

IN-DEPTH

Employment Law

BERMUDA

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In-Depth: Employment Law (formerly The Employment Law Review) is an insightful global survey of the employment law frameworks and related developments in key jurisdictions around the world. It analyses the most consequential current issues faced by employers, including recent case law, legislative and regulatory changes and best practices.

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Bermuda

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Introduction

Bermuda is a self-governing British Overseas Territory with its own constitution and government. The Bermuda Constitution Order 1968 (the Constitution) is an overriding constitution, which means that no domestic legislation or principle of common law can derogate from it.

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 including a compensation order for unfair dismissal and reinstatement. 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 Director of Labour and the Tribunal can mete out civil penalties against an employer for up to Bd\$5,000 and Bd\$10,000, respectively, for failing to provide a Statement of Employment (SOE) to employees, failing to have in place a policy against bullying and harassment and failing to follow the Tribunal's orders. The normal range of penalty is between Bd\$1,200 and Bd\$3,000.

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 (HRA 1981) prohibits discrimination and harassment by employers based on specified human rights-protected characteristics, and sexual harassment in the workplace is also an offence under the Act. Employees may bring a complaint of a breach of human rights to the Human Rights Commission (HRC). The HRC's Executive Officer has the power to investigate and collect evidence if they have reasonable grounds for believing that an employer has breached the HRA 1981. They also have a duty to seek to settle the causes of the complaint (through mediation by mutual consent of the parties) or to endeavour to cause the breach to cease, as the case may be. They may dismiss the complaint at any stage of the proceedings after giving the complainant an opportunity to be heard, if in their opinion the complaint is without merit.

Where it appears to the Executive Officer that it is unlikely in the circumstances that the causes of a complaint will be settled, or they have been trying for nine months to settle the complaint but have been unsuccessful, and the complaint is not so serious as to warrant a prosecution, they must refer the complaint to the Human Rights Tribunal appointed under the HRA 1981. The Tribunal will hear the complaint and decide whether or not a party has breached the HRA 1981 and may do any one of more of the following:

1. order the party in breach to come into compliance with the HRA 1981 and rectify any injury caused to the complainant by the breach and to make financial restitution including for injury to feelings (except for any loss which the complainant could have avoided had they acted reasonably);
2. if an offence has been committed and it is satisfied that its order will not be complied with, refer the complaint for prosecution; or
3. order any party to the dispute to pay any other party or the Commission costs of the proceedings before the Tribunal up to Bd\$1000.

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

There is a right of appeal to the Supreme Court from an order of the Human Rights Tribunal on matters of fact or law or both. In addition, criminal penalties of fines or imprisonment are imposed upon conviction for offences of wilful and unlawful discrimination, or for aiding, counselling or procuring another person to discriminate against a person in breach of the HRA 1981.

As an alternative to bringing a complaint under the HRA 1981, the complainant may opt to issue proceedings in the Supreme Court for a violation of their human rights as permitted by Section 20A of the HRA 1981.

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. The minimum wage is set out in the Employment (Minimum Hourly Wage) Order 2023, promulgated under the Employment Minimum Hourly Wage Entitlement) Act 2022. The normal (non-compulsory) retirement age for employees in the private sector is 65, while the compulsory retirement age for government employees is 68.

In February 2023, the government published 'A Guide to Working in Bermuda' to heighten awareness on the part of employees of their employment rights. In 2023 the government also published the 'Independent Contractor Guidance' to help employers and employees understand whether a worker is an independent contractor or not in substance. 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 to avoid paying the costs of employee benefits and leave

Year in review

As at the last May 2025 labour survey, there were a total of 36,242 workers in Bermuda: 4,230 work for the Bermuda government; 2,437 work for quangos and statutory boards; and 22,039 work for private companies or individuals. This marks the fourth consecutive year of job growth. Unemployment is down to 1.6 per cent rate and median incomes are rising.

