

# LABOUR & EMPLOYMENT

## Bermuda



# Labour & Employment

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Quick reference guide enabling side-by-side comparison of local insights, including legislation, protected employee categories and enforcement agencies; worker representation; checks on applicants; terms of employment; rules on foreign workers; post-employment restrictive covenants; liability for acts of employees; taxation of employees; employee-created IP; data protection; business transfers; termination of employment; dispute resolution; and recent trends.

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### Bermuda



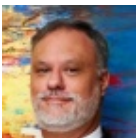
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## LEGISLATION AND AGENCIES

### Primary and secondary legislation

What are the main statutes and regulations relating to employment?

The Employment Act 2000 provides for minimum standards in employment relationships, covering matters such as pay, overtime, unauthorised deductions, rest days, meal breaks, time off, termination and disciplinary procedures. The Trade Union and Labour Relations (Consolidation) Act 2021 regulates the creation, recognition and bargaining rights of trade unions, and the rules relating to labour disputes.

The Bermuda Immigration and Protection Act 1956 provides for the rights of individuals to work in Bermuda.

The Human Rights Act 1981 is Bermuda's primary anti-discrimination statute. Section 6 provides guarantees against discrimination in the workplace.

*Law stated - 01 February 2023*

### Protected employee categories

Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

Section 10B of the Employment Act 2000 requires all employers to provide employees with a clear written policy statement against bullying and sexual harassment within the workplace, and to help employees understand its content. Failure of the employer to comply with this requirement may result in a civil penalty.

Section 6B of the Human Rights Act 1981 prohibits employers and other employees from harassing employees on the basis of their race, place of origin, skin colour, ethnic or national origin, sex, sexual orientation, marital status, disability, family status, religion, beliefs, political opinions or criminal record. Employers and employees found to have breached this section may be held jointly and severally liable to the complainant.

Section 9 of the Human Rights Act 1981 also expressly prohibits employers and other employees from engaging in sexual harassment in the workplace. Employers and employees found to have breached this section may be held jointly and severally liable to the complainant.

*Law stated - 01 February 2023*

### Enforcement agencies

What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Ministry of Labour is the government department responsible for employment and labour policy.

Employees may bring a complaint to an inspector employed by the government's Labour Relations Office within six months of an employer's alleged breach of the Employment Act 2000.

If the inspector believes that the employee has reasonable grounds for a complaint but is unable to resolve the dispute, it will be referred to the Employment and Labour Relations Tribunal, which has jurisdiction to determine employee complaints, labour disputes or other matters referred to it.

The Labour Relations Office oversees the certification and decertification of unions in the workplace, and manages labour relations disputes in both unionised and non-unionised workplaces.

The Department of Workforce Development processes labour relations disputes and provides workforce training.

The Human Rights Commission is the independent agency charged with receiving and investigating complaints arising from alleged breaches of the Human Rights Act 1981. The Human Rights Commission will initially investigate and try to conciliate a settlement to the complaint, failing which the complaint will be referred to an independent tribunal for adjudication.

The Supreme Court of Bermuda has concurrent jurisdiction to hear claims for breaches of the Human Rights Act 1981 at first instance if the claim is filed in the form of a writ.

The Personal Information Protection Act 2016 is expected to be implemented in 2023. Once this act is in force, the Office of the Privacy Commissioner will be responsible for determining employee complaints concerning privacy and data protection rights.

*Law stated - 01 February 2023*

## WORKER REPRESENTATION

### Legal basis

Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

The Trade Union and Labour Relations (Consolidation) Act 2021 is the primary statute governing the formation, governance and membership of trade unions. Employees have a right to membership of a trade union. They also have a right not to be a member of a trade union or refuse to join any particular union unless an agency shop agreement is in force, in which case an employee does not have the right to refuse to be a member of the relevant union unless he or she agrees to pay contributions to the trade union in lieu of membership, half of which may be donated to a charity instead.

*Law stated - 01 February 2023*

### Powers of representatives

What are their powers?

Trade unions have broad-ranging powers and may conduct ballots of their members, instigate labour disputes or intervene in them, report disputes to the Labour Relations Office and negotiate collective bargaining agreements.

There is a statutory procedure for the certification of trade unions by ballot whereby employees may create or have a trade union recognised, which employers are required to engage in.

