

## **Bermuda Employment Law in a Nutshell – 2018**

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

The relevant legislation is:

- 1 The Employment Act 2000 (as amended) which:
  - 1.1 applies to all employees working wholly or mainly in Bermuda, including foreign employees;
  - 1.2 sets out minimum statutory entitlements, including notice of termination rights and various leave benefits (vacation, sick leave, maternity, bereavement, public duty leave, etc.);
  - 1.3 mandates that there be a written contract (“Statement of Employment”) in place setting out fundamental terms of the employment relationship. If the contract contains more favourable terms than the Act, then the contract prevails. Parties cannot contract out of the Act’s minimum requirements;
  - 1.4 provides that an employee can only be dismissed for a valid reason, such as ability, performance, conduct or business operational requirements (e.g., for redundancy);
  - 1.5 provides that statutory redundancy pay (“severance allowance”) must be paid if conditions of redundancy are made out (capped at 6 months’ wages);
  - 1.6 protects employees from disciplinary action or termination (“unfair dismissal”) on human rights related grounds or for being a whistle-blower;
  - 1.7 defines constructive dismissal (also “unfair dismissal”) and provides compensation for same based on the employer’s unreasonable conduct;
  - 1.8 provides for a mandatory warning process for employees engaging in misconduct (short of serious misconduct) or unsatisfactory performance and time to improve (employees engaged in serious misconduct related to the employment relationship can be summarily dismissed);
  - 1.9 provides a complaint process for breach of the statute – to an Inspector who may then refer the case to the Employment Tribunal, with a 3-month limitation period. In addition to notice pay, 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 contractual probation period (if there is one, the contract must state whether there is one or not).
  - 1.11 gives priority to an employee's claims for unpaid wages and accrued vacation pay in a winding up action.
- 2 The Bermuda Immigration and Protection Act 1956 (as amended) provides that employees who are not Bermudian or a spouse of a Bermudian or a Permanent Resident's Certificate (PRC) holder must have a work permit issued by the Department of Immigration to work in Bermuda. These can range from 3 months to 10 years in time (the latter subject to several stringent criteria) and are renewable. The time for processing is approximately 8 to 10 days (for "fast track" or "temporary permits") or 6 to 10 weeks (for standard permits of 1 year or more). A work permit will not be issued where a qualified Bermudian or Permanent Resident Certificate holder applies for the position;
  - 3 The Human Rights Act 1981 prohibits discrimination and harassment in the employment sector on the basis of race, place of origin, colour, ancestry, sex (gender), marital status, disability, legitimacy, religious belief or political belief. Sexual harassment is also prohibited and made a criminal offence.
  - 4 The Labour Relations Act 1975 & the Trade Dispute Act 1992 provide for the hearing of a labour dispute by the Minister or an Arbitration Panel or Trade Disputes Tribunal. The legislation governs strike actions and applies to unionised employees (note that virtually all employees of international companies in Bermuda are non-unionised). All employees have a statutory right to belong, or to not belong to, a trade union.
  - 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 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 Miscellaneous:

- 7.1 there is no statutory minimum wage in Bermuda. Wages are determined by agreement between the parties as set out in the individual contract of employment or collective agreement (if unionised);
- 7.2 employers must provide a health insurance plan for their employees and each employee's uninsured dependant (spouse or child) at the minimum "standard hospital benefit" standard. Many employers provide higher levels of coverage, either HIP (Hospital Insurance Plan) or "major medical" coverage, paying 50% or 100% of the premium;
- 7.3 employers must provide a private pension plan for Bermudian employees and employed spouses of Bermudians at the rate of 10% of "pensionable earnings" as defined in the relevant Act – 5% may be deducted from the employee's earnings;
- 7.4 social insurance (government contributory pension) is also payable at a minimum fixed amount per month (approximately \$65);
- 7.5 payroll tax is payable on salary and benefits; the percentage rate depends on the total remuneration payable to employees in the company. Generally, tax on remuneration is around 16% of the remuneration package and the employer can claw back 6% from the employee, although a more complicated, sliding scale tax regime is now in place;
- 7.6 the typical work week is Monday to Friday from 9 a.m. to 5 p.m. with an hour for lunch. At least 24 hours of consecutive rest must be provided each week; certain categories of employee are exempt;
- 7.7 overtime pay is mandatory for hours worked in excess of 40 hours at 1.5 times basic pay unless the parties have contracted out of the requirement or unless the employee is professional 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;
- 7.8 non-competition clauses are only enforceable to the extent that they are reasonable to protect the employer's legitimate business interests (e.g. trade

secrets or key personnel). Non-solicitation clauses (of the former employer's clients and employees) are more readily enforceable;

- 7.9 employers cannot conduct involuntary drugs test on applicants or employees. It is up to the employee or applicant as to whether they agree to submit to it in order to become or stay employed; and
- 7.10 The Personal Information Protection Act 2016 ("PIPA") provides residents of Bermuda with statutory protection in relation to the use and sharing of their personal data and information.

*This article addresses general principles only and is not intended to be a comprehensive exposition of the subject. 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 regarding these basic rights and obligations, please contact either of the directors of CLL, Ms. Juliana Snelling at [jsnelling@canterburylaw.bm](mailto:jsnelling@canterburylaw.bm) or Mr. Paul Harshaw a [paul.harshaw@canterburylaw.bm](mailto:paul.harshaw@canterburylaw.bm).

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