In October 2024, Bermuda's newly established Gender Affairs Council began its task of addressing issues such as gender-based disparity and workplace discrimination. The Council, funded by the government, is tasked with building a comprehensive framework to address these gaps. Notably, a May 2024 labour force survey update revealed that women in Bermuda now have a 70 per cent higher median gross annual income than men (women earned Bd\$4,481 more per annum). This development is attributed to a higher level of tertiary education attained by women, although disparities along racial lines continue.

Since 2020, international business remains Bermuda's largest employer, growing at an average annual rate of 2.4 per cent. Approximately 15 per cent of the world's reinsurance capital is located in Bermuda, with over 1,100 (re)insurance companies doing business and managing assets exceeding US\$1.6 trillion. In 2024, 766 new international companies and partnerships were registered in Bermuda, bringing the total number of registered businesses to 12,396; 2025 is set to top those numbers. Bermudian-based reinsurers delivered the strongest capital growth globally in 2024, according to a 2025 AM Best report, growing capital by 16 per cent year-on-year; Bermudian-based reinsurers outpacing peers in Europe, the United States and Asia.

The sector's employment income for 2024 also recorded a growth of 12.3 per cent. As of 2024, employment in international business stood at 5,047 persons, marking its highest recorded level. Bermudians and spouses of Bermudians accounted for 59.3 per cent of those jobs.

In a continued effort to increase job opportunities for Bermudians, in September 2024 the government extended work permit moratoriums on 46 closed categories of employees including administrative assistants and HR officers and managers and interns, as well as maintained 10 restricted categories.

A relaxation of policy came for partners of either a Bermudian or of a Permanent Resident Certificate (PRC) holder, or of a non-Bermudian on a work permit, and for other legal residents of Bermuda who have already received permission to reside, who may now also apply to seek employment. In addition, partners who do not currently have permission to reside may apply to reside and seek employment. A genuine and subsisting relationship must be demonstrated. Normal work permit policies will apply (and thus Bermudians, spouses of Bermudians and PRC holders will be favoured).

Effective 1 March 2024 the Employment Protection of Employee Tips and Other Gratuities Amendment Act 2023 requires employers to distribute all tips, gratuities and service charges ('qualifying tips') to their workers fairly and without deductions, except for normal payroll tax. Key requirements include having a written tipping policy, keeping detailed records of tips received and distributed, and making these records available to employees.

upon request within 30 days. Allocated tips must be paid to workers by the end of the month following the month in which they were received.

Effective December 2024, the Employment Amendment Act 2024 increased the maximum severance allowance for redundancy from 26 weeks' wages to 32 weeks' wages for employees who have worked at least 13 years for an employer. In addition, since 1 July 2025, the employee portion of payroll tax is no longer payable on severance allowance for redundancy (the employer's portion remains payable).

To help alleviate the housing crisis, in 2025 Bermuda abolished the Work from Bermuda (WFB) 'digital nomad' scheme, which had been in place since 2020 and had enabled persons to work for overseas businesses remotely from Bermuda. The scheme attracted approximately 1,800 participants. Holders of WFB certificates will have 90 days from their expiry date to settle their affairs and leave Bermuda. Those who wish to remain may apply for permission to reside on an annual basis, provided they meet the eligibility requirements.^[2]

Significant cases

Khamisi Tokunbo v. (1) The Commission of Police (2) The Attorney General

In *Khamisi Tokunbo v. (1) The Commission of Police (2) The Attorney General*,^[3] the Court of Appeal held that the Crown (Attorney General), and not the Commissioner of Police, can be potentially vicariously liable in tort for the wrongful acts of a police officer (alleged unlawful arrest and detention). To be held vicariously liable, it would have to be shown that the police officer was acting in the ordinary course of their employment (an issue to be determined at trial).

