bermuda in respect to an exempted company or section 114B start-ups. The work activities may include business planning, seeking appropriate Government or regulatory approval(s), meeting compliance or financial requirements or raising capital.

Application Process

To apply for a Global Entrepreneur Work Permit a letter of application must be sent to the Department justifying the request together with a letter from a Bermudian or Bermuda business services company verifying the intent of the applicant and a completed Global Entrepreneur Work Permit Application Form. The Minister will grant a permit provided he is satisfied that the applicant is a bona fide investor or business person that is likely to domicile a company in Bermuda.

3.5 Standard Work Permits

Purpose and Specifications

The purpose of a Standard Work Permit is to allow all organisations in Bermuda to employ foreign nationals provided that they can demonstrate that a Bermudian, Spouse of a Bermudian or PRC holder was not suitably qualified or available to be hired. Employers may apply for Standard Work Permits of one (1), two (2), three (3), four (4) or five (5) years.

Eligibility

Employers are permitted to apply for Standard Work Permits for jobs that are in the open, special or restricted category. Applications for Standard Work Permits are not allowed for closed category jobs.

Application Process

The application process for each category of job is specified below:

Closed Category Jobs – section 3.6

Airline Ground Agent; Retail Floor Supervisor; General Labourer; Office Receptionist; Painter; Salesperson; Tourist Retail Salesperson; Taxi Driver; Wallpaper Technician; Grocery Packer; Cashier; and Courier.

Restricted Category Jobs – section 3.7

Bank Teller; General Bartender (customer facing); Carpet Installer; Commercial Cleaner; Entertainer/Musician; Fisherman; Photographer; Technical Salesperson; Travel Agent/Consultant; General Carpenter; Administrative Assistant; Room Attendant; Kitchen Porter; Dish/Pot Washer/Kitchen Assistants or roles similar thereto; Landscape Gardener (Entry Level); General Mason.

Special Category Jobs – section 3.8

Child-Care Giver; Beauty Salon, Spa and Hairdressing Staff; Family Support; Fine Artist; Graduate Trainees; Hospital Nurse and Physician; Hospitality: Seasonal Work Permit; Interns; Live-In Domestic Employees (Private Home); Locum Pharmacist and Shared Pharmacists; Occasional Work Permit: Model and Casual or Part-Time Employment; Musician or Entertainer; Music School Teacher; Photographer; Restaurant Staff; Self-Employed Persons and Part Owners of a Bermuda Business; Categories of Jobs Identified by the Minister where there are Large Numbers of Work Permits.

Open Category Jobs – section 3.9

All jobs that are not categorised as Closed, Restricted or Special are considered Open.

3.6 Application Process for Standard Work Permit in the Closed Category

Work permit applications for jobs in the Closed category will not be accepted. Employers must hire Bermudians, Spouses of Bermudians or PRC holders.

3.7 Application Process for Standard Work Permit in the Restricted Category

The application process for jobs in the Restricted category is the same as that for the Open category (see section 3.9) except the employer must:

- a) apply for a maximum term of one (1) year; and
- b) submit evidence that any candidates screened and recommended by the Department of Workforce Development (“DWD”) have been properly considered. DWD is expected to respond to enquiries by employers within ten (10) working days. Should no response be forthcoming from DWD the application may be submitted with written evidence that enquiries were made.

3.8 Application Process for Standard Work Permit in the Special Category

The application process for jobs in the Special category is the same as that for the Open category (see section 3.9) except the employer must ensure that they meet the additional requirements as specified in section 7.0.

3.9 Application Process for Standard Work Permit in the Open Category

Prior to making an application for a Standard Work Permit in the Open category, employers must demonstrate that they have made a bona fide attempt to recruit a suitably qualified Bermudian, Spouse of a Bermudian or PRC holder. At a minimum, employers must:

- advertise the position pursuant to section 1.14; and
- properly consider all those Bermudian, Spouse of Bermudian and PRC holder applicants that meet the minimum standards using reasonable selection practices such as interviews and testing.
- to apply for a Standard Work Permit employers must complete the Standard Work Permit Application Form.

Employers submitting more than one application for one category of employment must submit a copy of the advertisement for each application. All Bermudians, Spouses of Bermudians or PRC holder applicants that meet the minimum requirements **must** be given an opportunity to be interviewed.

3.10 Consulting with Statutory Body Regulating Profession

The Minister shall consult with the statutory body that regulates matters dealt with by that profession. Those bodies are:

1. Allied Health Professions Council
2. Bermuda Architects’ Registration Council
3. Bermuda Bar Council
4. Bermuda Clinical Social Work Council

5. Bermuda Dental Board
6. Bermuda Medical Council
7. Bermuda Nursing Council
8. Bermuda Pharmacy Council
9. Bermuda Psychologists' Registration Council
10. Chartered Professional Accountants of Bermuda
11. Optometrists and Opticians Council
12. Professional Engineers' Registration Council
13. Professional Surveyors' Registration Council
14. Veterinary Practitioners Council

To ensure prompt processing of applications, employers are strongly encouraged to send applications directly to the respective statutory council concurrently with the submission of their application to the Department. The statutory council is expected to review the qualifications and experience of the applicant and determine their eligibility to work in Bermuda. For the avoidance of any doubt, restraint of trade is not considered by the Minister to be a valid reason for a statutory council to oppose the approval of immigration applications. The Minister expects a response in writing from the respective statutory council within ten (10) working days of receipt of the application from an employer failing which the Minister may not consider the submissions in coming to a decision. The Minister shall consider requests for extensions of time from statutory councils to review applications in extenuating circumstances. Please see the Department website for the relevant instructions and forms for each statutory council listed.

