

# Bermuda

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## I INTRODUCTION

Bermuda is a self-governing British Overseas Territory with its own constitution and government. The Employment Act of 2000 (the Act) is the governing employment legislation. It applies to employees working 15 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 of the Act, including for unfair dismissal. The Tribunal comprises a chair, a deputy chair and 20 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 against a Tribunal decision to the Supreme Court on a point of law under the Employment Act (Appeals) Rules of 2014.

The Supreme Court has original jurisdiction to hear claims valued at Bd\$25,000 or higher; certain civil 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. In certain circumstances, appeals may be filed thereafter with the Judicial Committee of the Privy Council in England.

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

Health insurance requirements for employers are stipulated in the Health Insurance Act 1970. Government pension requirements are stipulated in the Contributory Pensions Act 1970. Private pension requirements are stipulated in the National Pension Scheme (Occupational Pensions) Act 1998 and, for government employees, the Public Service Superannuation Act 1981. Payroll tax obligations are stipulated in the Payroll Tax Act 1995 and the Payroll Tax Rates Act 1995. The normal (non-compulsory) retirement age for employees in the private sector is 65, while the compulsory retirement age for government employees is 68.

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## **II YEAR IN REVIEW**

In January 2023, the government published ‘A Guide to Working in Bermuda’ providing information to assist persons seeking or enjoying employment in Bermuda, including the rights of the employee and the employer, hiring and terminations, and related employment issues.

In 2023, the government enacted the following pieces of legislation establishing Bermuda’s first ever statutory minimum wage:

- a* the Employment Minimum Hourly Wage Entitlement) Act 2022 (effective 1 June 2023);
- b* the Employment (Minimum Hourly Wage) Order 2023 (effective 1 June 2023); and
- c* the Employment (Minimum Hourly Wage Entitlement) Regulations 2023 (effective 31 May 2023).

The precursor Act was the Employment (Wage Commission) Act 2019 (effective 14 October 2019) that had established a Wage Commission to make recommendations for a new minimum hourly wage and living wage rate to be prescribed by the Minister. The Order establishes that, for each pay reference period, an employee is entitled to be paid a gross hourly wage, which on average is not less than the minimum wage set at Bd\$16.40 per hour. For workers earning gratuities, service charges or commissions, or a combination of same, these may be combined with the base wage to add up to Bd\$16.40 per hour, failing which the employer must pay the employee the difference. However, any tips voluntarily given to an employee may not count towards the minimum hourly wage. Eligible employees include casual workers, part-time employees, temporary employees, students aged 18 years or older (paid at not less than 70 per cent of the minimum hourly wage) and such other persons as may be prescribed by regulations, with other classes of persons such as grocery packers excluded.

The government requires employers of work permit employees to file an updated amended statement of employment (SOE) with the Department of Immigration to indicate the hourly wage being paid (in addition to annual salary). For full-time expatriate employees whose pay is tied to commission, the SOE must state the base wage plus the percentage commission.

The legislation also mandates the keeping of records by employers for six years and the ability of employees to file complaints of non-compliance. Civil penalties and criminal fines may be given to non-complying employers.

Effective 1 April 2023, the Independent Contractor Guidance published by the government is said to further the Ministry’s mandate to promote labour standards and foster harmonious employment relations. The Guidance lists 12 indicators that are material to differentiate employees from independent contractors, and aims to reduce the occurrence of employers misclassifying employees as contractors in order to avoid paying the costs of employee benefits and leave.

The government has published more decisions of the Tribunal in anonymised, redacted form. Civil penalties have been imposed ranging from Bd\$1,250 to Bd\$3,000 for non-compliance with the Tribunal’s Orders and failure to provide an SOE or particular terms. A penalty may also be imposed for failing to provide a policy against bullying and sexual harassment.

International business has continued its expansion representing 28 per cent of economic activity in Bermuda. In 2022, 812 new companies set up in Bermuda, adding 230 new jobs. To support growth, the Ministry published ‘Supporting Business Development and Expansion – Work Permits in Bermuda’, which aims to simplify, promote and explain the

new work permit types available for businesses looking to domicile in Bermuda or expand, namely the New Business Work Permit, Global Entrepreneur Work Permit, Fintech Business Work Permit and Global Work Permit.