AB v. Mount Saint Agnes Academy

In *AB v. Mount Saint Agnes Academy*,^[4] the Plaintiff sued a private school arguing the school was vicariously liable for the wrongful acts of its teacher, namely acts of alleged grooming and sexual abuse, which she alleged caused her psychiatric injury. The Supreme Court refused the school's application to strike out the case, holding that the issue of whether the lawsuit was time-barred by the Limitation Act 1984 or should be extended in the court's discretion should be decided at the end of a full trial when all the evidence was before the court. The strike-out was refused because there was a prima facie cause of action with reasonable prospects of success that should proceed to a substantive hearing.

K Amani Lawrence and Eugene Johnston v. The Public Service Commission et al

In *K Amani Lawrence and Eugene Johnston v. The Public Service Commission et al*,^[5] the Supreme Court granted each of the two plaintiffs leave to issue judicial review proceedings against the public body that hires civil servants (the Public Service Commission, PSC) to quash the decisions of the PSC to recommend two other people for appointment to the positions of Solicitor General and Chief Parliamentary Counsel, respectively (both persons

were then appointed by the Governor). Leave was granted because there was an arguable case that: (1) the wrong advertisement was used for the post of Solicitor General and thus Mr Johnson was arguably unlawfully deprived of the opportunity to apply because he considered himself ineligible to apply (when in fact he was eligible); and (2) the PSC failed to give priority to a qualified Bermudian applicant for the post of Chief Parliamentary Counsel and instead recommended a foreign applicant for the post, contrary to the PSC Regulations 2001 that give Bermudians priority in hiring for public posts.

Basics of entering into an employment relationship

Employment relationship

An employment contract in the summarised form of a 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, according to Section 6(2) of the Act:

1. the full names of the employer and employee;
2. the date when the employment began;
3. the job title and brief description of the work for which the employee is employed;
4. the place or places of work;
5. the gross wage or the method of calculating it, and the intervals at which it is to be paid;
6. the normal days and hours of employment or, where the job involves shift work, the normal pattern of the shifts;
7. the entitlement to holidays, including public holidays, and paid vacation leave;
8. the entitlement to rest days and meal breaks;
9. the entitlement to overtime pay or hours in lieu and the rate of overtime pay or the method of calculating it;
10. the terms relating to incapacity for work as a result of sickness or injury, including provision for sick leave;
11. the length of notice which the employee is obliged to give, and entitled to receive, to terminate their contract of employment;
12. details of any pension provided, whether under the National Pension Scheme (Occupational Pensions) Act of 1998 or otherwise;
13. any disciplinary and grievance procedures applicable;
14. 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;
15. any probationary period;

16. any dress code;
17. the existence of any collective agreement which directly affects the terms and conditions of the employment;
18. 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;
19. the existence of the employer's written policy against bullying and sexual harassment in the workplace and how the policy can be accessed; and
20. 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.

Where there is no payment of overtime or hours in lieu for an employee working overtime, that fact must be noted in the SOE.

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.

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 higher level expatriate employees will have two contracts, the summary SOE for Immigration, and a more detailed contract of employment which is not sent to Immigration, but the two documents should be consistent.

Often parties will have more complex written contracts of employment that go beyond what is required by the Act in the SOE.

Agreed amended or additional terms must be confirmed in writing and signed by both parties within one month. Parties can amend the SOE through mutual agreement or the employer may amend the terms through a general change in policy that is brought to the attention of the workforce, which serves to amend the employees' terms generally. A fundamental detrimental variation to the terms by the employer without the employee's consent is a breach of contract and damages may be payable.

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 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.

Establishing a presence

All 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 or consultants to work or provide services in Bermuda, including foreign companies.

Thus, a foreign company will have to contract with a local company that is registered in Bermuda; the local company will be the employer and will apply for work permits to allow the foreign company's employees to work in Bermuda to serve the local company.

For example, Company A provides high-end window installation and annual maintenance, but they do not have a presence in Bermuda. Company A (foreign) will need to contract with Company B (local) to apply for work permits under the name of Company B to hire the employees of Company A to work in Bermuda, which then allows the employees from Company A to travel to Bermuda to carry out the work. Company B, the local company, will be the employer for the purposes of Bermuda law and must register.