3.11 Emergency Work Permit

It is recognised that there are genuine business emergencies that may arise from time to time. In such cases employers should contact their respective Department representative by phone to discuss the emergency request and to obtain instructions, and later submit in writing the particulars of the situation by way of a letter justifying the request for emergency service.

The following events are non-exhaustive examples of those that tend to constitute *bona fide* emergencies for Short Term Work Permits:

- Loss of key staff;
- Mass exodus of staff, other than that arising from an industrial dispute;
- Break down of equipment, including computer hardware and software, which is integral to the operation of the business;
- Secondment of an employee of any of its overseas branches, subsidiaries, affiliates or parent company required to troubleshoot a problem;
- Retaining an outside consultant to troubleshoot a problem;
- Temporarily filling a vacancy where there is potential risk to life or economic survival, e.g. *locum tenens* in the emergency room of the Hospital;
- A potential disaster situation; and
- Business recovery after a disaster.

Provided that the Department is satisfied that the situation warrants emergency service, a decision can normally be made within forty-eight (48) hours of receipt of the application (unless statutory board referrals are required or a Minister's decision is required). While the work permit is not likely to be issued within this period, the person will be cleared for landing in Bermuda without penalty. The work permit will be processed according to the usual processing timelines. In some instances even faster service is required in which case the Chief Immigration Officer should be contacted directly. Advertising is not required for such permits.

3.12 Notice of Termination

Employers are required to submit a written notice of termination within seven (7) working days from the work permit holder's last day of employment. The letter must be addressed to the Chief Immigration Officer under title "Notice of Termination". The letter must contain:

- the full name of the employee;
- the date on which the employee terminated employment;
- the date on which the employee left or is planning to leave the island (if known);
- the reason for the termination (e.g. end of contract, redundancy, dismissal, quitting).

The employer must also return the work permit paper document and work permit card (if still valid) and, if applicable, explain why original copies of the permit were not included with the notice of termination.

4.0 APPLICATIONS TO EXTEND OR MODIFY THE CONDITIONS OF A WORK PERMIT

Employers are to ensure that work permit holders comply with all the terms of their work permit. It is particularly important that work permit holders perform only the job specified on the permit and that they do not work beyond the expiry date of the permit. The following policies regulate how work permits may be extended or modified.

4.1 Applications to Extend the Term of a Work Permit Holder

If an employer intends to continue to employ a work permit holder in the same job beyond the expiry date of the current work permit, they must apply for a new permit. The same process that was followed to obtain the original permit must be followed again. Applications should be submitted no less than one (1) month and no more than three (3) months prior to expiration of the current work permit.

The Ministry of Education and schools are permitted to apply for work permits of teaching staff up to nine (9) months prior to the start of the upcoming academic year due to the recruiting cycle for teachers.

Provided that the employer has submitted a complete application within the time frame specified in this policy, the incumbent may continue working beyond the expiry of the work permit in the event that the work permit expires while their new application is still pending. If the complete application is not submitted within the time frame specified, the employee must stop working unless specifically authorised by the Minister. Note: A Short Term Work Permit cannot be applied for in these circumstances.

4.2 Promotions

For an employer to promote a person on a New Business, Global or Standard Work Permit from his/her current job to another in the same business, the employer must first obtain permission. While the employer is not required to advertise the post externally before applying by letter for permission to promote or otherwise transfer an employee internally, evidence of consideration of internal Bermudian, Spouse of Bermudian and PRC holder candidates must be submitted to the Department. Evidence of consideration may be the results of internal advertising and/or submission of reasons why a Bermudian, Spouse of Bermudian and/or PRC holder employees were considered but not suitably qualified. The Department may require that the position be internally advertised if this was not already done.

4.3 Changing Job Title

Where an employer wishes to change an employee's job title, provided the job description, the duties of the post, remuneration and benefits remain the same, the employer does not first have to obtain the Minister's permission to do so. The employer may make the changes and, before

or after the change, inform the Department by letter, including a new Statement of Employment. There is no need to advertise the post, or undertake internal recruiting efforts.

4.4 Transferring to Another Employer

In a business merger, acquisition or amalgamation, the surviving entity may wish to retain the services of employees in the business that has been absorbed. In such a case, the employer must apply for permission to make the transfer. The employer may apply, without advertising the post in such cases to transfer a person on a New Business, Global or Standard Work Permit from one company to another company, provided the duties remain the same. Bermudians, Spouses of Bermudians and PRC holders have priority over work permit holders in such transfers so employers should fully disclose the implications on the total workforce.

