



BERMUDA

EMPLOYMENT ACT 2000

2000 : 38

TABLE OF CONTENTS

PART I
INTRODUCTORY

- 1 Short title and commencement
- 2 Application
- 3 Interpretation
- 4 Meaning of “employee”
- 5 Meaning of “continuous employment”

PART II
CONDITIONS OF EMPLOYMENT

- 6 Statement of employment
- 7 Itemised pay statement
- 8 Unauthorised deductions
- 9 Overtime
- 10 Rest days

PART III
TIME OFF

- 11 Public holidays
- 12 Annual vacation
- 13 Public duties
- 14 Sick leave
- 15 Ante-natal care
- 16 Maternity leave
- 17 Bereavement leave

EMPLOYMENT ACT 2000

PART IV TERMINATION OF EMPLOYMENT GENERAL PROVISIONS

- 18 Termination of employment
- 19 Probationary period
- 20 Notice periods
- 21 Payment in lieu of notice
- 22 Certificate of termination
- 23 Severance allowance

- Misconduct etc
- 24 Disciplinary action
- 25 Summary dismissal for serious misconduct
- 26 Termination for repeated misconduct
- 27 Termination for unsatisfactory performance

- Unfair dismissal
- 28 Unfair dismissal
- 29 Constructive dismissal
- 29A Whistle-blowers

- Redundancy etc
- 30 Termination for redundancy
- 31 Effect of sham sale
- 32 Lay off
- 33 Winding up

PART V ENFORCEMENT

- 34 Inspectors
- 35 Employment Tribunal
- 36 Right to complain to inspector
- 37 Inquiry by inspector
- 38 Hearing of complaints by Tribunal
- 39 Remedies: general
- 40 Remedies: unfair dismissal
- 41 Appeals
- 42 Binding determination or order
- 43 Report by Tribunal
- 44 Offences

PART VI SUPPLEMENTARY

- 45 Regulations
- 46 Crown application
- 47 Amendment of Labour Relations Act 1975

EMPLOYMENT ACT 2000

48 Transitional provisions

SCHEDULE

WHEREAS it is expedient to promote the fair treatment of employers and employees by providing minimum standards of employment, by establishing procedures and notice periods for the termination of employment, by providing employees with protection against unfair dismissal, and by establishing the Employment Tribunal; and to make connected provision;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

PART I

INTRODUCTORY

Short title and commencement

1 (1) This Act may be cited as the Employment Act 2000.

(2) This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

Application

2 (1) Subject to any express provision to the contrary in this Act or regulations, this Act applies to all employers and employees.

(2) An agreement to waive any of the requirements of this Act and the regulations is of no effect.

(3) Where any of the rights of an employee established by any other Act, agreement, contract of employment, custom or practice are more favourable than this Act requires, the provisions so established prevail over this Act.

Interpretation

3 In this Act—

“collective agreement” means a written agreement between an employer, or an employers' organisation authorised by the employer, and a trade union, which concerns terms and conditions of employment and any other matter of mutual interest;

“condition of redundancy” has the meaning given in section 30(3);

“constructive dismissal” means termination by virtue of section 29;

“continuous employment” shall be determined in accordance with section 5;

EMPLOYMENT ACT 2000

“contract of employment” means any contract, whether express or implied, whether oral or in writing and whether or not in compliance with the requirements of this Act, which provides for an employee to perform specified services for an employer;

“dress code” means a written policy issued by an employer requiring his employees to dress in a particular manner for reasons of safety, hygiene or corporate image;

“employee” has the meaning given in section 4;

“employer” means a person in Bermuda who employs employees;

“inspector” means the Director of Workforce Development or a person designated as an inspector under section 34;

“lock-out” has the meaning given in the Labour Relations Act 1975;

“Minister” means the Minister responsible for workforce development;

“normal hourly wage”, in relation to an employee who does not receive a standard wage per hour, shall be calculated by dividing a week’s wages by the average number of hours for which the employee is employed per week, excluding any overtime;

“overtime rate” means the rate of one and a half times the employee’s normal hourly wage;

“prescribed” means prescribed by regulations;

“regulations” means regulations made by the Minister under this Act;

“statutory notice period” has the meaning given in section 20;

“strike” and “irregular industrial action short of a strike” have the meanings given in the Labour Relations Act 1975;

“Tribunal” means the Employment Tribunal established by section 35;

“unfair dismissal” has the meaning given in sections 28 and 29;

“wages” means all sums payable to an employee under his contract of employment (by way of weekly wage, annual salary or otherwise) or otherwise directly in connection with his employment, including any commission, but not including—

- (a) any tips or bonuses;
- (b) any expenses; or
- (c) the monetary value of any benefits in kind;

“week” means—

- (a) a week ending with a Saturday; or

EMPLOYMENT ACT 2000

- (b) in relation to an employee whose pay is calculated on a weekly basis ending with a day other than Saturday, a week ending with that day;

“a week’s wages” in relation to an employee whose wages vary from week to week, shall be calculated by taking—

- (a) the average wages earned by him over the previous twelve weeks, or
- (b) in any case where he has worked for less than twelve weeks, the average wages earned by him over the time that he has worked.