### III SIGNIFICANT CASES

#### i **Marcus Uddin v. The Commissioner of Police**

In *Marcus Uddin v. The Commissioner of Police*,<sup>2</sup> the Supreme Court held that a probationary police officer was entitled to damages for unlawful dismissal but exercised its discretion to reject the officer's claim for reinstatement. The Chief Justice held that it would be inappropriate to order reinstatement as to do so would not only usurp the proper powers of the Commissioner of Police (who had strongly objected to reinstatement), but also risked creating an environment with an undercurrent of ill feeling that would affect his future relations with his superiors in the service.

#### ii **Bermuda Healthcare Services Ltd and Brown Darrell Clinic v. Ideh**

On appeal on a point of law against a decision of the Tribunal in *Bermuda Healthcare Services Ltd and Brown Darrell Clinic v. Ideh*<sup>3</sup> that the complainant had been unfairly dismissed, the Supreme Court allowed the appeal and remitted the matter to be heard before a differently constituted Tribunal, on the basis that the Tribunal had taken no notes of the evidence at the hearing, which was a serious failure that was egregious and warranted a rehearing of the dispute. Given the present role of the Tribunal and the important matters that come before it, a party could legitimately expect that notes of the evidence would be taken by one if not all of the members, or at least cause them to be taken. The Supreme Court also held that the Tribunal's failure to comply with the statutory time periods for issuing their judgment was a breach of their statutory duty.

### IV BASICS OF ENTERING INTO AN EMPLOYMENT RELATIONSHIP

#### i **Employment relationship**

An employment contract in the summarised form of an 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 an SOE that contains the following, according to Section 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;*

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2 [2023] SC (Bda) 84 Civ. (6 November 2023).

3 [2023] SC (Bda) 34 Civ. (31 March 2023).

- (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 of 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; and*
- (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 there is no payment of overtime or hours in lieu for an employee working overtime, that fact must be noted in the SOE.

For expatriate employees employed under a work permit issued by the Department of Immigration, the SOE forms part of the immigration work permit application form that gets filed with the Department and will be vetted for compliance with law.

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 approximately halfway through the probationary period. 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 without notice. The employee may resign during the period for any reason without notice. The probationary termination provisions do not apply to promoted employees.

### **iii Establishing a presence**

All new companies hiring employees in Bermuda 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 of 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 their employer, or otherwise acting outside their employment, if those activities are harmful to the business. Breaching this implied duty may justify the 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 they continue to be employed and receive normal wages and benefits.

The contract will almost always 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 contained in the contract to lawfully prevent competition. However, Bermuda common law regards covenants in restraint of trade as *prima facie* unlawful. Thus, a 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 the retention of key personnel); conversely, a court will strike down clauses that are unreasonably wide in relation to time, geographical extent (although worldwide clauses will often be enforceable) 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 uphold clauses that prevent the poaching of key employees to protect the stability of the workforce.

If the contract does not contain an express post-termination restrictive covenant clause, the employer may try to rely on the employee's implied post-termination legal duty not to disclose or misuse the confidential information of their 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, except that the Act mandates that employers provide employees with a rest period of at least 24 consecutive hours each week. The 24-hour rest period rule does not apply to certain categories of employees, such as police, medical practitioners and firefighters. In addition, employees who work continuously for five or more hours must be given a meal break of at least 30 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 of 1963 provides that no child under 13 may be lawfully employed without having a weekly continuous rest period of at least 36 hours. Children under the age of 16 cannot be employed during school hours and may only be employed for up to two hours on school days outside of school hours. Persons under the age of 18 may not be lawfully employed at night unless they are over the age of 16, and then only until midnight.

### **ii Overtime**

The Act provides for mandatory overtime pay or hours off in lieu of pay unless the parties expressly contract out of the requirement in the SOE, in which case the SOE must state this. Overtime pay (or hours off in lieu) also does not apply to professional or managerial employees whose SOE provides that their annual salary has been calculated to reflect the expectation that they may occasionally work 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 of extra pay.

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, except for the mandatory rest period (see Section VI.i).

