

## **BERMUDA EMPLOYMENT LAW REVIEW 2022**

### **I INTRODUCTION**

Bermuda is a self-governing British Overseas Territory with its own constitution and government. The Employment Act 2000 (the Act) is the governing employment legislation in Bermuda. It applies to employees working fifteen or more hours per week wholly or mainly in Bermuda for remuneration under a contract of employment, or to others performing services on terms akin to an employment relationship, subject to certain statutory exceptions. The parties may not contract out of the requirements of the Act except where the Act expressly allows it.

Employees may bring a complaint to an inspector employed by the government's Labour Relations Department within six months of an employer's alleged breach the Act, including for unfair dismissal. The Tribunal comprises a chairman, a deputy chairman and from twenty to 30 members appointed by the Minister of Labour. The panel hearing a complaint will normally comprise three persons drawn from the Tribunal. Except where provided in the Act, the Tribunal regulates its own proceedings as it sees fit.

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 the power to order various remedies. There is a right to appeal to the Supreme Court from a decision of the Tribunal on a point of law under the Employment Act (Appeal) Rules 2014.

The Supreme Court has original jurisdiction to hear claims valued at Bd\$25,000 or higher; breach of contract claims worth less than Bd\$25,000 are brought in the lower magistrates' courts. Appeals against Supreme Court judgments are to the Court of Appeal and, in certain circumstances thereafter to the Judicial Committee of the Privy Council in England.

The Human Rights Act 1981 prohibits discrimination by employers on the basis of specified human rights protected characteristics, and sexual harassment is an offence.

Health insurance requirements for employers are stipulated in the Health Insurance Act 1970, government pension requirements in the Contributory Pensions Act 1970, private pension requirements in the National Pension Scheme (Occupational Pensions) Act 1998, and payroll tax obligations in the Payroll Tax Act 1995 and the Payroll Tax Rates Act 1995.

### **II YEAR IN REVIEW**

Bermuda emerged from the Covid-19 pandemic and the Public Health (Covid-19 Emergency) Regulations ended in November, 2022 after the tragic loss of 152 lives and 18,519 Corona virus cases. The resident population was 63,648 in 2021, with a decline in birth rates and increase in death rates.

In October 2022 good news for employers came when Bermuda was “white-listed” by the OECD and Financial Action Task Force, having successfully implemented the internationally agreed tax standard.

Also said to be good for business, in November 2022 the European Court of Justice struck down an EU law that mandated public registers of corporate beneficial ownership, ruling this infringed upon fundamental rights of privacy and personal data protection. Bermuda may therefore not have to make ownership registers public in 2023 as previously announced.

The economy grew 5.4% in 2021 to GDP \$6.3 billion (19.5 % smaller than in 2008). The recovery was led by international business, which increased in value by 8.4 per cent in 2021. International business remains the largest employment sector employing 2,420 Bermudians out of 4,412 jobs.

In 2022, employees who earn less than \$96,000 p.a. received a payroll tax rebate as well as a reduced payroll tax rate.

In an effort to increase job opportunities for Bermudians and spouses, the government increased the number of expatriate work permit moratoriums on 52 job categories.

New case law in the Supreme Court and the Tribunal developed in 2022 following the 2021 amendments to the Act. The government published decisions of the Tribunal for the first time (a year late), but in anonymised, redacted form. Civil penalties are being meted out to employers for the first time, principally for failure to provide an SOE and anti-bullying/anti-sexual harassment policies.

### **III SIGNIFICANT CASES**

#### **i. CI2 Aviation Bermuda Limited v. Bradshaw et al<sup>1</sup>**

The Supreme Court cleared up confusion over the interpretation of s.23(4)(a) of the Act in terms of whether the words ‘the employer’ means the same (former) or a new employer.

The company discontinued its business operations in Bermuda and terminated the contracts of its employees who became employed the next day with a new employer on no less favourable terms. A claim for severance allowance for redundancy was made by the employees under the section which provides:

*(4) Severance allowance is not payable where an employee—*

*(a) 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 immediately prior to the termination;’*

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<sup>1</sup> [2022] SC (Bda) 26 Civ

The Court ruled that severance allowance was payable given that firstly, the employees did not refuse to accept an offer of re-employment. Rather, they accepted employment with the new employer.