[Section 3 “employer” substituted by 2006:12 s.2 effective 8 June 2006; Section 3 amended by 2010 : 36 s.3(a) effective 16 July 2010; Section 3 “Minister” deleted and substituted by BR 5 / 2011 para. 5 effective 25 February 2011; Section 3 “inspector” amended and “Minister” deleted and substituted by BR 40 / 2013 para. 2 effective 3 May 2013]

Meaning of “employee”

4 (1) For the purposes of this Act, “employee” means—

- (a) a person who is employed wholly or mainly in Bermuda for remuneration under a contract of employment;
- (b) any other person who performs services wholly or mainly in Bermuda for another person for remuneration on such terms and conditions that his relationship with that person more closely resembles that of an employee than an independent contractor;

but does not include a person who falls within subsection (2).

(2) The following persons are not employees for the purposes of this Act—

- (a) a person who is under the age of sixteen years;
- (b) a casual worker;
- (c) a part-time employee;
- (d) a temporary employee;
- (e) a student;
- (f) a voluntary worker;
- (g) such other class of persons as may be prescribed by regulations.

(3) For the purposes of subsection (2)—

“casual worker” means a person who works from time to time for remuneration for one or more employers, but who does not seek the rights and obligations of a contract of employment;

“part-time employee” means a person who is employed by an employer for less than fifteen hours a week;

EMPLOYMENT ACT 2000

“student” means a person who is, by virtue of section 1(3) of the Contributory Pensions Act 1970 (students employed in vacation etc), deemed not to be an employed person for the purposes of that Act;

“temporary employee” means a person who is employed for no more than three months in any year by an employer;

“voluntary worker” means a person who works on a voluntary basis for a charity or other philanthropic organisation.

(4) Regulations made pursuant to subsection (2)(g) shall be subject to the negative resolution procedure.

[Section 4 subsections (1) and (4) amended by 2006:12 s.3 effective 8 June 2006]

Meaning of “continuous employment”

5 (1) An employee’s period of continuous employment shall begin from and include the first day on which he begins to work for an employer (including any probationary period) and shall continue up to and including the date of termination.

(2) It shall be presumed, unless the contrary is shown, that the employment of an employee is continuous.

(3) An employee’s period of continuous employment shall be deemed to continue during any period of absence from work—

- (a) due to his taking leave, whether annual leave, maternity leave, sick leave or any other leave in accordance with this Act or his contract, provided that any period of sick leave does not extend beyond four weeks;
- (b) due to his suspension, with or without pay, in accordance with this Act or his contract;
- (c) due to the termination of his contract, if he is reinstated or re-engaged under Part V;
- (d) due to an inability to work on account of an occupational disease or accident resulting from that employment;
- (e) due to a lock-out;
- (f) by agreement with his employer.

(4) Periods of short term contracts granted in succession with less than thirty day intervals shall count for the purpose of calculating the period of continuous employment.

(5) Acceptance of severance pay by an employee shall terminate his period of continuous employment.

(6) Where 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 pursuant to this Act.

PART II
CONDITIONS OF EMPLOYMENT

Statement of employment

6 (1) Not later than one week after an employee begins employment with an employer, the employer shall give to the employee a written statement of employment which shall be signed and dated by the employer and employee.

(2) The statement shall contain particulars of the following—

- (a) the full names of the employer and employee;
- (b) the date when the employment began;
- (c) the job title and brief description of the work for which the employee is employed;
- (d) the place or places of work;
- (e) the gross wage or the method of calculating it, and the intervals at which it is to be paid;
- (f) the normal days and hours of employment or, where the job involves shift work, the normal pattern of the shifts;
- (g) the entitlement to holidays, including public holidays, and paid annual vacation;
- (h) the terms relating to incapacity for work due to sickness or injury, including provision for sick leave;
- (i) the length of notice which the employee is obliged to give, and entitled to receive, to terminate his contract of employment;
- (j) details of any pension provided, whether under the National Pension Scheme (Occupational Pensions) Act 1998 or otherwise;
- (k) any disciplinary and grievance procedures applicable;
- (l) where the employment is not expected to be permanent, the period for which it is expected to continue or, if it is for a fixed term, the date on which it is to end;
- (m) any probationary period;
- (n) any dress code;
- (o) the existence of any collective agreement which directly affects the terms and conditions of the employment;
- (p) such other matters as may be prescribed;

and may contain other details relating to the terms and conditions of employment.

EMPLOYMENT ACT 2000

(3) Where there are no particulars to be entered under paragraphs (k) to (o) of subsection (2), that fact shall be noted in the statement.

(4) The statement may refer the employee for particulars of the matters mentioned in paragraphs (g) to (k) and (n) of subsection (2) to—

- (a) the provisions of any collective agreement which directly affects the terms and conditions of his employment; or
- (b) to any other relevant document,

which is copied to the employee.

(5) Where—

- (a) additional matters to be included in the statement are prescribed under paragraph (p) of subsection (2); or
- (b) the employer and employee agree to change any of the terms of employment particularised in the statement;

the employer shall, as soon as practicable and no later than one month after the matters are prescribed or the change agreed, give to the employee an amendment to the statement containing particulars of the change or a revised statement which shall (in either case) be signed and dated by the employer and employee.

Itemised pay statement

7 (1) An employer shall give to each of his employees a written itemised pay statement, at or before the payment of any wages.

