

Bermuda Employment Law in a Nutshell – 2018
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1. Employment law in Bermuda comprises local legislation (statutes enacted by Parliament) and English and Bermuda common law (case law decided and developed by courts over the years).

The governing legislation is the Employment Act 2000 (as amended) which:

- 1.1 applies to all employees working wholly or mainly in Bermuda, including expatriate employees.
- 1.2 sets out minimum statutory entitlements, including notice of termination rights and various leave benefits (vacation, sick leave, maternity, bereavement, public duty leave, etc.). If the contract contains more favourable terms than the Act, then the contract prevails. Parties cannot contract out of the Act's minimum requirements.
- 1.3 mandates that there be a written contract ("Statement of Employment") in place setting out the fundamental terms (salary, hours of work, duties, commencement date, etc.).
- 1.4 provides that an employee can only be dismissed for a valid reason, such as ability, performance, conduct or business operational requirements (e.g., redundancy);
- 1.5 provides that statutory redundancy pay ("severance allowance") must be paid if conditions of redundancy as defined in the Act are made out (capped at 6 months' wages).
- 1.6 protects employees from disciplinary action or termination ("unfair dismissal") on human rights related grounds or for being a whistle-blower.
- 1.7 defines constructive dismissal (a type of unfair dismissal) based on the employer's unreasonable conduct which must be proved by the employee.
- 1.8 provides for a mandatory warning process for employees engaging in misconduct (short of serious misconduct) or unsatisfactory performance with time to improve (employees engaged in serious misconduct related to the employment relationship can be summarily dismissed).
- 1.9 provides a complaint process for breach of the statute with a 3-month limitation period – to a Labour Relations Officer who may refer the case to the Employment Tribunal for hearing. In addition to possible payment in lieu of notice, compensation for unfair dismissal is limited to 6 months' wages. Reinstatement can, in theory, be ordered but rarely, if ever, is.

- 1.10 provides that either side can terminate the contract for any reason and without notice during a probationary period (the contract must state whether there is a probationary period or not).
- 1.11 gives priority to an employee's claims for unpaid wages and accrued vacation pay in a winding up action.
- 2 The Bermuda Immigration and Protection Act 1956 (as amended) provides that employees who are not Bermudian or a spouse of a Bermudian or a Permanent Resident's Certificate (PRC) holder must have a work permit issued by the Department of Immigration to work in Bermuda. These can range from short temporary permits to 10 years in time (the latter subject to stringent criteria) and are renewable. The time for processing is approximately 8 to 10 days (for "fast track" or "temporary permits") or 6 to 10 weeks (for standard permits of 1 year or more). A work permit will not be issued where a qualified Bermudian or spouse of a Bermudian or a PRC holder applies for the position.
- 3 The Human Rights Act 1981 prohibits discrimination and harassment in the employment sector on the basis of any of the protected characteristics (race, place or origin, etc.). Sexual harassment is also prohibited and is an offence.
- 4 The Labour Relations Act 1975 & the Trade Disputes Act 1992 provide for hearings of labour disputes by the Minister or an Arbitration Panel or Trade Disputes Tribunal. The legislation governs strike actions and applies to unionised employees. All employees have a statutory right to belong, or to not belong to, a trade union, pursuant to the Trade Union Act 1965. This is different from an employee's wish to be collectively bargained for by a union in which case the union must apply to be certified under the Act and win a secret ballot by a majority vote.
- 5 The Workers' Compensation Act 1965 provides for compensation by employers to workers who are injured on the job, regardless of fault. If negligence on the part of the employer is involved, the employee can sue in the Court for common law damages.
- 6 Common law allows an employee to elect to pursue a breach of employment contract claim (including wrongful dismissal) in the courts for damages. The limitation period is 6 years. The damages obtainable are dependent on common law principles derived from Court-decided cases over the years. The law will imply a reasonable period of notice of termination clause in the absence of an express notice clause. The minimum periods of notice will also apply as set out in section 20 of the Employment Act 2000.
- 7 There is no statutory minimum wage in Bermuda. Wages are determined by agreement between the parties as set out in the individual contract of employment or collective agreement, as applicable.
- 8 Employers must provide a health insurance plan for their employees and each employee's uninsured dependant (spouse or child) at the minimum "standard hospital benefit"

standard. Many employers provide higher levels of coverage, either HIP (Hospital Insurance Plan) or “major medical” coverage, paying at least 50% of the premium.

- 9 Employers must provide a private pension plan for Bermudian employees and employed spouses of Bermudians at the rate of 10% of “pensionable earnings” as defined in the relevant Act – 5% may be deducted from the employee’s earnings.
- 10 Social insurance (government contributory pension) is also payable at a fixed amount per month (approximately \$65). The cost is usually shared equally between the employer/employee.
- 11 Payroll tax is payable on salary and benefits; the percentage rate depends on the total remuneration payable to employees in the organisation. Generally, tax on remuneration is around 16% of the remuneration package and the employer can claw back a percentage from the employee (approximately 6%), although a more complicated, sliding scale tax regime is in place.
- 12 The typical work week is Monday to Friday from 9 a.m. to 5 p.m. with an hour’s break for lunch. At least 24 hours of consecutive rest must be provided each week; certain categories of employee are exempt.
- 13 Overtime pay is mandatory for hours worked in excess of 40 hours at the overtime rate of 1.5 x pay unless the parties have contracted out of the requirement, or unless the employee is professional or managerial whose contract states that the salary has been calculated to reflect that over 40 hours of work per week will be required on occasion.
- 14 Non-competition clauses are only enforceable to the extent that they are reasonable to protect the employer’s legitimate business interests (e.g. trade secrets or key personnel) in terms of time, geographical scope and scope of restriction. Non-solicitation clauses (of the former employer’s clients and employees) are more readily enforceable.
- 15 Employers cannot conduct involuntary drugs test on applicants or employees. It is up to the employee or applicant as to whether they consent to submit to tests in order to become or stay employed.
- 16 The Personal Information Protection Act 2016 (“PIPA”) (partly in force) provides residents of Bermuda with statutory protection in relation to the use and sharing of their personal data and information. PIPA legislates the right of residents of Bermuda to protect their personal information and allows for a fine of up to \$250,000 to be levied against an organisation that commits an offence under PIPA. PIPA requires an organisation to obtain the individual’s consent before using personal information unless certain criteria apply. PIPA also requires organisations to ensure the security of any personal information they hold, and prohibits them from keeping the information for longer than is necessary for its use.

This article makes general points only and is not intended to be a comprehensive exposition of the subjects

covered. Specific legal advice should be obtained in respect of any particular legal matter potentially affecting the rights of an employee or employer in Bermuda.

For more detailed advice please contact mail@canterburylaw.bm