Unionised employees may request that a trade union representative assists them in any dispute with their employer.

*Law stated - 01 February 2023*

## BACKGROUND INFORMATION ON APPLICANTS

### Background checks

Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

There are few restrictions or prohibitions on carrying out background checks on applicants. Background checks may be



conducted, but it is not a defence to a discrimination claim that a third party conducted the search on behalf of the employer if the employer uses the information provided by the third party for a discriminatory purpose.

*Law stated - 01 February 2023*

### **Medical examinations**

Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

No. However, such a requirement could be seen as discriminatory – for example, on the grounds of disability. Much will depend on the circumstances and whether such a requirement is reasonable relative to the job.

*Law stated - 01 February 2023*

### **Drug and alcohol testing**

Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

No. However, such a requirement could be seen to be unreasonable relative to the job and much will depend on the particulars of the situation.

*Law stated - 01 February 2023*

## **HIRING OF EMPLOYEES**

### **Preference and discrimination**

Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

Section 6(9) of the Human Rights Act 1981 allows employers to show preference in the hiring of Bermudians. This allowance, however, only applies to hiring and does not apply to preference around promotions.

*Law stated - 01 February 2023*

### **Written contracts**

Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

A written statement of employment is mandatory and must include:

- the full names of the employer and employee;
- the date when the employment began;
- the job title and brief description of the work for which the employee is employed;
- the place or places of work;
- the gross wage or the method of calculating it, and the intervals at which it is to be paid;
- the normal days and hours of employment or, where the job involves shift work, the normal pattern of the shifts;
- the entitlement to holidays, including public holidays and paid vacation leave;
- the entitlement to rest days and meal breaks;

- the entitlement to overtime pay or hours in lieu and the rate of overtime pay or the method of calculating it;
- the terms relating to incapacity for work due to sickness or injury, including provision for sick leave;
- the length of notice that the employee is obliged to give, and entitled to receive, to terminate his or her contract of employment;
- details of any pension provided, whether under the National Pension Scheme (Occupational Pensions) Act 1998 or otherwise;
- any disciplinary and grievance procedures applicable;
- 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;
- any probationary period;
- any dress code;
- the existence of any collective agreement that directly affects the terms and conditions of the employment;
- 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; and
- the existence of the employer's written policy against bullying and sexual harassment in the workplace, and how the policy can be accessed.

*Law stated - 01 February 2023*

### **Fixed-term contracts**

To what extent are fixed-term employment contracts permissible?

Fixed-term contracts are permissible in Bermuda and there are no limits on their duration.

*Law stated - 01 February 2023*

### **Probationary period**

What is the maximum probationary period permitted by law?

Section 19 of the Employment Act 2000 provides for a maximum probationary period of six months from the date of commencement of employment or promotion, extendable by a maximum of a further three months, provided that the employer provides the employee with a review of his or her performance within the first half of his or her probationary period.

*Law stated - 01 February 2023*

### **Classification as contractor or employee**

What are the primary factors that distinguish an independent contractor from an employee?

The primary factors that distinguish employees from independent contractors are how their contracts are structured, how they are paid and whether benefits, such as insurance and payroll tax, are paid for by the party 'employing' the other. Whether or not a party is an employee or independent contractor will depend on the facts of the particular situation.

*Law stated - 01 February 2023*

## Temporary agency staffing

Is there any legislation governing temporary staffing through recruitment agencies?

No. The Employment Act 2000 does not apply to temporary workers employed for a maximum of three months in any year by an employer.

*Law stated - 01 February 2023*

## FOREIGN WORKERS

### Visas

Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

There are no numerical limitations on short-term visas in Bermuda.

A global work permit allows an employee of a global company in another jurisdiction to transfer to the company's Bermuda office without the requirement of advertising the position only if the position being filled did not exist previously. Global work permits are granted for terms of between one and five years. Applications will be automatically approved in respect of individuals who have been employed for longer than one year and who earn a gross annual salary greater than BM\$125,000. Applications in respect of individuals employed for less than one year or those earning a gross annual salary of less than BM\$125,000, or both, will be considered on a case-by-case basis and approval will substantially depend on the employer demonstrating that the addition of the global work permit holder will add value to Bermuda. A global work permit does not apply to closed or restricted category positions.