(2) The statement shall contain particulars of—

- (a) the period of time or the work for which the wages are being paid;
- (b) the rate of wages to which the employee is entitled and the number of hours worked, where the number of hours worked varies from week to week;
- (c) the gross amount of wages to which the employee is entitled;
- (d) the amount and purpose of any deduction made from that amount;
- (e) any bonus, gratuity, living allowance or other payment to which the employee is entitled; and
- (f) the net amount of money being paid to the employee.

Unauthorised deductions

8 (1) An employer shall not make a deduction from an employee's wages unless—

- (a) the deduction is required or authorised to be made by virtue of this or any other enactment, a collective agreement or a provision of the employee's contract, or by order of any court or tribunal; or

- (b) the employee has previously signified in writing his agreement or consent to the making of the deduction.
- (2) Where the total amount of wages paid on any occasion by an employer to an employee is less than the total amount payable on that occasion, the amount of the deficiency shall be treated as a deduction for the purposes of subsection (1).
- (3) Subsection (1) does not apply—
 - (a) where the purpose of the deduction is the reimbursement of the employer in respect of an overpayment of wages or an overpayment in respect of expenses incurred by the employee in carrying out his employment;
 - (b) to a deduction made in consequence of any disciplinary proceedings which were held by virtue of this or any other enactment;
 - (c) to a deduction made in consequence of an employee's participation in a strike or irregular industrial action short of a strike that results in a withdrawal of labour.

Overtime

- 9 (1) Any hours worked by an employee in excess of forty hours a week shall either—
- (a) be paid at the overtime rate; or
 - (b) be paid at the employee's normal hourly wage and compensated by giving him the same number of hours time off in lieu.
- (2) Subsection (1) shall not apply—
- (a) where the employee is a professional or managerial employee whose statement of employment indicates that his annual salary has been calculated to reflect the fact that his regular duties are likely to require him to work, on occasion, more than forty hours a week; or
 - (b) in any other case where the employer and employee agree that it shall not apply.
- (3) For the purposes of this section, the Minister may, after consulting the Labour Advisory Council, modify the effect of subsection (1) by prescribing a different number of hours for specified types of employer or employee, and in doing so shall take into account such matters as he considers relevant, including—
- (a) the seasonal nature of the work; and
 - (b) the effect of the different number of hours on the health and safety of employees and the public.
- (4) Regulations made pursuant to subsection (3) shall be subject to the affirmative resolution procedure.

EMPLOYMENT ACT 2000

Rest days

10 (1) An employer shall provide each employee with a rest period of at least twenty-four consecutive hours in each week.

(2) Subsection (1) shall not apply to—

- (a) police officers;
- (b) prison officers;
- (c) fire officers;
- (d) medical practitioners and nurses employed at the hospitals, as defined by the Bermuda Hospitals Board Act 1970; and
- (e) such other classes of employee as may be prescribed for the purposes of this section.

PART III

TIME OFF

Public holidays

11 (1) In this section, “public holiday” has the meaning given in the Public Holidays Act 1947, but does not include any Sunday which would not otherwise be a public holiday by virtue of that Act.

(2) Subject to this section, an employer shall grant every employee a holiday with pay on each public holiday falling within any period of employment.

(3) Where a public holiday falls on an employee’s rest day, the employer shall grant him a holiday with pay on—

- (a) the working day immediately following the public holiday; or
- (b) such other day as may be agreed by the employer and employee.

(4) Where an employee is required to work on a public holiday, the employer shall—

- (a) pay that employee at a rate at least equal to the overtime rate; or
- (b) pay that employee at his regular rate of wages and grant him a holiday with pay on such other day as may be agreed by the employer and employee.

(5) An employer shall not be obliged to pay an employee in respect of a public holiday if the employee does not work on his working day immediately preceding and his working day immediately following the public holiday, unless he was on annual leave or sick leave on such a day.

(6) This section shall not apply where the employer and employee agree otherwise.

EMPLOYMENT ACT 2000

Annual vacation

12 (1) An employee shall be entitled to a period of two weeks annual vacation after he has completed—

- (a) the first year of continuous employment; and
- (b) each subsequent year of continuous employment,

but such periods of vacation are not cumulative.

(2) An employer shall, where practicable, grant an employee's request to take his annual vacation at a particular time, subject to the requirements of the business and to requests for vacation by other employees.

(3) An employee shall be entitled to a week's wages for each week of his annual vacation which shall, where so requested by the employee and where practicable, be paid in advance of the vacation.

Public duties

13 (1) Subject to the requirements of the business, an employer shall, where practicable, permit an employee to take such time off during his working hours as is reasonable in the circumstances to attend a meeting of any of the following bodies of which he is a member, or to do anything approved by the body for the purpose of discharging its functions—

- (a) any Government Board;
- (b) the Bermuda Regiment;
- (c) the Reserve Police;
- (d) the Senate or House of Assembly;
- (e) such other body as may be prescribed.

(2) An employer shall permit an employee who has been summoned for jury service or summoned to attend court as a witness to take such time off during his working hours as is necessary to discharge his duty.

(3) An employer shall permit an employee to take such time off during his working hours as is necessary in order for him to vote in a parliamentary election, within the meaning of the Parliamentary Election Act 1978.

(4) Subject to section 46 of the Defence Act 1965, an employee who has completed at least one year of continuous employment is entitled to be paid at his normal hourly wage for time taken off under this section; but where the employee receives any payment in connection with his duties, the employer shall be entitled to deduct the equivalent amount from any wages payable by virtue of this subsection.