Second, the Court ruled that the plain and ordinary meaning reference to 're-employment by the employer' means the same (former) employer offering the employee a different post after termination, and not the new employer.

## ii. **Gorham's Limited V. Robinson<sup>2</sup>**

The Supreme Court heard an appeal from a Tribunal decision, ruling that the company had not unfairly dismissed the warehouseman when it terminated him for unsatisfactory performance.

The court ruled it was not unreasonable for an employer to terminate a probationary employee at the earliest opportunity after the end of a probationary period if it had satisfactory reasons. In this case the satisfactory reason was because the probationary period ended on a date when the employee was on his scheduled day off.

The court rejected an earlier court ruling that an employer's contractual disciplinary process is only applicable once probation has been completed, holding that an employer's disciplinary process applies also to the employee on probation. It is therefore open to the employer to deal with an employee either by way of probation or by way of disciplinary procedures.

The court then considered a compensation order under s.40 of the Act, on the assumption that the employee not been unfairly dismissed, ruling that the start point would be to calculate the amount of compensation pursuant to section 40(5) which would give the number of weeks' wages to which an employee could be entitled.

The next step would be to take into account s.40(4) which could have the effect of increasing or decreasing the amount of the award to a level that the Tribunal considers just and equitable in all the circumstances. Those circumstances include:

- the loss sustained by the employee in consequence of the dismissal insofar as that loss is attributable to action taken by the employer, including the employee's income or efforts to mitigate his loss and the period of time he was out of work (s.40(4)(a)); and
- the extent to which the employee caused or contributed to the dismissal (s.40(4)(b)).

Other circumstances in that case included the fact that the contract allowed the company to terminate him on one week's notice during probation, the employer could have extended the probation period for another 60 days, and the employee's short service of only 3 months' probationary employment. The court ruled that whilst the maximum 26 weeks' award by the Tribunal was wholly disproportionate to a three-month probationary employee, the maximum award was appropriate given that he was out of work for 20 months.

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<sup>2</sup> [2022] SC (Bda) 39 App

## IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

### i Employment relationship

An employment contract in the summarised form of a Statement of Employment (SOE) must be entered into between an employer and an employee under the Act no later than one week after an employee begins employment and must be signed and dated by both parties. In addition to regular employees, all students, casual and voluntary workers, and part-time and temporary employees must have a SOE that contains the following, per s.6(2) of the Act:

- (a) the full names of the employer and employee;*
- (b) the date when the employment began;*
- (c) the job title and brief description of the work for which the employee is employed;*
- (d) the place or places of work;*
- (e) the gross wage or the method of calculating it, and the intervals at which it is to be paid;*
- (f) the normal days and hours of employment or, where the job involves shift work, the normal pattern of the shifts;*
- (g) the entitlement to holidays, including public holidays, and paid vacation leave;*
- (ga) the entitlement to rest days and meal breaks;*
- (gb) the entitlement to overtime pay or hours in lieu and the rate of overtime pay or the method of calculating it;*
- (h) the terms relating to incapacity for work due to sickness or injury, including provision for sick leave;*
- (i) the length of notice which the employee is obliged to give, and entitled to receive, to terminate his contract of employment;*
- (j) details of any pension provided, whether under the National Pension Scheme (Occupational Pensions) Act 1998 or otherwise;*
- (k) any disciplinary and grievance procedures applicable;*
- (l) 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;*
- (m) any probationary period;*
- (n) any dress code;*
- (o) the existence of any collective agreement which directly affects the terms and conditions of the employment;*
- (p) where the employment is pursuant to a work permit, the date of issue and expiry of that work permit, any employment-related conditions (including any requirement to work at more than one location) and any immigration restrictions set out in the work permit;*
- (q) the existence of the employer's written policy against bullying and sexual harassment in the workplace and how the policy can be accessed;*
- (r) such other matters as may be prescribed*

The SOE may also contain other details about the terms and conditions of employment.