*Law stated - 01 February 2023*

### Spouses

Are spouses of authorised workers entitled to work?

The Bermuda Immigration Protection Act 1956 regulates the employment of all persons who are not Bermudian, or the spouses of Bermudians or permanent resident certificate (PRC) holders. The spouse of a work permit holder can accompany the work permit holder as a sponsored dependant, with permission to reside and seek work. However, once the spouse has obtained a job offer, a work permit is required for him or her to commence gainful employment.

*Law stated - 01 February 2023*

### General rules

What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker who does not have a right to work in the jurisdiction?

The Bermuda Immigration Protection Act 1956 requires that all non-Bermudians obtain specific permission (by way of work permits) if they are to engage in a gainful occupation in Bermuda. Additional policies impacting work permits are found in the Work Permit Policy 2015 issued by the Department of Immigration. Foreign workers found not to have a work permit in place may be required to leave the country and employers may be subject to fines.

*Law stated - 01 February 2023*

## Resident labour market test

Is a labour market test required as a precursor to a short or long-term visa?

A labour market test is required in Bermuda. Work permit applications require the employer to advertise the vacancy in Bermuda per the requirements in the Work Permit Policy 2015 and properly consider any Bermudian, spouse of a Bermudian or PRC holder who meets the minimum qualifications and experience requirements of the advertisement. If a Bermudian, spouse of a Bermudian or PRC holder applicant meets the requirements of the advertised position, the applicant should be interviewed. The results of any interviews must be included with the work permit application submission.

*Law stated - 01 February 2023*

## TERMS OF EMPLOYMENT

### Working hours

Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

With the exception of certain public sector workers (such as police, fire service and medical workers) all employees must be provided with at least 24 hours of consecutive rest in each week and 30 minutes of rest for each continuous period of five working hours.

*Law stated - 01 February 2023*

### Overtime pay – entitlement and calculation

What categories of workers are entitled to overtime pay and how is it calculated?

Working hours in excess of 40 hours per week are treated as overtime, entitling the employee to overtime pay or time off in lieu. The rules on overtime do not apply to employees in professional or managerial roles where their salary has been calculated to reflect that their regular duties are likely to require them to work, on occasion, more than 40 hours a week. The Minister of Labour may exclude certain categories of workers from receiving mandatory overtime on the grounds of seasonal requirements or health and safety. Overtime pay is calculated at the rate of one-and-a-half times the employee's normal hourly wage.

*Law stated - 01 February 2023*

### Overtime pay – contractual waiver

Can employees contractually waive the right to overtime pay?

Employees may agree in writing to waive their right to overtime pay with their employer.

*Law stated - 01 February 2023*

## Vacation and holidays

## Is there any legislation establishing the right to annual vacation and holidays?

Section 12 of the Employment Act 2000 provides for annual vacation leave. Employees are entitled to two weeks of paid vacation leave after their first year of continuous employment. There is no statutory entitlement to accrue additional vacation leave for subsequent periods of employment. Parties may agree on additional vacation sums over and above the statutory minimum.

Employers must permit vacation leave at the times requested by the employee, subject to the requirements of the business.

*Law stated - 01 February 2023*

## Sick leave and sick pay

### Is there any legislation establishing the right to sick leave or sick pay?

Section 14 of the Employment Act 2000 provides for sick leave and sick pay. Employees who complete one year of continuous employment are entitled to be paid at their normal hourly wage for up to eight days per year when they are unable to work due to sickness or injury. Employers may provide additional sick leave over and above the statutory minimum.

To continue to receive sick pay, employees on sick leave for two or more consecutive days may be required to provide a certificate from a medical practitioner stating that they are unable to work due to sickness or injury.

*Law stated - 01 February 2023*

## Leave of absence

### In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

In the case of bereavement, employees may take up to three consecutive days on the death of a member of the employee's immediate family or five consecutive days to attend the funeral of a member of the employee's immediate family overseas. Immediate family is taken to include any other person with whom the employee was sharing a household (other than by reason only of a landlord-tenant or employer-employee relationship). Employers are not obliged to pay the employee during a leave of absence for bereavement.

Employees who have completed at least one year of continuous employment are entitled to 13 weeks of paid maternity leave. Employees with less than one year of continuous employment are entitled to 13 weeks of unpaid maternity leave.