## **VII FOREIGN WORKERS**

Pursuant to the Bermuda Immigration and Protection Act 1956, employees engaged in gainful occupation 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. However, to obtain a work permit, the employment position must either be exempt from advertising (e.g., a chief position), 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 working wholly or mainly in Bermuda are protected by the same employment laws and owe the same payroll tax as local workers, albeit the reinsurance industry will often cover the foreign employee's portion of payroll tax.

Since 2020, Bermuda has offered a one-year renewable residency permit that enables persons known as ‘digital nomads’ to work for overseas businesses or to study remotely from Bermuda. Applicants must prove that they have the means to financially support themselves while on the island. They do not have the right to seek employment with local companies in Bermuda.

The implementation of the National Pension Scheme (Operational Pensions) Amendment Act of 2019 was postponed to a date yet to be announced. If enacted, this Act will, for the first time, require private contributory pensions to be paid by employers 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. In practice, employers in the reinsurance industry currently often provide a non-registered pension plan for expatriate employees that is akin to a local registered pension plan.

## **VIII GLOBAL POLICIES**

Internal rules on discipline are not required by Bermuda law. If these 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 these procedures.

However, employers will often set out their internal disciplinary procedures (usually framed as non-contractual policies) 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. Making the disciplinary policy non-contractual in nature makes it easier for the employer to amend the policy or deviate from it without facing a breach of contract claim.

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 the following:

- 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 their 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 employment contracts be translated into the employee's native language. However, if the employer knows that the employee does not understand the terms of their employment agreement, the contract may be unenforceable 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 by government immigration policy 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, they will be landed for seven days and may be required to undergo English language testing as a condition of residence.

## **XI EMPLOYEE REPRESENTATION**

The Trade Union Act and Labour Relations (Consolidation) Act of 2021 provides that every employee has the right to join or refuse to join a trade union.

Where an agency shop agreement is in force, an employee does not have the right to refuse to be a union member unless they agree 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 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 certified bargaining unit reasonable access to the employer's premises for the union's lawful activities. However, employers may impose reasonable access restrictions on union representatives for safety purposes or to avoid undue disruption of the business. Furthermore, by notice in writing addressed to a certified union, employers may require that a representative not engage in union activities on the premises without the employer's prior consent.

## **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. 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. PIPA defines 'personal information' as 'any information about an identified or identifiable individual'; this does not include information that is publicly available. Every

employer will be required to appoint a privacy officer to comply with PIPA. The operation of PIPA will be overseen by a privacy commissioner who will be responsible for handling data breach complaints. The complaint process will start with mediation, followed by an inquiry, and conclude with potential criminal sanctions.

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

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

## **iii Sensitive data**

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. In practice, 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 specific 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. PIPA will protect personal information provided about employees during background checks when enacted.

## **v 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 of 1999, provided that a method is used to identify the person signing (e.g., the signature is associated with an authorised certification service provider) and to indicate that the person intended to sign or otherwise adopt the information in the document. In practice, most employment-related documents are signed electronically in pdf form with the consent of both parties. 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.

# **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 and instructions on how 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,

namely the name and address of the employer, nature of the employer's business, length of continuous employment, capacity in which the employee was employed, the wages and other remuneration payable at the date of termination, and where the employee so requests, the reason for the termination.

If the termination of a contract by the employer is for an invalid or unlawful reason or for no reason, it constitutes an unfair dismissal, since the Act provides that a valid reason for termination must exist in order to lawfully terminate. Termination-at-will clauses are unlawful and unenforceable.

Furthermore, 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 of 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 vacation, parental, bereavement or sick leave (unless sick leave extends beyond six 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 one month's notice in other cases (statutory notice periods). 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 will also not apply. Instead of providing notice, an employer may, at its discretion, pay an employee a sum equal to the wages and other remuneration and confer on the employee all other benefits that would have been due up to the expiry of the contractual notice period (or pay a sum equivalent to the value of the employer paid benefits for such period). If the employee leaves without giving proper notice, the employer need only pay salary plus any accrued but unused vacation leave and benefits, up to the last day worked. All termination payments required by the Act must be made within seven days of termination or on the next regular payroll date, whichever is later. If the employer suffers a loss, it may sue the employee for compensatory damages (e.g., the cost of substitute hire) 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 the 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 the full opportunity to present evidence under oath and make submissions. The burden of proof is on the employer to prove the reason for the dismissal. If the employer fails to prove the reason for dismissal, the court will make a conclusive presumption that the dismissal was unfair. Alternatively, an employee who claims constructive dismissal has the burden of proving the reason that made the continuation of the employment relationship unreasonable.