[Section 13 subsection (4) amended by 2006:12 s.4 effective 8 June 2006]

EMPLOYMENT ACT 2000

Sick leave

14 (1) An employee who has completed at least one year of continuous employment shall be entitled to be paid at his normal hourly wage in respect of eight days per year when he is unable to work due to sickness or injury.

(2) An employee shall not be entitled to be paid in respect of a period of two or more consecutive days unless, where his employer so requests, the employee provides the employer with a certificate from a registered medical practitioner certifying that the practitioner has examined the employee and determined that he is unable to work due to sickness or injury.

Ante-natal care

15 (1) An employee who is pregnant and who has, on the advice of a registered medical practitioner, made an appointment to receive ante-natal care, is entitled to take time off during her working hours to attend the appointment.

(2) An employee is not entitled to take time off under this section unless, where her employer so requests, she produces a certificate from a registered medical practitioner confirming that she is pregnant, and an appointment card or some other document showing that the appointment has been made.

(3) An employee who has completed at least one year of continuous employment is entitled to be paid at her normal hourly wage for time taken off under this section.

Maternity leave

16 (1) An employee shall be entitled to maternity leave if she—

- (a) provides her employer with a certificate of a registered medical practitioner certifying that she is pregnant and specifying the estimated date of the birth; and
- (b) submits to the employer an application for maternity leave at least four weeks before the day she specifies as the day on which she intends to commence her leave.

(2) The period of maternity leave shall be—

- (a) in relation to an employee who has completed at least one year of continuous employment or will have done so by the expected date of delivery, a period of twelve weeks, consisting of eight weeks paid leave and four weeks unpaid leave;
- (b) in any other case, a period of eight weeks unpaid leave.

(3) An employee who has taken a period of maternity leave shall notify her employer at least two weeks in advance of the date on which she intends to resume work, and she shall be entitled to resume work—

- (a) in the position she occupied at the time the leave commenced; or

- (b) where that position no longer exists, in a comparable position with not less than the same wages and benefits she was receiving before the maternity leave,

and with no loss of seniority.

(4) An employee who fails to notify her employer in accordance with subsection (3) shall be taken to have terminated her employment.

Bereavement leave

17 (1) In this section, any reference to a person's immediate family shall be taken to be a reference to—

- (a) his spouse, child, parent or sibling; or
- (b) any other person with whom he was sharing a household (other than by reason only of a landlord-tenant or employer-employee relationship).

(2) An employer shall grant to an employee a leave of absence of up to—

- (a) three consecutive days on the death of a member of the employee's immediate family; or
- (b) five consecutive days in order to attend the funeral of a member of the employee's immediate family overseas.

(3) An employee shall advise the employer as soon as possible after the death in question of his intention to take bereavement leave under this section and of the anticipated commencement date and duration of the leave.

(4) An employer shall not be obliged to pay an employee in respect of a period of bereavement leave.

PART IV

TERMINATION OF EMPLOYMENT

GENERAL PROVISIONS

Termination of employment

18 (1) An employee's contract of employment shall not be terminated by an employer unless there is a valid reason for termination connected with—

- (a) the ability, performance or conduct of the employee; or
- (b) the operational requirements of the employer's business.

(1A) An employee's contract of employment shall not be terminated by an employer under subsection (1), unless the notice requirements under section 20 and the provisions under section 26 or 27 have been complied with.

(2) Subsection (1) does not apply where an employee is employed—

EMPLOYMENT ACT 2000

- (a) for a fixed period of time which has expired;
- (b) for the duration of a project which is complete.

(3) An employee's contract of employment may be terminated by the employer for any reason in accordance with the notice requirements of section 20.

(4) Notwithstanding subsections (1) and (1A), an employee's contract of employment may be terminated by the employer without notice, for serious misconduct, under section 25.

[Section 18 subsections (1) and (1A) substituted for (1), and subsection (4) inserted, by 2006:12 s.5 effective 8 June 2006]

Probationary period

19 (1) A new employee may be required to serve a probationary period.

(2) During the probationary period, the employer or employee may terminate the contract of employment for any reason and without notice.

Notice periods

20 (1) A contract of employment may be terminated in accordance with this Part by the employer on giving the following minimum periods of notice in writing ("the statutory notice periods")—

- (a) one week, where the employee is paid each week;
- (b) two weeks, where the employee is paid every two weeks;
- (c) one month, in any other case.

(2) The statutory notice periods shall not apply—

- (a) where the employer is entitled to summarily dismiss an employee under this Act;
- (b) where the employee has reached the age at which he is required to retire, pursuant to his contract or otherwise;
- (c) where periods of notice are regulated by contract, by collective agreement or otherwise by agreement between the employer and employee;
- (d) where the giving of longer periods of notice is customary given the nature and functions of the work performed by the employee.

(3) A notice of termination shall not be given by an employer during an employee's absence—

- (a) on annual vacation, maternity leave or bereavement leave;
- (b) on sick leave, unless the period of sick leave extends beyond four weeks.

(4) An employee shall give his employer the statutory notice period to terminate his contract of employment unless—

EMPLOYMENT ACT 2000

- (a) the employer waives his right to notice;
- (b) a longer notice period applies by contract, by collective agreement or otherwise by agreement between the employer and employee; or
- (c) the giving of longer periods of notice is customary given the nature and functions of the work performed by the employee.