A letter from the employer must be sent to the Department providing:

- the full name of the employee;
- the details of the employer's action taken;
- a new or amended Statement of Employment;
- certificate of incorporation, if the company is new or has changed its name; and a non-refundable fee.

4.5 Sharing the Services of an Employee

Sometimes more than one employer wishes to hire a particular person. This is permitted but each employer must obtain a work permit for the individual. The requisite fee must be submitted by each employer.

An application may be made separately or jointly. An application that is submitted jointly by the employers may be advertised jointly provided the name of each employer appears in the advertisement and each employer provides a Statement of Employment.

4.6 Permission to Seek Employment and Job Changes During the First Two (2) Years

Any Standard, Global or New Business Work Permit holder may seek alternative employment without obtaining permission of the Minister. Although there is no limitation on the number of job changes that such a work permit holder may have, the work permit holder is not normally permitted to change employers during the first (2) two years of employment with an initial employer. Exceptions may be made in circumstances where the applicant has been made redundant; where the applicant has lodged a complaint against their employer with DWD (and it has been determined that the applicant has a bona fide grievance with the employer); upon making written request to the Minister to waive the two (2) year requirement. This is subject to the Employment Act 2000 and employment contracts governing probationary periods.

5.0 SPONSORED DEPENDANTS

Many employees that are granted permission to reside and work in Bermuda wish for their spouse (married in accordance with Bermuda law), partner, fiancé and/or child(ren) to accompany them. The purpose of this section of the policy is to specify the qualifications and conditions surrounding sponsored dependants.

A sponsored dependant is a:

- spouse of a PRC holder or work permit holder (married in accordance with Bermuda law);
- partner of a Bermudian, PRC holder or work permit holder (see the detailed guidelines on the Department of Immigration website);
- child(ren) of a PRC holder or work permit holder

For the purpose of section 5, the term 'work permit' means a New Business Permit, Global Business Permit, Global Entrepreneur Permit or Standard Work Permit.

For the purpose of this section, children under eighteen (18) years of age are classified as dependants of their parents. In cases where the children are attending a college or university, the children continue to be classified as dependants up to the age of twenty-five (25) years. Dependant children, on attaining eighteen (18) years of age, who are not attending a college or university and who wish to reside in Bermuda, require permission in their own right to do so.

For the purpose of section 5 and for the avoidance of doubt, please note that sponsored dependant children are only given permission to reside, not seek employment.

5.1 Entry / Re-entry Permit

A sponsored dependant of a work permit holder may be permitted to land in Bermuda as a bona fide resident after the issuance of an entry/re-entry permit. The entry/re-entry permit allows the holder to seek employment unless otherwise stated on the entry/re-entry permit (see section 5.2). To obtain an entry/re-entry permit, employers must follow the instructions in the relevant forms when requesting a work permit.

For all successful applications, the sponsored dependant(s) will be issued an entry/re-entry permit that is aligned with the end date of the sponsor's work permit. If the passport of the sponsored dependant expires before the end date of the sponsor's work permit, the entry/re-entry permit will be granted to coincide with the sponsored dependant's passport expiry date. Once a certified copy of the new passport is submitted to the Department, a request to amend the dates of the entry/re-entry permit can be made. It is essential that the sponsored dependant always carries the entry/re-entry document when travelling. Where a sponsored dependant arrives in Bermuda without the entry/re-entry document, an undocumented fee may be levied at the airport.

5.2 Sponsored Dependants Residing in Bermuda

Upon application, sponsored dependants of the work permit holder may be given permission to reside with the work permit holder and seek employment provided that the sponsor submits proof of financial support for the sponsored dependants. Proof is a bank reference and evidence of medical coverage. The Department reserves the right to require further proof if required to assess the ability of the sponsor to support the sponsored dependant(s).

Applications for permission to reside and seek employment in Bermuda with sponsored dependant(s) must include evidence that the following total remuneration thresholds will be met:

Demographic Profile	Household Remuneration
2 person household	\$60,000 per annum
3 person household	\$100,000 per annum
4+ person household	\$125,000 per annum

Upon making application the Minister may waive the minimum remuneration requirement. Should the sponsored dependant status change in any way the work permit holder must advise the Department of the change. Failure to do so could result in the primary work permit holder's permit being revoked.

5.3 Children Born in Bermuda

Where a child is born in Bermuda to a work permit holder or to a sponsored dependant of a work permit holder, proof must be provided to the Department that the Bermuda-born child possesses the citizenship of one or other or both of the parent(s). Proof can take the form of:

- A valid passport for the child;
- Certificate of registration or birth certificate of the child as a citizen of a country; or
- A certified letter from the authorities of a country confirming that the child is a citizen of that country; and
- A valid multi re-entry visa (for visa controlled nationals).

Without such proof, new work permits may not be issued.

5.4 Convictions of Sponsored Dependand

In the event that a sponsored dependant of a work permit holder is convicted of a criminal offence, the Department will consider each case on its merits. In serious cases where the Minister believes that the sponsored dependant poses a threat to Bermuda, the sponsored dependant may be required to leave Bermuda.