If there are no particulars to be entered under points (k) to (o), above, that fact must be noted in the SOE. The SOE may refer to a collective agreement or another document for its terms, which must be copied to the employee. Agreed amended or additional terms must be confirmed in writing and signed by both parties within one month.

Fixed-term employment contracts are permissible, in which case the SOE must state this fact, as well as the date on which the contract is to end.

Where the parties have contracted out of overtime pay or hours in lieu, that fact must be noted in the SOA.

Often parties will have more complex written contracts of employment that go beyond what is required by the Act. These types of contracts may be amended pursuant to ordinary contract law principles.

## **ii Probationary periods**

The Act provides that new employees and newly promoted employees (subject to certain excepted categories) may be required to serve a probationary period, which must be no longer than six months plus a three-month maximum extension. The SOE must detail whether or not there is a probationary period and its expected duration. A probationary employee is entitled to receive a performance review on or before the completion of half time. During the probationary period, the employer may terminate the employment of a new employee for any reason relating to the employee's performance review, performance, conduct or the operational requirements of the business, and without notice. The employee may resign during this period for any reason without notice. The termination provisions do not apply to promoted employees.

## **iii Establishing a presence**

All new companies in Bermuda hiring employees must be registered with the Registrar of Companies, which is responsible for tracking, processing and administering all limited liability companies, including local companies, exempted companies, overseas companies and foreign sales corporations. A company that is not registered may not hire employees.

If a foreign company that is based overseas hires employees through an agency or third party in Bermuda, the agency will be the employer for the purposes of Bermuda law. However, the foreign company may, in certain circumstances, be deemed to be the real employer and may be sued in Bermuda for any cause of action arising in Bermuda under the External Companies (Jurisdiction in Actions) Act 1885.

## **V RESTRICTIVE COVENANTS**

During employment, the employee is under an implied duty of good faith and fidelity. Thus, regardless of the express terms that exist in the contract, a court may prevent an employee from

competing with his or her employer, or otherwise acting outside his or her employment, if those activities are harmful to the business. Breaching this implied duty may justify summary dismissal of the employee for serious misconduct. It is easier for the employer to rely on an express non-compete clause than on this implied duty.

There may also be a 'garden leave' clause in the employment contract. This allows the employer to prohibit the employee from working during all or some of the notice period while he or she continues to be employed and receive normal wages and benefits.

The contract will often provide that the post-termination restrictive covenant period will be reduced by the amount of time spent on garden leave.

Post-termination, an express non-compete clause must be in place to lawfully prevent competition. However, Bermuda common law regards covenants in restraint of trade as prima facie unlawful. Thus, the court will enforce the covenant only if it goes no further than is reasonably necessary to protect the legitimate interests of the employer (e.g., trade secrets, trade connections with customers and suppliers and key personnel ); conversely, it will strike down clauses that are unreasonably wide in time, geographical extent and scope of the restricted activity. A well-drafted severability clause should be included whereby the court may strike out invalid and unenforceable clauses and leave in place valid and enforceable ones.

Courts will more readily enforce clauses that prevent employees from soliciting or dealing with clients or suppliers of the former employer, thus protecting trade connections. Courts will also prevent the poaching of key employees to protect the stability of the workforce.

If the contract does not contain an express post-termination restraint clause, the employer may try to rely on the implied post-termination duty on an employee not to disclose or misuse the confidential information of his or her former employer. However, this implied duty is often difficult to define and enforce.

## **VI WAGES**

### **i Working time**

There are no regulations on maximum working hours applicable to adults working in Bermuda, save that the Act mandates that employers provide employees with a rest period of at least twenty-four consecutive hours in each week, excluding certain categories of employee.. Employees who work five hours or more continuously must be given a meal break of at least thirty minutes - and are not required to work during the break but may do so if they wish.

The Employment of Children and Young Persons Act 1963 provides that no child under age thirteen may lawfully be employed without having a weekly continuous rest period of at least thirty-six hours. Children under age sixteen cannot be employed during school hours and may

only be employed for up to two hours on school days outside school hours. Persons under age eighteen may not lawfully be employed at night unless they are over the age of sixteen, and then only until midnight.