Payment in lieu of notice

21 (1) In lieu of providing notice of termination of employment in accordance with section 20, an employer may, at his discretion, pay an employee a sum equal to the wages and other remuneration and confer on him all other benefits that would have been due up to the expiry of any required period of notice.

(2) Where an employee terminates his contract of employment without notice in circumstances in which notice was required, and his employer has not waived the right to notice, the employee shall be entitled only to such wages and other remuneration which accrued at the date of termination.

Certificate of termination

22 On the termination of a contract of employment, an employer, if so requested by his employee, shall provide the employee with a certificate of termination indicating—

- (a) the name and address of the employer;
- (b) the nature of the employer's business;
- (c) the length of the employee's period of continuous employment;
- (d) the capacity in which the employee was employed;
- (e) the wages and other remuneration payable at the date of termination of the contract;
- (f) where the employee so requests, the reason for the termination.

Severance allowance

23 (1) Subject to subsection (7), on termination of his employment, an employee who has completed at least one year of continuous employment shall be entitled to be paid severance allowance by his employer.

(2) For the purposes of subsection (1), the amount of severance allowance payable to an employee shall be no less than the equivalent of—

- (a) two weeks wages, for each completed year of continuous employment up to the first ten years;
- (b) three weeks wages for each completed year of continuous employment thereafter;

up to a maximum of 26 weeks wages.

EMPLOYMENT ACT 2000

(3) For the purposes of subsection (1), termination of employment means termination by reason of—

- (a) redundancy;
- (b) the winding up or insolvency of an employer;
- (c) the death of an employer;
- (d) the death of an employee from an occupational disease or accident resulting from that employment.

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

- (a) unreasonably refuses to accept an offer of re-employment by the employer at the same place of work under no less favourable terms than he was employed immediately prior to the termination;
- (b) is employed by a partnership and his employment ceases on the dissolution of the partnership and—
 - (i) he enters into employment with one or more of the partners immediately after the dissolution, or
 - (ii) he unreasonably refuses to accept an offer of re-employment by any of the partners under no less favourable terms than he was employed immediately prior to the termination;
- (c) is employed by an employer who dies and—
 - (i) he enters into employment with the personal representative, widow, widower or any heir of the deceased employer immediately after the death, or
 - (ii) he unreasonably refuses to accept an offer of re-employment by such a person under no less favourable terms than he was employed immediately prior to the death.

(5) Where the contract of employment is terminated by reason of the death of the employee—

- (a) the severance allowance shall be paid to such person as the employee may have nominated in writing or, in the absence of such a person, to his estate representative; and
- (b) the employer shall be entitled to set off any life insurance which has been provided to the employee under his contract of employment.

(6) The payment of severance allowance under this section shall not affect an employee's entitlement—

- (a) to payment in lieu of notice under section 21; or
- (b) to compensation under Part V.

EMPLOYMENT ACT 2000

(7) The Minister, after consultation with the Labour Advisory Council, by regulations subject to the affirmative resolution procedure, may exempt specified types of employment from the payment of severance allowance where the Minister is satisfied on the application of an industry that there are exceptional circumstances to justify an exemption.

[Section 23 subsection (1) amended, and (7) inserted, by 2006:12 s.6 effective 8 June 2006]

Misconduct etc

Disciplinary action

24 (1) An employer shall be entitled to take disciplinary action, including giving an employee a written warning or suspending an employee, when it is reasonable to do so in all the circumstances.

(2) No employer may impose a fine or other monetary penalty on an employee except in cases where a requirement of restitution would be appropriate and where agreed on between the parties.

(3) In deciding what is reasonable for the purposes of subsection (1), regard shall be had to—

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

(4) A complaint that disciplinary action is unreasonable may be made to an inspector under section 36.

Summary dismissal for serious misconduct

25 An employer is entitled to dismiss without notice or payment of any severance allowance an employee who is guilty of serious misconduct—

- (a) which is directly related to the employment relationship; or
- (b) which has a detrimental effect on the employer's business,

such that it would be unreasonable to expect the employer to continue the employment relationship.

Termination for repeated misconduct

26 (1) Where an employee is guilty of misconduct which is directly related to the employment relationship but which does not fall within section 25, the employer may give him a written warning.

(2) If, within six months of the date of the warning, the employee is again guilty of misconduct falling within subsection (1), the employer may terminate the employee's contract of employment without notice or the payment of any severance allowance.

(3) An employer shall be deemed to have waived his right to terminate under subsection (2) if he does not do so within a reasonable period of time after having knowledge of the repeated misconduct.

Termination for unsatisfactory performance

27 (1) Where an employee is not performing his duties in a satisfactory manner, the employer may give him a written warning and appropriate instructions as to how to improve his performance.

(2) If the employee does not, during the period of six months beginning with the date of the written warning, demonstrate that he is able to perform his duties in a satisfactory manner and is in fact doing so, the employer may terminate his contract of employment without notice or the payment of any severance allowance.