5.5 Employment of a Sponsored Dependant

A sponsored dependant may be permitted to work only if they are hired by an employer who has followed the normal policy to obtain a work permit. For the avoidance of doubt, sponsored dependants can volunteer for unremunerated positions with not-for-profit organisations, registered charities or religious institution without permission from the Department.

5.6 Employing Relatives

An employer who makes an application to hire a family member must declare the relationship at the time of application. Each such application is treated on its merits. Failure to declare the familial relationship could result in revocation of permission to work.

5.7 Cost of Repatriation of Employee and Sponsored Dependents

The Act requires that the most recent employer of a person (“former employee”) whose work permit has expired, been revoked, or is deemed to have been revoked shall be responsible for any costs associated with repatriation of the former employee and his qualifying sponsored dependants, and for reimbursing the Accountant General if he incurs any such costs.

The obligation of costs to repatriate does not apply if the employer and former employee have agreed in writing that the former employee will be responsible for any such repatriation costs, but it shall apply if in any case the former employee is unable to meet those costs. Any costs associated with repatriation of dependants who were not listed on the former employee’s original work permit application shall be the responsibility of the former employee, who shall be responsible for notifying the Chief Immigration Officer of any changes to the sponsored dependants listed on the original work permit save for the conditions listed below.

5.8 Sponsored Dependents Who Wish to Remain after the Work Permit Holder has left Bermuda

Sponsored dependants who wish to remain in Bermuda after the work permit holder has left Bermuda require permission to reside and seek employment. Permission may be granted, but subject always to the sponsored dependant providing satisfactory proof to the Department that they have sufficient funds to remain in Bermuda and relevant funds for the sponsored dependant’s repatriation to their country of origin being deposited with the Chief Immigration Officer pursuant to section 130 of the Act if requested.

6.0 CATEGORIES OF PERSONS GIVEN SPECIAL CONSIDERATION

6.1 Extension of Spouse's Employment Rights to the Divorced Parent of a Bermudian

The Extension of Spouse's Employment Rights (ESER) confers privileges to the divorced parent of a Bermudian child or children until the youngest Bermudian child of the household reaches the age of eighteen (18) years, or if he or she is still in college/university, twenty-five (25) years.

A "divorced parent of a Bermudian" is defined as a person with custody of a Bermudian child. Custody includes joint custody as well as sole custody.

These privileges include:

- to reside in Bermuda;
- to seek employment in Bermuda without restriction;
- if one is already employed, to continue to work in that employment without having to apply to the Department for a work permit; and
- to retire from work and reside in Bermuda without the need to apply for any additional permission to do so.

To qualify for the ESER, the applicant must immediately before the divorce from the Bermudian spouse, have been exercising, or was eligible to exercise, his or her spouse's employment rights under section 60 of the Act; must have custody of a Bermudian child; and must be of good character and conduct.

A person wishing to apply for the ESER is required to submit certain documents in support of his or her application. These include:

- a) a completed ESER Application Form which is available from the Department;
- b) two (2) passport-type photographs of the applicant;
- c) a certified copy of the applicant's birth certificate or passport;
- d) a certified copy of the divorce absolute;
- e) a certified copy of each child's birth certificate or passport (only for the child(ren) with whom the divorced parent is attaching his/her request for the ESER); if older than eighteen (18) years but under twenty-five (25) years, proof that the child is in college/university on a full time basis; i.e. letters/transcripts from learning institutions, including relevant dates;
- f) proof of custody – sole or joint;
- g) proof that the applicant had exercised, or was eligible to exercise, his or her spouse's employment rights immediately prior to the divorce (i.e. letters from the applicant's employers), or proof of the former Bermudian spouse's ordinary residence in Bermuda (i.e. letters from the former Bermudian spouse's employers), or a letter from a professional person attesting to the continuous ordinary residence in Bermuda of the applicant's former Bermudian spouse; and
- h) two (2) character references in support of the application.

The Minister has the right to revoke the ESER at any time under section 34 of the Act. Without prejudice to the generality of the Minister's rights under the Act, non-exhaustive examples of occurrences, which could lead to the revocation of an ESER, are as follows: the ESER was obtained by fraud, false pretences or concealment of a material fact; or the holder is convicted of a crime, whether in Bermuda or abroad, which resulted (or would have resulted if convicted in Bermuda) in a sentence or a term of imprisonment of two (2) years or more whether or not the sentence was served in full or suspended; or the holder resides outside Bermuda for two (2) years or more, without seeking leave from the Minister to do so prior to his or her departure.

6.2 Spouses of Consular or Diplomatic Service Officers

Under section 60(6) of the Act, the spouses of certain consular officers, or of others with diplomatic privileges, are permitted to work outside work permit control provided they fulfil certain requirements. Refer to the Act for details.

6.3 Portuguese Nationals

Employers wishing to employ Portuguese nationals recruited from a Portuguese territory are advised that a formal agreement, the Accord between the Government of Bermuda and the Government of Portugal, governs the conditions and terms of employment of such persons in Bermuda. The Accord must be complied with.

7.0 JOB CATEGORIES WITH SPECIAL CONDITIONS

The application process for job categories with special conditions is the same as that for the Open category (see section 3.9) except the employer must ensure that they meet the additional requirements as specified in this section of the policy.