Employees who have completed at least one year of continuous employment are entitled to five days of paid paternity leave. Employees with less than one year of continuous employment are entitled to five days of unpaid paternity leave. Paternity leave may only be taken once during a 12-month period beginning on the date the child is born and within a period not exceeding 14 weeks of that date.

*Law stated - 01 February 2023*

## Mandatory employee benefits

## What employee benefits are prescribed by law?

All employers must provide employees and their non-employed spouses with health insurance under the Health Insurance Act 1970. The employer may deduct up to half the cost of the premiums from the employee's wages.

All employers must establish and maintain a pension plan for employees who are Bermudian nationals or the spouse of a Bermudian national under the National Pension Scheme (Occupational Pensions) Act 1998. This includes self-employed persons.

All employers must contribute and ensure employees contribute to social insurance in Bermuda in accordance with the Contributory Pensions Act 1970.

*Law stated - 01 February 2023*

## Part-time and fixed-term employees

### Are there any special rules relating to part-time or fixed-term employees?

The Employment Act 2000, which sets out the bulk of the rights and obligations in the employment context, does not apply to part-time employees. For the purpose of the Employment Act 2000, a 'part-time employee' means a person who is employed by an employer for fewer than 15 hours a week.

The Employment Act 2000 excludes employees whose fixed term of employment has expired from the requirement for an employer to only terminate a contract of employment for a valid reason related to their ability or conduct, or for redundancy.

Fixed terms of employment count towards a period of continuous employment for the purpose of matters such as sick pay, and maternity and paternity rights.

*Law stated - 01 February 2023*

## Public disclosures

### Must employers publish information on pay or other details about employees or the general workforce?

No.

*Law stated - 01 February 2023*

## POST-EMPLOYMENT RESTRICTIVE COVENANTS

### Validity and enforceability

#### To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

Restrictive covenants must be reasonable in their duration, in their geographical scope and in the scope of activities that are prohibited. Courts will not 'read down' or modify a covenant that they find to be unreasonable. The clause will simply be declared to be entirely unenforceable.

Although the enforceability of restrictive covenants has not been tested recently in the Bermuda courts, in practice, non-

complete clauses of six months are generally considered to be reasonable and therefore enforceable for senior executives.

*Law stated - 01 February 2023*

### **Post-employment payments**

Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

No. However, the employer would be required to pay during any notice period.

*Law stated - 01 February 2023*

## **LIABILITY FOR ACTS OF EMPLOYEES**

### **Extent of liability**

In which circumstances may an employer be held liable for the acts or conduct of its employees?

Bermuda law has the English law principle of vicarious liability, which imposes strict liability on employers for the wrongdoings of their employees. This generally applies to any torts committed while employees are conducting their duties.

*Law stated - 01 February 2023*

## **TAXATION OF EMPLOYEES**

### **Applicable taxes**

What employment-related taxes are prescribed by law?

Payroll tax is payable on all wages or salaries and benefits paid to employees as a result of services provided in Bermuda. Payroll tax is split between the employer and the employee. Guest workers and contractors are both subject to payroll tax.

*Law stated - 01 February 2023*

## **EMPLOYEE-CREATED IP AND CONFIDENTIAL BUSINESS INFORMATION**

### **Ownership rights**

Is there any legislation addressing the parties' rights with respect to employee inventions?

Patents and registered designs are protected under the Patents and Designs Act 1930 . Anyone may apply to register a patent – including an employee – and, upon registration, the patent will belong to the applicant. There is no legislation deeming employee inventions created in the ordinary course of employment as belonging to the employer or entitling the employee to compensation.

Registered designs are deemed to belong to the author unless they were created for another person for valuable consideration. This could include registered designs created in the ordinary course of employment.

Copyright and design rights are protected by the Copyright and Designs Act 2004 . The author of a work is the first owner of the copyright and the designer is the first owner of design rights unless these were created in the ordinary

course of employment, in which case they will belong to the employer.

The statutory default position may be modified by the employment contract.

*Law stated - 01 February 2023*

### **Trade secrets and confidential information**

**Is there any legislation protecting trade secrets and other confidential business information?**

Trade secrets and confidential business information are protected by contractual agreements and common law obligations of confidentiality. There is no legislation protecting them.