Unfair dismissal

Unfair dismissal

28 (1) The following do not constitute valid reasons for dismissal or the imposition of disciplinary action—

- (a) an employee's race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, disability or marital status;
- (b) an employee's age, subject to any other enactment or any relevant collective agreement regarding retirement;
- (c) any reason connected with an employee's pregnancy, unless it involves absence from work which exceeds allocated leave entitlement;
- (d) an employee's trade union activity;
- (e) an employee's temporary absence from work because of sickness or injury, unless it occurs frequently and exceeds allocated leave entitlement;
- (f) an employee's absence from work for any of the reasons mentioned in section 13 (public duties), or due to service as a volunteer fire officer;
- (g) an employee who removes himself from a work situation which he reasonably believes presents an imminent and serious danger to life or health;

EMPLOYMENT ACT 2000

- (h) an employee's participation in any industrial action which takes place in conformity with the Labour Relations Act 1975;
- (i) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of this Act;
- (j) the making of a protected disclosure under section 29A.

(2) The dismissal of an employee is unfair if it is based on any of the grounds listed in subsection (1).

[Section 28 subsection (1)(j) inserted by 2011 : 35 s. 7 effective 21 October 2011]

Constructive dismissal

29 (1) An employee is entitled to terminate his contract of employment without notice where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship, having regard to the employee's duties, length of service and circumstances.

(2) An employee who terminates his contract pursuant to subsection (1) shall be deemed to have been unfairly dismissed for the purposes of this Act.

Whistle-blowers

29A (1) A person makes a protected disclosure if, in good faith, he notifies a listed person that he has reasonable grounds to believe—

- (a) that his employer or any other employee has committed, is committing, or is about to commit, a criminal offence or breach of any statutory obligation related to the employer's business;
- (b) that he himself has been directed, either by his employer or by one of his supervisors, to commit such a criminal offence or breach of statutory obligation; or
- (c) that information tending to show any matter falling within paragraph (a) or (b) has been, is being, or is likely to be, altered, erased, destroyed or concealed by any person.

(2) For the purposes of this section, the "listed persons" are—

- (a) the person's employer, manager or supervisor;
- (b) a police officer;
- (c) the Collector of Customs;
- (d) the Chief Fire Officer, as defined in section 2 of the Bermuda Fire and Rescue Service Act 1982;
- (e) the Chief Medical Officer, as defined in section 2 of the Public Health Act 1949;

EMPLOYMENT ACT 2000

- (f) the Chief Environmental Health Officer of the Department of Environmental Health;
- (g) a Safety and Health Officer appointed for the purposes of the administration of the Occupational Safety and Health Act 1982;
- (h) the Auditor General, appointed under section 88 of the Constitution;
- (i) the Ombudsman, appointed under section 93A of the Constitution;
- (j) the Accountant-General, appointed under section 4 of the Public Treasury (Administration and Payments) Act 1969;
- (k) the Director of Project Management and Procurement, appointed under section 32B of the Public Treasury (Administration and Payments) Act 1969;
- (l) *[repealed by 2012 : 25 s. 4]*
- (m) the Director of Internal Audit, appointed under section 3 of the Internal Audit Act 2010;
- (n) the Chief Immigration Officer of the Department of Immigration.

(3) A person making a protected disclosure may notify whichever of the persons listed in subsection (2) appears to him to be the most appropriate person to notify in the circumstances.

(4) Any provision of a contract of employment, or other agreement relating to the terms of employment of a person, shall be void insofar as it purports to preclude a person from making a protected disclosure.

(5) The Minister may, by order subject to the affirmative resolution procedure, amend subsection (2) so as to add or remove persons from the list.

[Section 29A inserted by 2011 : 35 s. 7 effective 21 October 2011; subsection (2)(l) repealed by 2012 : 25 s. 4 effective 3 July 2012; subsection (2)(n) inserted by 2013 : 35 s. 8 effective 1 April 2014.]

Redundancy etc

Termination for redundancy

30 (1) An employer may terminate the employment of an employee whose position is redundant.

(2) An employee is redundant for the purposes of this Act, where the termination of his employment is, or is part of, a reduction in the employer's work force which is a direct result of any of the conditions of redundancy.

(3) The following are the conditions of redundancy—

- (a) the modernisation, mechanisation or automation of all or part of the employer's business;
- (b) the discontinuance of all or part of the business;

- (c) the sale or other disposal of the business;
 - (d) the reorganisation of the business;
 - (e) the reduction in business which has been necessitated by economic conditions, contraction in the volume of work or sales, reduced demand or surplus inventory;
 - (f) the impossibility or impracticality of carrying on the business at the usual rate or at all due to—
 - (i) shortage of materials;
 - (ii) mechanical breakdown;
 - (iii) act of God; or
 - (iv) other circumstances beyond the control of the employer.
- (4) Before terminating the employment of an employee for redundancy, the employer shall, as soon as practicable—
- (a) inform the employee's trade union or other representative (if any) of the following information—
 - (i) the existence of the relevant condition of redundancy;
 - (ii) the reasons for the termination contemplated;
 - (iii) the number and categories of employees likely to be affected; and
 - (iv) the period over which such termination is likely to be carried out; and
 - (b) consult the employee's trade union or other representative (if any) on—
 - (i) the possible measures that could be taken to avert or minimise the adverse effects of such redundancy on employment; and
 - (ii) the possible measures that could be taken to mitigate the adverse effects of any termination on the employees concerned.

[Section 30 subsection (1) amended by 2006:12 s.7 effective 8 June 2006]

Effect of sham sale

- 31 (1) Where one of the purposes of a sale or other disposition of a business is—
- (a) to enable an employer to avoid any of his obligations under this Act; or
 - (b) to deprive any employee of his rights under this Act,

all of the employer's obligations under this Act are binding on the person acquiring the business.

