

Bermuda Employment Act amendments

Briefing Summary: On 27 November 2020 the Bermuda government announced sweeping amendments to the Employment Act 2000 (EA 2000). The amended legislation is currently drafted as coming into force on 1 June 2021.

Service Area: Bermuda Legal Services, Employment, Pensions and Incentives

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These changes are to be implemented in conjunction with the establishment of a unified 'Employment and Labour Code' (**Code**), which will comprise the provisions of the amended EA 2000 and those of the proposed Labour Relations (Consolidation) Act 2020 (**LRCA 2020**). The Code will completely replace the Trade Union Act 1965, the Labour Relations Act 1975 and the Labour Disputes Act 1992.

In essence, the changes appear to seek to rectify absent provisions which should have been included in the original legislation (some 20 years ago), as well as including some additional "easy win" protections for employees. The changes do not attempt to tackle broader issues such as the cost of labour, the increase in automation and underutilization/inequality issues. Indeed, the amendments are fearless in their focus on increasing employee protections without reference to the wider global labour market as it exists in 2020.

Some significant changes employers should be cognisant of are as follows:

Wages will include bonuses

The definition of "wages" will be expanded to include tips and bonuses – the knock on effect being an increase to the cost of redundancies and other terminations for employers or, (conversely) more significant payments to affected employees, depending on your point of view. It is not clear how the bonus element of any compensation will be calculated (as bonuses often fluctuate year to year).

There will be time limits for severance payments

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All "wages and other remuneration and benefits" which have accrued at the termination date will need to be paid within seven days or by the next pay date, whichever is the longer period. These requirements will impact severance agreements and pay in lieu of notice arrangements where parties have in the past been able to negotiate payment in instalments, or specific performance of share awards etc.

Employees to be entitled to more information on lay off

Before laying off employees, employers will need to inform those employees and their trade unions of the existence of any conditions of redundancy, the reasons for the lay off, and the likely duration of the lay off.

This is broadly in line with the approach we have recommended to employers this year during and following the COVID-19 lockdown period.

Employees will need to be consulted on redundancy

At least 14 days before giving notice of termination for reasons of redundancy, employers will be required to inform and consult with both individual employees and their trade unions.

Employment contracts will require more information

Employers will need to expand their statements of employment to include references to:

- a written policy on bullying and sexual harassment;
- employee entitlement to rest days and meal breaks;
- employee entitlement (or lack thereof) to overtime pay or hours in lieu; and
- where employment depends on a work permit, specified information in relation to that work permit.

The proposed work permit requirements will create some challenges for employers as this information will not always be available at the time the employment contract is offered or signed. Employers may need to issue addendums to these contracts as the information becomes available.

Policies on bullying and sexual harassment are required

All employers are to provide their employees with clear written policy statements against bullying and sexual harassment. These statements will need to contain the specific information that will be set out in the amended EA 2000.

Probation periods will be limited

The proposed amendments will limit employee probations to periods of six months, which, after a mid-point performance review, can be extended to nine months total. While employees will still be able to resign during this period without notice for any reason, employers will be limited to dismissal without notice where there exist reasons relating to the operational requirements of the employer's business or the employee's performance review, performance, or conduct.

Where the probationary period applies to an employee that has been promoted internally, termination without notice will not be possible.

Employers will need to provide meal breaks

Employers will be prohibited from requiring employees to work more than five continuous hours without being allowed to take a 30 minute "meal break". An employee will be able to consent to working during this break.

New employees will receive paid leave for ante-natal care

The amendments will remove the requirement that employees complete a year of continuous employment before becoming eligible to receive paid leave for ante-natal care appointments.

Bereavement leave will be expanded

An employee will be able to take at least three consecutive days of statutory bereavement leave on the death of their grandparent, great-grandparent, grandchild or great-grandchild.

Clarity will be provided on independent contractors

The legislation proposes that the Manager of Labour Relations may publish guidance to assist with the differentiation of employees and independent contractors.

This guidance will be helpful, given the continuing growth of Bermuda's gig economy.

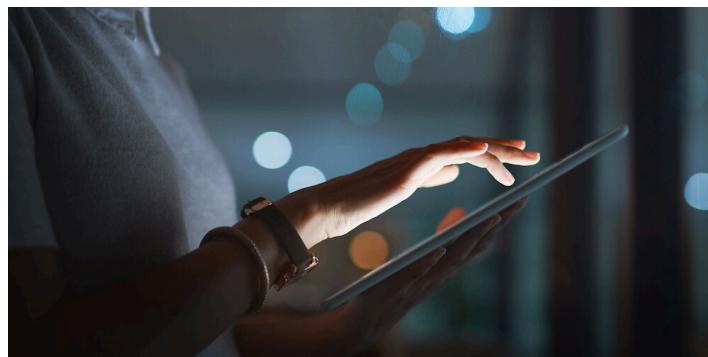
Modernisation of the Tribunal / Civil penalties will be imposed for non-compliance

Under the Code, there will be established an 'Employment and Labour Relations Tribunal' (**Tribunal**) which will function more like a formal arbitration with costs ramifications for both parties as well as some subpoena powers. Further it will be able to impose discretionary penalties of up to \$1,000 or \$5,000, depending on which provisions are contravened.

If you would like to discuss how these changes will affect your business, please get in touch with any of the contacts listed on this page.

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