*Law stated - 01 February 2023*

## **DATA PROTECTION**

### **Rules and employer obligations**

**Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?**

Bermuda does not yet have a statutory privacy regime fully in force. At present, employers' obligations result from common law obligations of confidentiality, which is that private information shall not be misused, and the implied term of mutual trust and confidence in the employment relationship requires the employer to not act in a way that undermines that relationship such that the employee cannot be expected to continue working.

Personal information will receive additional protection under the Personal Information Protection Act 2016, the most significant change to Bermuda's privacy regime in generations. Although not onerous by global standards, this statute will bring data privacy laws closer to those found in the EU General Data Protection Regulation.

The Personal Information Protection Act 2016 has received royal assent but is not yet fully implemented. While a precise timetable is not yet public information, the provisions affecting employers' uses of personal information are imminent and are expected to come into force in 2023.

This will require employers to protect employees' private information, provide an explanation to employees as to how their personal information will be used and limit such use to the purposes set out in a privacy notice. Any breach of these obligations gives the employee a statutory claim for misuse of personal information and may result in enforcement action by the Privacy Commissioner.

*Law stated - 01 February 2023*

### **Privacy notices**

**Do employers need to provide privacy notices or similar information notices to employees and candidates?**

While it is good practice to provide employees with a privacy notice, it will not be required until section 9 of the Personal Information Protection Act 2016 is in force.

*Law stated - 01 February 2023*



## Employee data privacy rights

### What data privacy rights can employees exercise against employers?

Employees may bring claims for breach of confidence, misuse of private information, invasion of privacy or breach of the implied term of mutual trust and confidence in the employment relationship.

When Part 3 of the Personal Information Protection Act 2016, which provides for the rights of individuals against organisations processing personal information, comes into force, employees will obtain significant additional data privacy rights against employers. These will include the rights to:

- access their personal information;
- rectification, blocking, erasure and destruction of personal information; and
- compensation for financial loss or distress caused by an employer failing to comply with its privacy obligations.

*Law stated - 01 February 2023*

## BUSINESS TRANSFERS

### Employee protections

#### Is there any legislation to protect employees in the event of a business transfer?

Bermuda does not have an equivalent to the United Kingdom's Transfer of Undertakings (Protection of Employment) Regulations 2006.

Upon the sale of shares by a vendor, the shareholders will change but the employer remains the same. The employment contracts and collective agreements that are in force between the employer and its employees remain in full force and effect, and the employer retains all its obligations and liabilities towards its employees.

The sale of assets operates to terminate the employment contract between the vendor and its employees. It is then the purchaser's choice as to whether it should offer new contracts to those employees.

Section 21 of the Employment Act 2000 provides protection to employees in relation to a sham sale. Where one of the purposes of a sale or other disposition is to allow an employer to avoid its obligations or deprive employees of their rights, all the employer's obligations under the Employment Act 2000 are said to be binding on the person acquiring the business.

*Law stated - 01 February 2023*

## TERMINATION OF EMPLOYMENT

### Grounds for termination

#### May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

'Cause' is not a term used in the Employment Act 2000. Instead, it refers to the requirement to have a 'valid reason' for dismissal.

After the expiry of an employee's probationary period, the employer must have a valid reason for terminating the employment contract as set out in section 18 of the Employment Act 2000, which must relate to the ability,

performance or conduct of the employee, or the operational requirements of the employer's business (ie, redundancy). In addition, an employee may be dismissed when he or she reaches the mandatory retirement age set out in his or her employment contract or applicable collective bargaining agreement.

An employer may dismiss an employee whose fixed term of employment has expired without giving any reason.

*Law stated - 01 February 2023*

### **Notice requirements**

Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Notice requirements set out in the Employment Act 2000 must be satisfied. An employer may elect to make payment in lieu of notice and confer all other benefits that would have been due up to the end of the employee's notice period.

*Law stated - 01 February 2023*

### **Dismissal without notice**

In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

Employers can terminate a contract of employment without notice when an employee:

- is guilty of serious misconduct that is directly related to the employment relationship or that has a detrimental effect on the employer's business, such that it would be unreasonable to expect the employer to continue the employment relationship;
- is guilty of misconduct falling short of serious misconduct and if, within six months of the date of a written warning, the employee is again found guilty of such misconduct; or
- is not performing his or her duties in a satisfactory manner and does not, within six months of the date of a written warning, demonstrate that he or she is able to perform his or her duties in a satisfactory manner, or is in fact doing so.