7.1 Child-Care Giver

Child-care givers often hold more than one (1) work permit because they care for more than one (1) child. A child-care giver is limited to the care of three (3) children, a regulation set by the Ministry of Health. Therefore, work permit holders in this category will be limited to one (1) permit for three (3) children, one (1) permit for two (2) children plus one (1) permit for a third child, or three (3) permits for one (1) child per employer. Child-care sharing arrangements will be considered on a case by case basis.

7.2 Beauty Salon, Spa and Hairdressing Staff

Contracts of employment for beauty salon, spa and hairdressing staff must include information relating to holiday and sick pay entitlements (i.e. if remuneration is by way of commission only the contract of employment must specify if the commission payments are inclusive or exclusive of holiday and sick pay entitlement).

7.3 Family Support

Those persons employed on Global, Global Entrepreneur, New Business Work Permits or who have been granted waivers of advertising, who personally employ household staff prior to relocating to Bermuda, will automatically be granted, after application, a Standard Work Permit for the staff to relocate to Bermuda and continue working for the same period of time as their primary employer. There is no need to advertise the positions. This is limited to nannies, in-house elderly and medical care personnel. Should the sponsor family be required to leave Bermuda or make arrangements to relocate to another country, the household staff will also be required to leave unless they obtain specific permission from the Minister to find alternative employment (subject always to the requirement to deposit funds for repatriation with the Chief Immigration Officer pursuant to section 130 of the Act).

7.4 Fine Artist

A person does not require a permit to create a work of art but only galleries are permitted to show and sell the work of artists who are not Bermudian, Spouses of Bermudians or PRC holders.

A gallery is defined as a permanent place of business whose purpose is to display and sell works of art. The definition can include a specialised department in a retail store. For the avoidance of doubt, a hotel that shows and sells paintings or other works of art does not fall within the definition of a gallery.

Galleries who wish to show and sell the work of a visiting artist must first inform the Department by writing a letter giving the name of the artist, the duration of the person's stay and by enclosing the required fee.

Where a resident artist wishes to sell their work of art, they must first obtain a Standard Work Permit but advertising for the position is not required. This is an exception to the general policy prohibiting self-employment.

Each gallery that wishes to show and sell the work of an artist must satisfy itself that the artist in question is lawfully permitted to do so.

7.5 Graduate Trainee

Many companies, especially those with a global presence, have graduate training programmes where participants can opt to work in an overseas office for a period of time. Advertising for this position is not required. The employer that has an established graduate training programme should write a letter of application to the Chief Immigration Officer identifying the graduate who will be coming to Bermuda as well as:

- the job category and length of training in Bermuda for the graduate;
- a completed Short Term Work Permit Application;
- a copy of the foreign graduate's employment agreement; and
- confirmation the graduate has medical insurance valid for Bermuda for the duration of their stay in Bermuda.

It is expected that participants in such programmes will not be taking the position of a qualified Bermudian, Spouse of Bermudian or PRC holder and that Bermudians, Spouses of Bermudians and PRC holders should be given equal opportunity to participate in related programmes in the employer's overseas offices.

7.6 Hospital Nurse and Physician

Once every three months, the Bermuda Hospitals Board is required to advertise for Bermudians. After each advertisement period, the Hospitals Board is required to submit quarterly reports to the Department on scheduled dates: 31 March, 30 June, 30 September and 31 December, detailing, for the previous three months, information about all nurses and physicians on staff, stating for each one whether the person is Bermudian.

7.7 Hospitality: Seasonal Work Permit

This work permit allows a hotel or restaurant to recruit seasonal workers for up to eight (8) months during the period between 1 April and 30 November in any given year. Seasonal workers will receive vacation pay and health insurance benefits, according to the actual period of the Seasonal Work Permit.

Applications for a Seasonal Work Permit follow the same procedure as a Standard Work Permit.

7.8 Intern

A business may establish an exchange internship programme with a counterpart organisation overseas to allow the reciprocal exchange of overseas interns and Bermudians, Spouses of Bermudians or PRC holder interns for training purposes. Advertising for this position is not required. The employer that has established an exchange internship programme should write a letter of application to the Chief Immigration Officer identifying the intern who will be coming to Bermuda as well as:

- the job category and length of internship in Bermuda for the foreign intern;
- the job category and length of internship of the Bermudian counterpart;
- a completed Short Term Work Permit Application;
- a copy of the foreign intern's employment agreement; and
- confirmation the intern has medical insurance valid for Bermuda for the duration of their stay in Bermuda.
- The Department will issue a work permit in respect of the intern provided that the exchange programme clearly benefits Bermudians, Spouses of Bermudians or PRC holders.

7.9 Live-In Domestic Employee (Private Home)

The employer of a live-in nanny/housekeeper is to pay all of the employee's health insurance premiums, social insurance premiums and payroll tax as well as a wage equivalent of at least \$10.00 an hour. Room and board must be calculated at \$700.00 a month (\$158.00 a week).