As to rehire rights, if the Tribunal finds that there was an unfair dismissal, it has the statutory power to award either reinstatement or re-engagement of the employee in comparable work. In non-union workplaces, reinstatement is rarely ordered as the courts and tribunals will not wish to force parties to work together who have been in litigation against each other.

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. Pursuant to the Stamp Duties Act 1976, stamp duty of Bd\$25 should be applied to the agreement to be enforceable (unless the employer is an exempted company). If a complaint has been filed with the Department of Labour Relations, written confirmation of the fact of the 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 and damages will generally be limited to the sum value of remuneration plus benefits for the contractual notice period (less sums that could have been earned through mitigation), save and unless there are express contractual terms providing for more generous termination payments. Legal costs are generally recoverable in the Supreme Court by a winning party in the judge's discretion, whereas the Tribunal has no jurisdiction to award costs.

## **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:
  - 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 months amounts to a termination by redundancy. Before laying off an employee, the employer must inform the employee and the employee's trade union or other representative (if any) of the existence of the relevant condition of redundancy, the reasons for the lay-off contemplated and the expected duration of the lay-off.

A redundant employee is entitled to:

- a* notice: the employer must provide the required notice of termination or payment in lieu (see Section XIII.i);
- b* severance allowance: if an employee has completed one continuous year of employment, they are 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 they were previously employed;

*c* a certificate of termination (see Section XIII.i);

*d* an itemised pay statement;

*e* a pension transfer: for eligible employees, the employee's pension is transferable on redundancy, including the employee's vested contributions, which vest for one year after joining the plan; and

*f* information: before making an employee redundant, as soon as is practicable the employer shall inform the employee and 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.

Furthermore, the employer must consult, at least 14 days prior to the termination date for redundancy, on the possible measures that could be taken:

*a* to avert or minimise the adverse effects of the redundancy on employment; and

*b* 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 a 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 and employers in Bermuda do often outsource work to overseas personnel where the cost of labour is significantly cheaper.

#### **XV OUTLOOK AND CONCLUSIONS**

Despite its cloud of national debt hovering at Bd\$3.3 billion and over 2,200 of its residents being on financial assistance, Bermuda maintains its robust reputation as a powerful financial centre and domicile of choice for the reinsurance industry, which continues to be its main source of employment. There are approximately 14,000 international companies registered on the island, plus 2000 local companies. Attractive hardening market conditions have allowed reinsurance companies to raise substantial capital to support growth opportunities in 2023 with share offerings in the billions.

The Ministry expresses confidence that Bermuda's economy will continue to expand and aims to raise the island's working population by 25 per cent (an additional 8,400 people) by 2027 through immigration reform.

Major tax reform is expected in 2025 following the intended implementation of the Corporate Income Tax Act 2023, which will charge a 15 per cent tax on the corporate profits of Bermuda businesses that form part of multinational enterprises that earn more than €750 million (Bd \$812 million) of revenue annually. The government estimates that as many as 10 per cent (approximately 1,400) of international businesses registered in Bermuda could be affected.

Regarding data privacy, effective 1 January 2025, all provisions of PIPA will finally become law. Currently only some administrative provisions are in force, allowing the appointment of the Privacy Commissioner and the creation of the Office. The remaining substantive clauses of PIPA will give the Act substantial power. Employers are getting organised so as to be compliant.

On the minimum wage front, the next step will be to develop a framework for a living wage, with work needed to close the gap between the minimum wage and the living wage. The latter takes into consideration what funds an employee needs to afford them a socially acceptable standard of living taking into account basic living costs.

Effective from 1 March 2024, the government intends to enact the Employment (Protection of Employee Tips and Other Gratuities) Amendment Act 2023 that will define gratuities, prevent the withholding of gratuities and establish safeguards to ensure the gratuities go to employees.

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