- (2) Nothing in this section shall be taken to restrict an employer from making a bona fide sale of his business.

EMPLOYMENT ACT 2000

Lay off

- 32 (1) An employer shall not lay off an employee except in accordance with this Act.
- (2) Where any of the conditions of redundancy exist, an employer may lay off an employee for a continuous period not exceeding four months.
- (3) Where the lay off continues for a period which exceeds four months, it shall be deemed to be a termination for redundancy pursuant to section 30.

Winding up

- 33 (1) The winding up or insolvency of an employer's business shall cause the contract of employment of an employee to terminate one month from the date of winding up or the appointment of a receiver, unless the contract is otherwise terminated under this Part.
- (2) This section shall not apply where, notwithstanding the winding up or insolvency, the business continues to operate.
- (3) Subject to the retention of such sums as may be necessary to satisfy the costs, charges and expenses of the winding up of the employer's business, but notwithstanding the priority conferred on certain debts by section 236 of the Companies Act 1981 or any other enactment, on the winding up of an employer's business or the appointment of a receiver, the claims of an employee to the—
- (a) payment for vacation accrued but not taken;
 - (b) payment for wages earned but not paid; and
 - (c) severance allowance as calculated in accordance with section 23(2) up to a maximum of twenty-six weeks' wages,

shall have priority over all other claims including claims of the Crown.

- (4) The debts mentioned in subsection (3)(a), (b) and (c) shall rank equally among themselves and be paid in full, unless the assets of the employer's business available for payment of general creditors are insufficient to meet them, in which case they shall abate in equal proportions.

[Section 33 subsections (3) and (4) substituted for (3) by 2006:12 s.8 effective 8 June 2006]

PART V ENFORCEMENT

Inspectors

- 34 The Minister shall designate persons to be inspectors for the purpose of the enforcement of this Act and shall give every such person a certificate of his designation signed by the Minister and the person so designated.

Employment Tribunal

- 35 (1) The Employment Tribunal is hereby established.

EMPLOYMENT ACT 2000

(2) The Tribunal shall have jurisdiction to hear and determine complaints and other matters referred to it under this Act.

(3) The Schedule shall have effect with respect to the constitution of, and proceedings before, the Tribunal.

Right to complain to inspector

36 (1) An employee shall have the right to make a complaint in writing to an inspector that his employer has, within the preceding three months, failed to comply with any provision of this Act.

(2) A complaint may be made under this section by a trade union or other representative group on behalf of an employee.

(3) Where a group of employees having the same or substantially the same interests has a complaint pursuant to this Act, one complaint may be made in a representative capacity.

Inquiry by inspector

37 (1) Where an inspector—

- (a) receives a complaint under section 36; or
- (b) has reasonable grounds to believe that an employer has failed to comply with any provision of this Act,

the inspector shall, as soon as practicable, inquire into the matter.

(2) If, for the purposes of an inquiry under this Act, an inspector requires information which the employer, employee or any other person is likely to be able to supply, the inspector may, by notice in writing, require that person—

- (a) to supply that information; and
- (b) to produce such documents as may be specified and permit the inspector to take copies,

on such date or within such period of time as may be specified in the notice.

(3) After making such inquiries as he considers necessary in the circumstances, the inspector shall endeavour to conciliate the parties and to effect a settlement by all means at his disposal.

(4) Where the inspector—

- (a) has reasonable grounds to believe that an employer has failed to comply with any provision of this Act; but
- (b) is unable to effect a settlement under subsection (3),

he shall refer the complaint to the Tribunal.

(5) Where, in relation to an employer, any relevant grievance procedure is established (whether under a contract of employment, collective agreement or otherwise) to

deal with employees' complaints, the inspector shall not, except with the consent of all parties, attempt to settle the complaint under this section or refer the complaint to the Tribunal unless and until there has been a failure to obtain a settlement by means of that procedure.

Hearing of complaints by Tribunal

38 (1) As soon as practicable after the inspector has referred a complaint to the Tribunal, it shall hold a hearing and give the employer and employee, or their representatives, full opportunity to present evidence on oath and make submissions.

(2) In any claim arising out of the dismissal of an employee it shall be for the employer to prove the reason for the dismissal, and if he fails to do so there shall be a conclusive presumption that the dismissal was unfair.

(3) Where the employee claims constructive dismissal it shall be for him to prove the reason which made continuation of the employment relationship unreasonable.

Remedies: general

39 (1) Where the Tribunal determines that an employer has contravened a provision of this Act, it shall notify the employer and employee in writing of the reasons for its determination and shall order the employer—

- (a) to do any specified act which, in the opinion of the Tribunal, constitutes full compliance with this Act;
- (b) pay to the employee not later than such date as may be specified in the notice, the amount which the Tribunal has determined represents any unpaid wages or other benefits owing to the employee.

(2) Where the Tribunal determines that an employer has not contravened a provision of this Act, it shall notify the employer and employee in writing of the reasons for its determination.

Remedies: unfair dismissal

40 (1) If the Tribunal upholds an employee's complaint of unfair dismissal, it shall award one or more of the following remedies—

- (a) an order for reinstatement, whereby the employee is to be treated in all respects as if he had never been dismissed;
- (b) an order for re-engagement, whereby the employee is to be engaged in work comparable to that in which he was engaged prior to dismissal, or other reasonably suitable work, from such date and on such terms as may be specified in the order or agreed by the parties;
- (c) a compensation order in accordance with subsection (4).