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.

Bermuda has no concept of a permanent establishment (PE). If a company hires employees in Bermuda, they must provide health insurance for their employees in accordance with the Health Insurance Act 1970, they must provide a private pension for Bermudian and spouses of Bermudian staff (10 per cent of pensionable earnings), they must provide the social insurance (government pension) benefit and they must remit payroll tax to the Bermuda government. The employee portion of health, pension, social insurance and payroll tax is deducted from the employee's salary. Many employers in the reinsurance industry cover all these costs at 100 per cent. They also often provide a non-registered pension plan for expatriate employees that is akin to a local registered pension plan.

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 for any other company during all or some of the notice period while they continue to be employed and receive normal wages and benefits (albeit not actively working).

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.

An express non-compete clause must be contained in the contract to lawfully prevent competition after the employee's termination date. 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. The clauses must be limited in time and scope to be reasonable.

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.

Wages

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 requirement does not apply to the 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.

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 SOE must state this.

Overtime pay (or hours off in lieu) is not required for professional or managerial employees whose SOE provides that their annual salary has been calculated to reflect that they may occasionally be required to work more than 40 hours a week.

Otherwise, employees who work 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 with unions 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 'Working time'). Employers will often mandate that overtime work be approved in advance.

Minimum wage

Minimum wage rights and obligations are set out in the Employment Minimum Hourly Wage Entitlement Act 2022, the Employment (Minimum Hourly Wage) Order 2023, and the Employment (Minimum Hourly Wage Entitlement) Regulations 2023, which established the first national minimum wage set at Bd\$16.40 per hour.

For workers earning gratuities, service charges or commissions, or a combination of same, these earnings 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, voluntary 'tips' must go to employees since the Protection of Employee Tips and Other Gratuities Amendment Act 2023 (effective 1 March 2024) and do not count towards the minimum wage.

The minimum hourly wage is expected to be increased every two years in line with the annual average rate of inflation, utilising the Consumer Price Index as the indicative measure, capped at 2.5 per cent per year.

Foreign workers

Pursuant to the Bermuda Immigration and Protection Act 1956, employees engaged in gainful occupation (working) in Bermuda must either possess Bermuda status, be the spouse of a Bermudian or a PRC 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 PRC holder who is qualified and has applied for the position.

The length of the foreign worker's assignment will be dictated by the length of their work permit (generally up to five years in length, usually one, two or three years) which may or may not be renewed in the employer's discretion.

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 as well as the cost of benefits. There is no mandatory private pension for foreign workers but re(insurance) companies often voluntarily provide a pension plan or a pension allowance in lieu of pension to foreign executives.

Global policies

Internal rules on discipline are not required by Bermuda laws and there is no concept of workplace 'rules'.

However, employers will often have written 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 in the future without facing a breach of contract claim.

As to the law, 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:

1. the nature of the conduct in question;
2. the employee's duties;
3. the terms of the contract of employment;
4. any damage caused by the employee's conduct;
5. the employee's length of service and their previous conduct;
6. the employee's circumstances;
7. the penalty imposed by the employer;
8. the procedure followed by the employer; and
9. the practice of the employer in similar situations.

The SOE must state whether there is (or is not) a disciplinary procedure and if there is one, where it can be found. Otherwise, employers must follow the Act.

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. Parental leave is paid by the employer, not the government.

Pregnant mothers must provide a medical certificate verifying the pregnancy and specifying the estimated date of birth. The application for maternity leave must be submitted at least four weeks before the mother intends to commence her leave. If the employee intends to return to her position following her period of maternity leave and without loss of seniority, she must notify her employer at least two weeks in advance of the date on which she intends to resume work. If the employee's position no longer exists, the employer must provide the returning employee with a comparable position with at least the same level of wages and benefits as she was receiving before her maternity leave. If the employee fails to notify her employer at least two weeks in advance of the date she intends to resume work, she shall be deemed to have terminated her employment.