The minimum weekly wage is calculated by converting the weekly periods of work into hours then multiplying the weekly hours by \$10.00 to obtain the minimum, gross, weekly pay. The minimum weekly wage expected is the minimum, gross, weekly pay minus \$158.00. The period of notice of termination from either party is to be the same. One month is considered the shortest reasonable period of notice.

7.10 Locum Pharmacist and Shared Pharmacist

This work permit allows local pharmacies to share qualified pharmacist(s) where cover is required for short periods of time (i.e. three (3) months or less, when either the pharmacist has to leave Bermuda and/or where no Bermudian pharmacists are available).

An application for a shared service of pharmacists is made pursuant to section 4.5. As a member of the Bermuda Pharmacy Owners Association, each local pharmacy is allowed to apply for one (1) Standard Work Permit for a pharmacist who is already engaged in employment in Bermuda. The application must have a letter from the current employer agreeing to the arrangement.

7.11 Model - Occasional Work Permit for Casual or Part-Time Employment

Applications will be considered for persons to be employed as a casual or part-time model for up to one hundred (100) hours in any twelve (12)-month period. The Occasional Work Permit, if

granted, may enable the model to be employed on any project during the period of the Occasional Work Permit.

Each application of this type is considered on its merits and it is not required to be advertised. A model's Occasional Work Permit does not confer the right to do voice-overs for television commercials. Separate Occasional Work Permits for voice-overs must be applied for, and, if granted, that permit may be more restrictive than for the employment of models.

Application for an Occasional Work Permit is by a covering letter specifying:

- The name and immigration file number of the model or resident status;
- The name of the employer responsible for the Occasional Work Permit; and
- Efforts to employ Bermudians, Spouses of Bermudians or PRC holders and the name(s) with contact information of employed Bermudians, Spouses of Bermudians and PRC holders.

7.12 Musician or Entertainer

The initiatives of the Department of Tourism and/or the Tourism Authority and the passage of the Hotel Concession Act 2000 provide the framework for granting incentives for the hiring of local entertainers. Work permits for foreign musicians/entertainers to perform at commercial locations open to the public (clubs, pubs and hotels) may be granted, provided that they are advertised in the normal way. The maximum period for a work permit in the entertainment industry will normally be a Seasonal Work Permit of eight (8) months. However, where a one-off large, commercial entertainment event open to the public is to be held and foreign musicians/entertainers are to be utilised, qualified Bermudian(s), Spouse(s) of Bermudians and PRC holder(s) musician(s)/entertainer(s) of the same entertainment genre must feature in the entertainment event. Failure to feature qualified Bermudian(s), Spouse(s) of Bermudians or PRC holder(s) of the same genre will mean that work permits may not be granted.

7.13 Music School Teacher

Any teacher of music employed under a work permit by a school may take up paid employment, on a casual basis, for up to ten (10) hours per week, as a performer or tutor outside the school's teaching requirements with the permission of the employer.

Teachers who perform on an unpaid voluntary basis (e.g. weddings, receptions, private parties, Philharmonic Society concerts, musical theatrical productions and similar one-off or short-term engagements) have the Minister's tacit permission to undertake such work (see section 2.1). Voluntary performances by teachers do not count against the weekly ten (10) hours allowance for paid employment.

However, if the teacher is performing either solo or with a group on a regular part time basis, the place of business (i.e., churches, hotels, restaurants, pubs or bars) must obtain a work permit to hire the teacher in such capacity.

7.14 Occasional Work Permit for Casual or Part-Time Employment

A work permit under this section allows a person, who is already resident in Bermuda, to work in any category of work (e.g. instructor, tutor, fine artist) on a casual or part time basis provided the amount of work done is no more than nine (9) hours a week. A work permit may be granted for up to one (1) year.

To obtain a work permit under this section, a person must submit a work permit application.

Applications can be made for more than one employer to hire the same instructor or private tutor for less than nine hours each but the total hours for all employers cannot exceed nine (9) hours per week. Such an arrangement is permitted provided each employer has a separate part-time permit.

7.15 Photographer

Photographers approved to work (subject to any restrictions listed above) will be limited to those who are:

- Journalists;
- Working for overseas print or motion picture media publications;
- Working for overseas clients such as advertisers wishing to use Bermuda as a backdrop;
- Specialists in photography including architectural, food, aerial, medical, motion picture, digital or video provided that the job is advertised in the usual way per section 1.14;
- Working for an international hotel group including those working on behalf of a convention client for the purpose of photographing their event; or
- Working at a private wedding event.

7.16 Restaurant Staff

Contracts of employment for restaurant staff applications must include clear information relating to the minimum weekly remuneration for restaurant staff.

7.17 Self-Employed Person and Part Owner of a Bermuda Business

Self-employment is not normally permitted. The Department defines self-employment as providing leadership and labour to a business in which the self-employed person makes final decisions on its operation and is the principal beneficiary of the business. Part ownership in a local business does not confer any right to work. For part owners to obtain permission, the applicant must apply for permission in the normal way. Permission is likely to be granted based on the strength of the application giving consideration to:

- the character of the applicant and, where relevant, of his or her spouse;
- the existing and likely economic situation of Bermuda;
- the availability of the services of local companies and persons already residing in Bermuda;
- the protection of local interests;
- the requirements of the community as a whole.