*Law stated - 01 February 2023*

### **Severance pay**

Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

Under the Employment Act 2000, if an employee has completed one year of continuous employment and his or her employment is terminated by reason of redundancy, the winding up of the employer's business or the death of an employee from an occupational disease or accident resulting from that employment, the employee is entitled to severance allowance by his or her employer.

Severance is calculated based on length of service, namely two weeks' wages for each year of completed service up to 10 years and three weeks' wages for each year of completed service over 10 years, subject to a maximum cap of 26 weeks' wages.

**Procedure****Are there any procedural requirements for dismissing an employee?**

Procedural requirements apply to dismissal depending on the reason relied on by the employer.

Employees dismissed for unsatisfactory performance must first receive a written warning explaining how their performance is unsatisfactory and be provided with a six-month period during which they are given instructions on how to improve. If, after six months have elapsed, their performance remains unsatisfactory, then they may be dismissed without notice or the payment of severance. Employers must terminate the employee's contract within 14 days of the expiry of the six-month period or they will be deemed to have waived their right to terminate.

Employees dismissed for misconduct must first receive a written warning explaining the misconduct complained of and instructions on how to improve. They may be dismissed immediately without notice or the payment of severance if they commit one further incident of misconduct within six months or three further incidents of misconduct within 12 months. Employers must terminate within 14 days of having knowledge of the final incident or will be deemed to have waived their right to terminate. Written warnings are not required in the event of gross misconduct.

Employees facing redundancy must be informed at least 14 days prior to the date on which notice to terminate their employment contract is given. They must be informed as to the existence of the relevant condition requiring redundancy, the reasons why they face redundancy, the number and category of employees facing redundancy, and the period over which the redundancy will take place. Employers must then also consult with the employee or their trade union on measures, which may avoid or mitigate redundancy.

No prior approval from a government agency is required to dismiss an employee.

*Law stated - 01 February 2023*

**Employee protections****In what circumstances are employees protected from dismissal?**

Part IV of the Employment Act 2000 provides various protections from dismissal, including notice requirements and steps to be taken in the case of poor performance or misconduct, which help to protect employees from dismissal.

*Law stated - 01 February 2023*

**Mass terminations and collective dismissals****Are there special rules for mass terminations or collective dismissals?**

There are no special rules relating to mass terminations or collective dismissals; however, section 31 of the Employment Act 2000 prohibits sham sales for the purpose of enabling an employer to avoid its obligations or deprive employees of their rights under the Employment Act 2000. In the event of collective redundancies, the employer must comply with its obligations to carry out a proper consultation before dismissal.

*Law stated - 01 February 2023*

### **Class and collective actions**

Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Class or collective actions are not allowed; however, trade unions may assert labour claims on behalf of employees in accordance with Part 4 of the Trade Union and Labour Relations (Consolidation) Act 2021. These claims include matters such as terms of employment, conditions of work, engagement or non-engagement of persons, termination or suspension of employment, allocation of work between workers, collective agreements and a contravention of the rules on collective bargaining for trade unions.

*Law stated - 01 February 2023*

### **Mandatory retirement age**

Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Bermuda does not currently have a mandatory retirement age in the private sector.

*Law stated - 01 February 2023*

## **DISPUTE RESOLUTION**

### **Arbitration**

May the parties agree to private arbitration of employment disputes?

Yes. Private arbitration of employment disputes would typically be provided for under the employment contract. This does not exclude the employee from bringing an action before the employment tribunal unless he or she has waived his or her right to do so.

*Law stated - 01 February 2023*

### **Employee waiver of rights**

May an employee agree to waive statutory and contractual rights to potential employment claims?

Employees may waive their rights as enshrined in the Employment Act 2000 by agreement. There are no requirements for the employee to receive independent legal advice on any waiver; however, it would be good practice for employers to require it. A waiver is usually executed by way of a deed and consideration is not required.

An employee cannot legally waive his or her rights arising from those guaranteed by the Human Rights Act 1981.

*Law stated - 01 February 2023*

### **Limitation period**

What are the limitation periods for bringing employment claims?