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

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 employee does not understand the terms of their employment agreement, the contract may be unenforceable under common law unconscionable bargain or undue influence principles. Thus, it is good practice to translate the contract where the employee's English is not good.

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.

The government will soon introduce the 'Requirement for Proficiency in English Language' to its Work Permit policy. All persons coming to work in Bermuda will be required to have a working knowledge of the English language to ensure that they can perform their work duties in a safe manner. The burden shall be upon the employer to affirm such proficiency in advance of hiring the applicant. Testing one's English proficiency will be equivalent to the standardised Test of English as a Foreign Language (TOEFL) found online. For those from non-English speaking countries, the TOEFL exam result must be submitted with the work permit application.

Where foreign-language documents are submitted to immigration with applications, they must be officially translated into English by a certified translator.

Employee representation

The Trade Union Act and Labour Relations (Consolidation) Act of 2021 (TULRA) 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.

For the unionised workplaces, within the collective bargaining agreement, there will be a clause referencing the Joint Consultative Committee (JCC) or Labour management teams, aka 'work councils'.

The terms of reference or constitution of the JCC vary from union to union. The major unions will have multiple JCCs based on their bargaining units, ranging from 14 to 16 up to a maximum of 28. Everything is contingent on the size of the bargaining unit and whether a JCC is required.

The unions' respective constitutions will set out the election and removal procedures for union officer representatives (by a secret ballot of union members) and the length of their terms. There is no fixed ratio of representatives to employees; the President and the General Secretary will determine the size of the JCC membership, as well as which specific members will sit on JCCs. The membership can include full-time officers of the Union, or the Vice President of the Division, and also officers of the Division. White-collar unions tend to have an elected executive officer at the JCC table and co-opt members from the respective Divisions according to the matter at hand on the JCC Agenda.

The union's terms of reference or constitution will state how frequently the representatives will meet, or a clause will detail how and when an urgent JCC will be held.

In respect of the election procedures for representatives, the representatives of the two largest unions will be the elected shop stewards from the divisions of the bargaining units. Each union's constitution will determine the number, as well as when elections are held for shop stewards. Generally, elected shop stewards in the large unions serve terms of two or four years. For the smaller unions, some shop stewards have served in the position for decades as a result of the unwillingness of other members to become shop stewards.

JCC shop stewards are generally allowed to attend the JCC with pay or, if they attend on their day off, to have a day off on a mutually agreed day with the employer's consent. Depending on the union, attendance at a JCC is mandatory. In other instances, white-collar unions will ask for a substitute shop steward if the appointed shop steward cannot attend because of the exigencies of the workplace. As long as the shop steward is a member of the JCC, they have the right to participate in the JCC despite their workload at the workplace.

Employers must comply with trade union certification procedures in the TULRA 2021 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.

The employer and their team of managers are also present to answer questions raised by the union on the interpretation of an edict to the workers that may contravene the collective bargaining agreement, employee handbook or the law, or a manager asking a worker to perform a duty that is outside the employee's job description.

Some unions do not raise any grievances at JCCs because there is a grievance procedure for handling such cases in the collective agreement. However, the employer will raise any matter that they feel challenges the employer's right to manage the business as it sees fit.

Data protection

Requirements for registration

Effective 1 January 2025, all organisations holding personal information in Bermuda are bound by the Personal Information Protection Act 2016 (PIPA) unless a statutory exemption applies. PIPA aims to ensure that personal information is used in a manner that recognises both the need to protect the rights of individuals in relation to their personal information and the need for organisations to use personal information for legitimate purposes.

There is no requirement that organisations register with the office of the Privacy Commissioner, which is the government data protection agency.