Where the industry is new, part owners are more likely to be encouraged, especially where the enterprise creates a new source of quality employment for Bermudians, Spouses of Bermudians and PRC holders and there is a clear and demonstrable benefit to Bermuda and the local workforce. If there is no obvious benefit to Bermuda, the part owner is unlikely to obtain permission to work. This is particularly true in situations where the applicant is in partnership with one or more Bermudians whose involvement or employment with the business is not bona fide and significant. This policy applies only to local businesses. Exempted companies may be owned and managed by foreign nationals.

7.18 Categories of Jobs Identified by the Minister where there are Large Numbers of Work Permits

The National Training Plan calls for employers to play a key role in ensuring that Bermudians and Spouses of Bermudians are developed and employed in specific occupations which have a high number of work permit holders. The following occupations have been identified as having a large number of work permit holders and are subject to change:

Registered Nurse, Qualified Accountant, Waiter/ Waitress, Mason, Landscape Gardener, Chef

Employers who employ more than ten (10) work permit holders in the occupations listed above may be invited by DWD and/or the Department to participate in initiatives led by the National Training Board to boost the number of Bermudians and Spouses of Bermudians employed in these job categories. Employer participation will be considered by the Board and the Minister when considering work permit applications.

APPENDIX I

Individuals from jurisdictions identified as high risk for tuberculosis (TB), or who have ever resided in such a jurisdiction for a period of three (3) months or more must provide a chest x-ray and a letter from a certified physician confirming they pose no health risk and are free from TB.

This list is based on the World Health Organisation's Yearly Report on tuberculosis. This list will mirror the high risk jurisdiction list as published yearly (or more frequently as may be necessary) by the World Health Organisation.

Afghanistan, Bangladesh, Brazil, China, DR Congo, Ethiopia, Indonesia, India, Kenya, Cambodia, Myanmar, Mozambique, Nigeria, Pakistan, Philippines, Russian Federation, Thailand, Tanzania, Uganda, Viet Nam, South Africa, Zimbabwe.

APPENDIX II

Landing Policies at L.F. Wade International Airport

- Passengers who arrive in Bermuda as a work permit holder with a copy (not the original) of their work permit or whose work permit is approved but who have forgotten to carry a copy or the original work permit with them – will be referred to the Immigration Referral Office so that the Senior Immigration Inspector can verify that a valid work permit exists. Once the relevant checks have been made and the work permit has been confirmed, NO penalty fee shall be imposed and the passenger should be reminded and encouraged to travel with their original work permit.
- Passengers arriving in Bermuda as a work permit holder without a work permit at all – will be referred to the Immigration Referral Office so that the Senior Immigration Inspector can conduct inquiries to ascertain if a valid work permit exists. Once it has been confirmed in the system that no valid work permit exists, or that no application has been submitted to the Department on the passenger's behalf, the passenger shall be charged the penalty fee. He/she shall be landed as a 'working visitor' for one (1) business day and instructed to report to Department of Immigration Headquarters with his/her prospective employer so that the employer can address the matter with the Corporate Services team. Additionally, the Senior Immigration Inspector shall contact the employer and get a verbal guarantee that they (the employer and the working visitor) will attend the Department as instructed to address the matter. Finally, an email will be sent to Immigration Headquarters by the Senior Immigration Inspector updating the relevant persons on the matter.
- Passengers arriving in Bermuda as a work permit holder without a work permit in hand but where it can be seen in the system that a work permit is in process (no decision on the work permit application) - will be referred to the Immigration Referral Office so that the Senior Immigration Inspector can verify whether a valid work permit exists. Once it has been confirmed in the system that no valid work permit exists, but that an application has been submitted and is in process then the passenger shall be landed in the appropriate category, charged the penalty fee and instructed not to commence work until the application has been approved or until otherwise instructed by Immigration Department officials. In addition, the Senior Immigration Inspector shall also contact the employer and advise them that the passenger has been landed but cannot work until a decision is made on the work permit application.
- Passengers arriving in Bermuda as a work permit holder or who require a Letter of Permission and who attempt to mislead Officers by telling them that they are arriving as regular vacationing visitors when in fact they are arriving to perform work-related functions that would ordinarily require the Minister's specific permission; i.e. either a work permit or a Letter of Permission – will be referred to the Immigration Referral Office so that the Senior Immigration Inspector can conduct further inquiries. Once it has been confirmed that the passenger did mislead Immigration and Customs officials about their reason/purpose for entering Bermuda, the passenger may be refused entry.

- Passengers arriving in Bermuda on Periodic Work Permits but who are not in possession of a physical Periodic Work Permit – will be referred to the Immigration Referral Office. All working visitors arriving in Bermuda on Periodic Work Permits must have in their possession the original or a copy of the work permit. In cases where it has been confirmed that the local host company has more than one (1) active Periodic Work Permit, the employer will be contacted and invited to provide a copy of the Periodic Work Permit and confirm that there is not currently a person in Bermuda working against that Periodic Work Permit. Once it has been confirmed with the employer that a valid Periodic Work Permit exists, it should be scanned to the Senior Immigration Inspector at which point the passenger shall be landed as a working visitor without penalty. In instances where it has been confirmed that no Periodic Work Permit exists, the passenger shall be charged the penalty fee, landed for one (1) business day as a working visitor and the employer contacted and instructed to attend the Department of Immigration Headquarters to address the matter. This will allow the local host company to resolve the issues that prevail. If the local host company cannot or does not provide the requisite documents/proof, the working visitor will be directed to leave Bermuda; all related travel expenses will be borne by the local host company.