## **ii Overtime**

The Act provides for mandatory overtime pay or hours off in lieu unless the parties expressly contract out of the requirement in the SOE, in which case the SOA must state this. Mandatory overtime pay does not apply to professional or managerial employees whose SOE provides that their annual salary has been calculated to reflect that their regular duties are likely to require them to work, on occasion, more than 40 hours a week.

Otherwise, employees who work for more than 40 hours in a week are entitled to be paid at the overtime rate of one-and-a-half times the normal hourly wage. Alternatively, they may be paid the normal hourly rate for the extra hours and be given the same number of hours off in lieu.

Many collective agreements provide for overtime pay, including double pay for hours worked on Sundays and public holidays.

There are no limits to the amount of overtime that may be performed in a given period, save for the mandatory rest period (see Section VI.i).

## **iii Proposed new minimum wage legislation**

In 2022 the Government announced that a statutory minimum wage will be introduced in 2023 and set at between \$16 and \$16.40 per hour. For workers depending on tips and service charges, gratuities will be combined with a base wage to add up to \$16.40 an hour, failing which the employer must pay the difference.

## **VII FOREIGN WORKERS**

Pursuant to the Bermuda Immigration and Protection Act 1956 employees in Bermuda must either possess Bermuda status be the spouse of a Bermudian or a Permanent Certificate Resident holder, or else be in possession of a work permit from the Department of Immigration. , , .

There are no arbitrary restrictions on the number of foreign workers who may be employed in Bermuda, but to obtain a work permit, the position must either be exempt from advertising or the Department of Immigration must be satisfied that there is no Bermudian, spouse of a Bermudian or Permanent Resident Certificate holder who is qualified and has applied for the position. Foreign workers are protected by the same employment laws and generally pay the same taxes as local workers.

Since 2020, Bermuda offers a one-year renewable residency permit for persons known as 'digital nomads', to work in Bermuda for businesses outside the Island, or study remotely from Bermuda.

Applicants must prove that they have the means to financially support themselves while on island. They do not have the right to seek employment in Bermuda with local companies.

The implementation of the National Pension Scheme (Operational Pensions) Amendment Act 2019 was postponed to a future date, yet to be announced. This Act will, for the first time, require contributory pensions to be paid by employers in respect of expatriate workers who have been granted permission to work in Bermuda for at least one year. Self-employed expatriate workers will also be required to contribute.

## **VIII GLOBAL POLICIES**

Internal rules on discipline are not required by Bermuda law. If such procedures exist, the SOE must contain the particulars, and if there are none, the SOE must state this. There are no other mandatory workplace rules (as opposed to laws) that apply to such procedures.

However, employers will often set out their internal disciplinary procedures in an employee handbook or on an intranet site. Employees are commonly required to sign an acknowledgment that they have read the policies and agree to comply.

The Act provides that an employer may take disciplinary action, including issuing a written warning or suspending an employee when it is reasonable to do so after taking into account:

- (a) the nature of the conduct in question;*
- (b) the employee's duties;*
- (c) the terms of the contract of employment;*
- (d) any damage caused by the employee's conduct;*
- (e) the employee's length of service and his previous conduct;*
- (f) the employee's circumstances;*
- (g) the penalty imposed by the employer;*
- (h) the procedure followed by the employer; and*
- (i) the usual practice of the employer in similar situations.*

## **IX PARENTAL LEAVE**

Employees who have worked for an employer for one year or more are entitled to either paid maternity leave of 13 weeks or paid paternity leave of five days. If the length of service is less than one year, the maternity benefit is 13 weeks of unpaid leave and the paternity leave benefit is five days of unpaid leave.

Employment may not be terminated while an employee is on parental leave, and employment is deemed to be continuous during parental leave.

## **X TRANSLATION**

English is the written and spoken language in Bermuda. There is no law requiring that contracts of employment be translated into the employee's native language. However, if the employer is



aware that the employee does not understand the terms, the contract may not be enforceable under common law unconscionable bargain or undue influence principles.

Foreign nationals coming to work in Bermuda under the Portuguese Accord and those employed in the construction industry are required to have a working knowledge of English to ensure that work duties are carried out safely. If an individual's English language skills are questionable, he or she will be landed for seven days and may be required to undergo testing by as a condition of residence.