Organisations have obligations under PIPA whenever 'using' personal information which term is defined to include all manner of usage such as collecting, processing, storing, transferring and erasing data. Companies must notify their employees with respect to the use of their personal information, identifying for them what information is being kept and how it is being used. Personal information that may be 'used' includes contact information, occupation and employment details, personal identification documents, family status and relationships, financial information, information about health status, medical history and health insurance, and family members' health and insurance.

Organisations may not 'use' their employee's personal information unless one of the specified statutory conditions is met, one of which is the employee 'knowingly consented' to the use of their data. Consent may be reasonably implied from conduct except in relation to sensitive personal information. There are other statutory conditions and statutory legitimate purposes that allow the use of personal data even without consent (e.g., performance of a contract, acting pursuant to law, the use is necessary in the context

of the current, past or potential employment relationship, etc.). Pursuant to PIPA, all personal data acquired prior to 1 January 2025 is deemed to have been collected with the employee's consent and may be used for the purposes for which it was then collected.

Organisations must use personal information with appropriate safeguards against risk, including against loss, unauthorised access, destruction, use, modification or disclosure, or any other misuse. Such safeguards must be proportional to the likelihood and severity of the harm threatened by the misuse, the sensitivity of the information and the context in which it is held, and must be subject to periodic review and reassessment.

Cross-border data transfers

PIPA's personal information protection laws apply to cross-border data transfers. Organisations do not need to register overseas transfers of data with the Privacy Commissioner. They must, however, take reasonable steps to ensure that the overseas third party is contractually bound to process personal information at a comparable level of compliance as PIPA. The Bermuda organisation remains responsible for compliance. The issue of consent is dealt with in the preceding section and remains applicable to that extent.

Various protection methods can be used when transferring data overseas including user agreements or safe harbour registration, depending on the compliance level of the overseas jurisdiction. Any onward transfers of data will be subject to the same conditions and protections.

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'.

Stronger protections apply under PIPA to sensitive personal data. It must be used with lawful authority if and only to the extent that it is used with the person's consent; or in accordance with an order by either the court or the Commissioner; or for the purposes of any criminal or civil proceedings; or in the context of recruitment or employment where the nature of the role justifies such use. Of course it must never be used, without lawful authority, to discriminate against a person in violation of the HRA 1981.

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 protects personal information provided about employees during background checks which may be collected.

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, 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 and expressed to be effective with the mutual 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.

Discontinuing employment

Dismissal

Employees may not be dismissed without cause. 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 (e.g., redundancy).

Written warnings must be given in the event of misconduct (falling short of serious misconduct) or unsatisfactory performance which give the employee time to improve and instructions on how to improve, before a dismissal can occur.

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. Termination-at-will clauses are unlawful and unenforceable.

The employer must provide the employee with a certificate of termination stipulating the reason for the termination if requested by the employee.

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 HRA1981.

The appropriate amount of notice must be given in accordance with the Act or contract (if more favourable). 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. Instead of providing notice when terminating, 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.

Notice may not be given during an employee's vacation, parental, bereavement or sick leave (unless sick leave extends beyond six weeks). Notice is not required for fixed-term or project-based employees, when a work permit expires, in cases of serious misconduct or, following a warning, instances of repeated misconduct or continued unsatisfactory performance.

Companies do not need to notify a government authority of a dismissal. 'Social plans' do not exist in Bermuda. Offers of suitable alternative employment are not required but should be considered during the consultation process preceding a redundancy.

There is no category of employee protected from dismissal although the procedure will differ with government workers under the Public Service Commission Act. Whistle-blowers are protected from dismissal in certain circumstances.

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 do not wish to force parties to work together who have been locked in a dispute.

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\$27 should be applied to the agreement to make it 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.

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:

1. the modernisation, mechanisation or automation of all or part of the employer's business;
2. the discontinuance of all or part of the business;
3. the sale or other disposal of the business;
4. the reorganisation of the business;
5. the reduction in business, necessitated by economic conditions, contraction in the volume of work or sales, reduced demand or surplus inventory; or
6. the impossibility or impracticality of carrying on the business at the usual rate, or at all, because of:
 - shortage of materials;
 - mechanical breakdown;
 - act of God; or
 - other circumstances beyond the control of the employer.