The only exception to the above process is where the local host company only has one active Periodic Work Permit on record by the Department i.e. barring exceptional circumstances, the person shall be landed without penalty in this case.

Visa Requirements

There is **NO** requirement for Bermuda entry visas and visa waivers for persons who plan to travel to Bermuda as a tourist or business visitor or as a work permit holder. Consequently, all tourists, business visitors and all work permit holders who require a multiple re-entry visa (MRV) for the UK, US or Canada will be permitted to land in Bermuda without a Bermuda entry visa or visa waiver. Such persons must also possess a passport that is valid for 45 days past the expiration of travel and/or of the work permit. In addition to these requirements, such persons whose MRV and passport validity is less than the time specified above may not be landed.

Where an employer applies for a new work permit for a **resident** work permit holder who requires an MRV, the Department will process and issue the work permit. The issuance of the work permit will assist with the application for the MRV.

Notwithstanding any of the aforementioned scenarios, other circumstances may require that an alert be placed in the system instructing that actions be taken contrary to those indicated above.

APPENDIX III

FREQUENTLY ASKED POLICY QUESTIONS

- 1. Is a “Letter of Release” required to be submitted with an application of a person currently employed in Bermuda by another employer?**

No. The “Letter of Release” that was previously required to ensure that employers had no objection to an employee obtaining employment elsewhere is no longer required. Employers are instead required to submit a “Letter of Termination”. Employers that wish to enforce restrictive covenants of contracts of employment (e.g. no-competition clauses) or any alleged breach of contract must seek remedy in the courts rather than involve the Department. Employers should note, however, permission will not normally be granted to allow persons to move to a second job until they have completed two (2) years’ service with their first employer in Bermuda.

- 2. Is there a policy that prohibits someone from visiting Bermuda while an application is pending with the Department?**

Persons may visit Bermuda while an application is in process, however, they may NOT engage in gainful occupation until such time as their application is approved and visitors may not seek employment. Individuals and employers are warned that amendments to the Act in 2013 increased the penalties for working without permission. The law will be strictly enforced so individuals and employers who commence employment prior to their application being approved can expect a refusal of their application and other penalties.

- 3. What is the longest work permit term that an employer may apply for?**

The longest term for a Standard Work Permit is five (5) years.

- 4. Are employers required to submit a police report, health certificates and x-ray and professional and character references with their applications?**

Employers are required to provide a written declaration that they have thoroughly screened the applicant and to the best of their knowledge and belief the applicant, is of good character, possesses the qualifications purported in the application, is in good health and does not have a criminal record. Employers are encouraged to keep evidence of their screening practices because they will face civil penalties and/or criminal prosecution if they sign the declaration and it is later found that they knew or should have known that an employee was unfit to be granted permission to work in Bermuda. Individuals from jurisdictions identified as high risk for tuberculosis (TB), or who have ever resided in such a jurisdiction for a period of three (3) months or more must provide a chest x-ray and a letter from a certified physician confirming they pose no health risk and are free from TB for all work permit categories.

5. Has the Temporary Permit been eliminated?

Yes.

6. Can employers still apply for Permission in Principle?

No.

7. How much discretion may the Minister exercise in making decisions that are guided by these policies?

The Minister has the right to create, modify, eliminate and make exceptions to any immigration policy. So where individuals or employers believe that the circumstances of a situation warrant special consideration of the Minister, they should justify their case in writing for the attention of the Chief Immigration Officer.

8. Is there a policy which regulates how long a person who has previously worked in Bermuda must be a non-resident prior to returning to the Island?

No. The policy which previously required a one (1) year absence has been eliminated.

9. Are employers required to submit a letter guaranteeing repatriation of employees and their sponsored dependants?

No. The guarantee of repatriation by the employer is enshrined in law under the Bermuda Immigration and Protection Amendment (No. 2) Act 2013.

10. When required, how will the employer demonstrate that it has met the requirement to advertise in the newspaper and on the Workforce Development website?

Newspaper advertisements may be photocopied or a screenshot from the electronic editions of the publication may be submitted. Job postings may be printed.

11. Do married applicants need to submit a “letter of undertaking” to promise to leave Bermuda if their marriage dissolves?

No. Such a letter is no longer required.

12. Is a break in residency required for Short Term Work Permit holders who obtain approval beyond a continuous period of six (6) months?

No.

13. Is the Short Term Work Permit advertising requirement different than the requirement for Standard Work Permits?

No.

14. Can I appeal to the Minister in respect of work permit decisions?

Most work permit applications are decided upon by the Board as delegated by the Minister. Appeals on those decisions should be made to the Minister with the appropriate fee. Appeal must be submitted in writing to the attention of the Chief Immigration Officer.