## **XI EMPLOYEE REPRESENTATION**

The Trade Union Act and Labour Relations (Consolidation) Act 2021 provides that every employee has the right to be a member of a trade union, and the right not to be a member of any trade union.

Where an agency shop agreement is in force, an employee does not have the right to refuse to be a member of the union unless he or she agrees to pay contributions to the trade union in lieu of membership, half of which may be donated to a charity instead.

An employee who is a union member has the right to: take part in the activities of the trade union (including with a view to becoming a union official) at the appropriate time (i.e., outside working hours or at a time agreed by the employer); seek or accept appointment or election; and hold office if elected.

An employer who interferes with these rights commits an offence.

A union's constitution sets out the election and removal procedures for union officer representatives (by a secret ballot of union members), the length of their terms and the frequency of meetings. There is no fixed ratio of representatives to employees.

Employers must comply with trade union certification procedures as set out in the 2021 Act and must deal with unions that have obtained certification in good faith for the purposes of collective bargaining.

Employers commit an offence if they do not allow representatives of a union that is certified in respect of a bargaining unit in the business reasonable access to the employer's premises for the union's lawful activities, but employers may impose reasonable restrictions in the interests of safety or to avoid undue disruption of the business. Further, employers may, by notice in writing addressed to a certified union, require that a representative not engage in union activities on the premises without its prior permission.

## **XII DATA PROTECTION**

### **i Requirements for registration**

The preliminary provisions of the Bermuda Personal Information Protection Act 2016 (PIPA) were introduced in 2016 but the substantive provisions have not yet come into force. The PIPA will regulate the use of personal information by organisations in Bermuda by protecting both the rights of individuals and the need for organisations to retain and use personal data for proper purposes. Personal information means ‘any information about an identified or identifiable individual’, except for information that is publicly available. Every employer will be required to appoint a privacy officer. The operation of the PIPA will be overseen by a privacy commissioner, responsible for handling data breach complaints. The complaint process will start with mediation, followed by an inquiry, followed by possible criminal sanctions.

### **ii Cross-border data transfers**

All personal information protection policies will apply to cross-border data transfers.

### **iii Sensitive data**

The PIPA defines sensitive data as ‘any personal information relating to an individual’s place of origin, race, colour, national or ethnic origin, sex, sexual orientation, sexual life, marital status, physical or mental disability, physical or mental health, family status, religious beliefs, political opinions, trade union membership, biometric information or genetic information’.

### **iv Background checks**

Background checks, credit checks and criminal record checks are permitted in Bermuda. Practically, the person being checked must consent to the release of information, but there are no legal requirements per se regarding consent. The Bermuda Credit Association provides credit checks in certain industries and provides results to paying members. Criminal conviction records will not be released by the court or police without the person’s express consent.. Some protection comes with the common law duty of confidence, which prohibits the disclosure or misuse of information received in confidence. The PIPA will protect personal information provided by employees during background checks when enacted.

## **XIII DISCONTINUING EMPLOYMENT**

### **i Dismissal**

An employee who is not on a fixed-term or project-based contract may not be dismissed without a valid reason connected with the employee’s ability, performance or conduct, or the operational requirements of the employer’s business. Written warnings must be given in the event of repeated misconduct (falling short of serious misconduct) or unsatisfactory performance, giving the employee time to improve. The employer must provide the employee with a certificate of termination stipulating the reason for the termination if requested by the employee, as well as formal employment details.

If the termination of a contract is for an invalid or unlawful reason or for no reason, it constitutes an unfair dismissal.

Termination-at-will clauses are unlawful and unenforceable.

Further, the Act provides that an employee's dismissal is unfair if it is based on any one of a list of specified reasons, many of which involve protected characteristics under the Human Rights Act 1981. Whistle-blowers are also protected from dismissal in certain specified circumstances.

The notice requirements of the Act must be satisfied. The employer is not allowed to give notice of termination during an employee's absence on annual vacation, parental, bereavement or sick leave (unless sick leave extends beyond 6 weeks).