There is no difference in the conditions required if there are multiple redundancies although with mass lay-offs, it is good practice to notify the government in advance.

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:

1. notice: the employer must provide the required notice of termination or payment in lieu (see the 'Dismissal' subsection);
2. 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 32 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;

3. a certificate of termination (see the 'Dismissal' subsection);
4. an itemised final pay statement;
5. a pension transfer: for eligible employees, the employee's pension is transferable on redundancy, including the employee's vested contributions, which vest after one year of membership in the plan; and
6. information: before making an employee redundant, as soon as is practicable the employer must inform the employee and the trade union or other representative (if any) 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:

1. to avert or minimise the adverse effects of the redundancy on employment; and
2. 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). Bermuda does not have the concept of a 'social plan'.

The employee does not have rehire rights, but the employer must consult on measures to avert the adverse effects of the redundancy, which includes considering an offer of suitable alternative employment.

Parties can enter into separation agreements with releases, but these are generally only required when the employee is being paid more than the law and contract require.

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 often outsource work to overseas personnel where the cost of labour is significantly cheaper.

Outlook and conclusions

Despite the cloud of national debt hovering at Bd\$3.2 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 and shows continued marked growth into 2025.

Government is expected to bring in hundreds of millions of dollars in revenue from the new global Corporate Income Tax (CIT) that taxes multinational companies earning more than €750 million (Bd\$812 million). Besides reducing the debt, plans include payroll tax changes to increase take-home pay for lower and middle-income earners, and capping the top rate of employer payroll tax to encourage job creation.

Bermuda continues to face a growing demographic crisis; the population has declined for five consecutive years and is at its lowest since 2003. The ageing population and shrinking workforce mean fewer working people are supporting increasing numbers of pensioners. In 2011 there were 10,459 pension recipients; as at 2025 there are 15,086 recipients, while the number of contributors fell from 35,913 to 33,770 between 2011 and 2023.

The Bd\$2 billion Contributory Pension that funds the government pension for most workers is paying out Bd\$203 million per annum but taking in just Bd\$135 million, and thus the fund is projected to be exhausted around 2042. It will begin to pay out more than it takes in from contributions and investment returns in 2026 and thus investments will need to be liquidated.

Solutions proposed include slowing or reducing the rate of increase in pension benefits; increasing the rate of contribution from employees; raising the normal retirement age; using revenue from the new CIT to top up the funds; and having employees and employers contribute more to their companies' private pension funds.

The Public Service Superannuation Fund (PSSF), the government workers' pension fund, faces a similar crisis. Three major changes to pension regulations that will take effect include: workers having to work until age 70 (currently 68) to qualify for full pension; a 2 per cent increase in pension contributions over the next three years from 8 per cent to 10 per cent, and changing the method for calculating an individual pension to being based on the average salary over the last 10 years worked, not just the last year.

The Government's Work Permit policy will be updated effective 1 September 2025 including in relation to work permit application timing (30 working days to process until the system is digitalised); policies in relation to required documents; sponsored dependants (unmarried partners and children) residing and working in Bermuda; secondments and lay-offs (with the expectation that jobs will be re-filled by Bermudians first); short-term work permits will

no longer serve as a bridge for standard work permits; and the required salary level will change for households of four or more dependents.

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Endnotes

- 1 Juliana M Snelling is a director at Canterbury Law Limited. [^ Back to section](#)
- 2 All statistical references in this section are from *The Royal Gazette*, Bermuda. [^ Back to section](#)
- 3 Civil Appeal No. 7 of 2024 (CA). [^ Back to section](#)
- 4 [2024] SC (Bda) 27 Civ. (12 June 2024). [^ Back to section](#)
- 5 2025 Bda L.R. 6, Civil Jurisdiction 2024 No 346. [^ Back to section](#)



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