Employees must bring claims for an employer's failure to comply with the Employment Act 2000 within six months.

Claims for breaches of employment contracts are subject to a limitation period of six years.

Under the Human Rights Act 1981, a complainant may bring a complaint to the Human Rights Commission as a matter of right within six months of the cessation of the discriminatory action. A complainant may also bring a complaint to the Human Rights Commission up to two years after the cessation of the discriminatory action, but the executive officer of the Human Rights Commission has the discretion to decide whether to investigate the complaint (if brought after the six-month limitation period).

If a person wishes to claim through a writ that his or her human rights have been violated, he or she has six years within which to file the writ.

*Law stated - 01 February 2023*

## UPDATE AND TRENDS

### Key developments and emerging trends

Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

The introductions on 1 June 2021 of the Employment Amendment Act 2021 and of the Trade Union and Labour Relations (Consolidation) Act 2021 were both significant developments.

On 1 June 2023, the Employment (Minimum Hourly Wage Entitlement) Act 2022 will come into force, introducing a minimum wage for the first time. The minimum hourly wage will be set at BM\$16.40, which is one of the highest globally.

Proposals to amend the Contributory Pensions Act 1970 to introduce a sliding scale of contributions have been raised, which could impact higher-paid workers more heavily. At present, there is little detail available on these proposals.

*Law stated - 01 February 2023*

## Jurisdictions

	<b>Angola</b>	FTL Advogados
	<b>Australia</b>	People + Culture Strategies
	<b>Austria</b>	Schindler Attorneys
	<b>Belgium</b>	Van Olmen & Wynant
	<b>Bermuda</b>	MJM Barristers & Attorneys
	<b>Brazil</b>	Cescon, Barriau, Flesch & Barreto Advogados
	<b>Canada</b>	KPMG Law
	<b>Chile</b>	SCR Abogados
	<b>China</b>	Morgan, Lewis & Bockius LLP
	<b>Colombia</b>	Holland & Knight LLP
	<b>Egypt</b>	Eldib Advocates
	<b>Finland</b>	Kalliolaw Asianajotoimisto Oy
	<b>France</b>	Morgan, Lewis & Bockius LLP
	<b>Germany</b>	Morgan, Lewis & Bockius LLP
	<b>Hong Kong</b>	Morgan, Lewis & Bockius LLP
	<b>Hungary</b>	VJT & Partners
	<b>India</b>	AZB & Partners
	<b>Indonesia</b>	SSEK Law Firm
	<b>Iran</b>	Dadflamingo
	<b>Israel</b>	Barnea Jaffa Lande
	<b>Italy</b>	Zambelli & Partners
	<b>Japan</b>	TMI Associates
	<b>Kazakhstan</b>	Morgan, Lewis & Bockius LLP
	<b>Luxembourg</b>	Castegnaro
	<b>Malaysia</b>	SKRINE

	<b>Mauritius</b>	Orison Legal
	<b>Mexico</b>	Morgan, Lewis & Bockius LLP
	<b>Netherlands</b>	CLINT   Littler
	<b>Nigeria</b>	Bloomfield Law
	<b>Norway</b>	Homble Olsby   Littler
	<b>Pakistan</b>	Axis Law Chambers
	<b>Panama</b>	Icaza González-Ruiz & Alemán
	<b>Philippines</b>	SyCip Salazar Hernandez & Gatmaitan
	<b>Puerto Rico</b>	Morgan, Lewis & Bockius LLP
	<b>Romania</b>	Muşat & Asociații
	<b>Singapore</b>	Morgan Lewis Stamford LLC
	<b>Slovenia</b>	Law firm Šafar & Partners
	<b>South Korea</b>	JIPYONG LLC
	<b>Sweden</b>	Advokatfirman Cederquist KB
	<b>Switzerland</b>	Wenger Plattner
	<b>Taiwan</b>	Brain Trust International Law Firm
	<b>Thailand</b>	Pisut & Partners
	<b>Turkey</b>	Bozoğlu Izgi Attorney Partnership
	<b>United Arab Emirates</b>	Morgan, Lewis & Bockius LLP
	<b>United Kingdom</b>	Morgan, Lewis & Bockius LLP
	<b>USA</b>	Morgan, Lewis & Bockius LLP