Employees are entitled to at least one week's notice if they are paid weekly, two weeks' notice if they are paid bi-weekly and, in other cases, one month's notice. If the contract stipulates a greater amount of notice, the longer notice period will apply. Where the giving of longer periods of notice is customary given the nature and functions of the employee's work, the statutory notice periods shall not apply. An employer may elect to make payment in lieu of notice and confer all other benefits that would have been due up to the end of the employee's notice period. If the employee leaves without giving proper notice, the employer need only pay salary plus any accrued but unused vacation and benefits, up to the last day worked. All payments must be made within seven days of termination or on the next regular payroll date, whichever is the later. If the employer suffers loss, it may sue the employee for compensatory damages, but in practice this rarely happens. Employees may bring a complaint of unfair dismissal (including constructive dismissal) to an inspector within six months of the date of breach. If the inspector has reasonable grounds to believe that an employer has unfairly dismissed the employee, but is unable to effect a settlement, the inspector will refer the complaint to the Tribunal. The Tribunal will hold a hearing on the matter as soon as practicable and must give the parties or their representatives a full opportunity to present evidence on oath and make submissions. The burden of proof is on the employer to prove the reason for the dismissal, failing which there is a conclusive presumption that the dismissal was unfair; whereas an employee who claims constructive dismissal has the burden of proving the reason that made continuation of the employment relationship unreasonable.

As to rehire rights, if the Tribunal finds there was an unfair dismissal, it has the statutory power to award either reinstatement or re-engagement of the employee in comparable work.

The amount of compensation for unfair dismissal must not be less than three weeks' wages for each completed year of continuous employment for employees with no more than two completed years of continuous employment, and not less than four weeks' wages for each completed year of employment thereafter, up to a maximum of 26 weeks' wages.

The parties are free to enter into a settlement agreement, which is treated in accordance with normal contract law principles. Stamp duty of Bd\$25 should be applied to the agreement to be enforceable (unless the employer is an exempted company), pursuant to the Stamp Duties Act 1976. If a complaint has been filed with the Department of Labour Relations, written confirmation of the fact of settlement signed by both parties must be sent to the Department for it to close its file. The terms need not be disclosed.

Employees may also pursue a common law claim for breach of contract amounting to a wrongful or constructive dismissal in the Supreme Court, notwithstanding the right to pursue statutory remedies for unfair (including constructive) dismissal under the Act. The limitation period for court claims is six years.

## **ii Redundancies**

A redundancy under the Act applies when a termination of employment is, or is part of, a reduction in the workforce that is a direct result of any of the conditions of redundancy, namely:

- (a) the modernisation, mechanisation or automation of all or part of the employer's business;*
- (b) the discontinuance of all or part of the business;*
- (c) the sale or other disposal of the business;*
- (d) the reorganisation of the business;*
- (e) the reduction in business, necessitated by economic conditions, contraction in the volume of work or sales, reduced demand or surplus inventory; or*
- (f) the impossibility or impracticality of carrying on the business at the usual rate, or at all, due to:*
  - (i) shortage of materials;*
  - (ii) mechanical breakdown;*
  - (iii) act of God; or*
  - (iv) other circumstances beyond the control of the employer.*

A lay-off that exceeds a period of four months amounts to a termination by redundancy. Before laying off an employee, the employer must inform the employee of the relevant condition of redundancy, the reasons for the lay-off and its expected duration.

A redundant employee is entitled to:

- notice – the employer must provide the required notice of termination, or payment in lieu (see Section XIII.i);
- severance allowance – if an employee has completed one continuous year of employment, he or she is entitled to be paid severance allowance, the statutory minimum being two weeks' wages for each year of completed service up to 10 years, and three weeks' wages for each year of completed service thereafter, subject to a maximum of 26 weeks' wages. If the contract provides for a greater amount of

severance, it will prevail. Severance allowance is not payable when an employee unreasonably refuses to accept the employer's offer of re-employment at the same place of work under no less favourable terms than those under which he or she was previously employed;

- a certificate of termination – see Section XIII.i;
- an itemised pay statement;
- a pension transfer – the employee's pension is transferable on redundancy, including the employee's vested contributions, which vest one year after joining the plan d; and
- information – before making an employee redundant, as soon as is practicable, the employer shall inform the trade union or other representative of:
  - the existence of the relevant condition of redundancy;
  - the reason for the termination contemplated;
  - the number and categories of employees likely to be affected; and
  - the period during which the termination is likely to occur.

Further, the employer must consult, at least 14 days prior to the termination date for redundancy, on:

- the possible measures that could be taken to avert or minimise the adverse effects of the 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 delineating the requirements to be followed and the benefits to be paid in the event of an intended lay-off or redundancy.

No specific categories of employees are protected from dismissal (including redundancy) and no social plan is required..

#### **XIV TRANSFER OF BUSINESS**

There is no specific protection for employees whose employment is threatened by a transfer of business or undertaking. The Act provides that when a business is sold, transferred or otherwise disposed of, the period of employment with the former employer shall be deemed to constitute a single period of employment with the successor employer, if the employment was not terminated and severance pay was not paid under the Act. Acceptance of severance pay by an employee has the effect of terminating employment.

There is no legal prohibition to outsourcing work.

## **XV ELECTRONIC SIGNATURES**

Electronic signatures are permissible and legally effective, valid and enforceable for the purposes of offer letters and employment contracts under the Electronic Transactions Act 1999, provided that a method is used to identify the person signing (e.g., the signature is associated with an authorized certification service provider) and to indicate that the person intended to sign or otherwise adopt the information in the document. The method must be reliable and appropriate for the purpose of the document in light of the circumstances including any relevant agreement. Where the signature of a person is required by law (e.g. an SOE) the electronic record should be in a form that is both accessible and capable of retention for subsequent reference.

## **XVI OUTLOOK**

Despite the cloud of national debt hovering at \$3.35 billion, Bermuda maintains its robust reputation as a powerful financial center and domicile of choice for the reinsurance industry, which will continue to be the main source of employment.

In September 2022 the Minister of Labour announced the aim to raise the island's working population by 25% over the next five years, to get an additional 8,400 people working through immigration reform. Calls continue for the conventional retirement age of 65 to be raised given the ageing population and the expectation that the government pension Contributory Pension Fund will go bankrupt.

The government's new Office of Fintech aims to promote the growth of the digital assets industry. Fifteen fully licensed digital asset companies are now set up on the island, which some view as inviting reputational risk in the face of the recent collapses of crypto-related entities. The Bermuda Monetary Authority has proposed amendments to the Digital Asset Business Act 2018: Code of Practice and Digital Asset Business (Client Disclosure) Amendment Rules 2022 in order to bolster protection for customers using the services of regulated financial institutions.

Employers anticipate the main provisions of the Personal Information Protection Act 2016 coming into force in 2023. They will face many new duties in relation to the use and processing of personal data of their employees.

In late 2022, the government announced that a new Labour Department will be created to promote labour standards, enforce and monitor compliance, and develop new labour policy.

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Juliana Snelling (née Horseman) is a Rhodes Scholar, a director and partner of Canterbury Law Limited and a member of the Bar of England and Wales (1994), the Law Society of England and

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Ms Snelling's principal work involves advising local and multi-national companies, public authorities and senior-level business executives on Bermuda employment, labour, immigration and human rights laws. She also advises in civil matters generally, including contract and tort matters, landlord tenant, defamation and personal injury matters.

She served for five years as counsel to the Bermuda Medical Council, for three years as chair of Bermuda's Land Valuation Appeal Tribunal, and for six years on the Professional Conduct Committee of the Bermuda Bar Association, and also on the Treatment of Offenders' Board.

*Who's Who Legal: Labour, Employment & Benefits 2022* reports about Ms Snelling, "Her work product is consistently exceptional", in *Who's Who Legal: Labour, Employment & Benefits 2021* as 'a very professional, dependable and efficient lawyer who always exceeds requirements and expectations', and in each *Who's Who Legal: Labour, Employment & Benefits 2020* as an 'exquisite lawyer with extensive experience in complex workplace disputes'. In *Who's Who Legal: Labour & Employment 2019*, she is 'recommended by peers internationally for her labour and employment practice, which includes advising offshore companies and senior executives on employment matters'.

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