(2) In deciding which remedy to award, the Tribunal shall first consider the possibility of making an order of reinstatement or re-engagement, taking into account the

EMPLOYMENT ACT 2000

wishes of the parties and the circumstances in which the dismissal took place, including the extent (if any) to which the employee caused or contributed to his dismissal.

(3) Where the Tribunal finds that the employee engaged in misconduct notwithstanding the unlawful nature of the dismissal, it may include a disciplinary penalty as a term of the order for reinstatement or re-engagement.

(4) A compensation order shall, subject to subsection (5), be of such amount as the Tribunal considers just and equitable in all the circumstances, having regard—

- (a) to the loss sustained by the employee in consequence of the dismissal in so far as that loss is attributable to action taken by the employer; and
- (b) the extent to which the employee caused or contributed to the dismissal.

(5) The amount of compensation ordered to be paid shall be not less than—

- (a) two weeks wages for each completed year of continuous employment, for employees with no more than two complete years of continuous employment;
- (b) four weeks wages for each completed year of continuous employment, in other cases,

up to a maximum of 26 weeks wages.

Appeals

41 (1) A party aggrieved by a determination or order of the Tribunal may appeal to the Supreme Court on a point of law.

(2) An appeal under subsection (1) shall be lodged in the Registry within twenty-one days after receipt of notification of the determination or order, or such longer period as the Supreme Court may allow.

(3) On any such appeal, the Supreme Court may make such order, including an order as to costs, as it thinks fit.

(4) Section 62 of the Supreme Court Act 1905 shall be deemed to extend to the making of rules under that section to regulate the practice and procedure on an appeal under this section.

(5) The lodging of an appeal under this section shall act as a stay of any order of the Tribunal.

Binding determination or order

42 Any determination or order made by the Tribunal shall be binding on the employer or any person succeeding (whether by virtue of a sale or other disposition or by operation of law) to the ownership or control of the business and the employee to whom the determination or order relates.

Report by Tribunal

43 The Chairman of the Tribunal shall, from time to time and at least once in each calendar year, submit to the Minister a report setting out determinations and orders made by Tribunal under this Part; but any such report shall not reveal the names of any of the parties affected.

Offences

44 (1) A person who—

- (a) fails, without reasonable cause, to comply with a requirement under section 37(2);
- (b) in purported compliance with a requirement under section 37(2), supplies information which he knows is false in a material particular; or
- (c) fails to comply with an order of the Tribunal made under this Part,

shall be guilty of an offence and liable on summary conviction to a fine of \$10,000.

(2) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent, knowledge or connivance of a director, manager, secretary or other similar officer of the body corporate, or any person who is purporting to act in any such capacity, he, as well as the body corporate commits that offence and shall be liable to be proceeded against and punished accordingly.

PART VI
SUPPLEMENTARY

Regulations

45 (1) The Minister may make such regulations as he considers necessary or expedient to give effect to this Act, and regulations may make different provision for different cases.

(2) Regulations under this section shall be made subject to the negative resolution procedure.

Crown application

46 This Act binds the Crown.

Amendment of Labour Relations Act 1975

47 In section 1 of the Labour Relations Act 1975 (interpretation), at the end of the definition of "labour dispute" there shall be added—

"but shall not include any matter which was the subject of a complaint which has been settled by an inspector or determined by the Employment Tribunal under the Employment Act 2000;".

Transitional provisions

48 (1) For the purposes of this section—

“commencement date” means the date appointed under section 1;

“existing employee” means a person who was employed immediately before the commencement date;

“transitional period” means the period of one year beginning with the commencement date.

(2) For the purposes of section 5, an existing employee’s period of continuous employment shall be deemed to begin from and include the first day on which he began to work for his employer, notwithstanding that that day was before the commencement date.

(3) In relation to existing employees, subsection (1) of section 6 shall have effect as if the following were substituted—

“(1) An employer shall, before the end of the transitional period, give to each of his existing employees a written statement of employment which shall be signed and dated by the employer and employee.

(1A) Subject to any additional requirements of this Act, the terms and conditions of employment evidenced in the written statement shall be at least as beneficial to the employee as the terms and conditions on which he was employed immediately before the commencement date.”

(4) No complaint made under section 36 shall be entertained by an inspector in so far as it relates to any alleged contravention of this Act by an employer in relation to an existing employee during the transitional period.

SCHEDULE

(section 35)

THE EMPLOYMENT TRIBUNAL

CONSTITUTION OF TRIBUNAL

1 (1) The Tribunal shall consist of a Chairman, a Deputy Chairman and a panel of not more than twelve members, appointed by the Minister by notice published in the Gazette.

(2) Before exercising his powers under subparagraph (1), the Minister shall consult such trade unions and other organisations as appear to him to be representative of the views of employers and employees.

(3) For the purpose of determining any complaint or other matter referred to the Tribunal under this Act, the Tribunal shall be composed of—

- (a) the Chairman or Deputy Chairman;
- (b) one or two members selected by the Chairman to represent the interests of employers; and
- (c) the same number of members selected by the Chairman to represent the interests of employees.

APPOINTMENTS

2 (1) The Chairman and Deputy Chairman of the Tribunal shall hold office for a period of three years, and may be reappointed from time to time for a like period.

(2) No person shall be qualified to be the Chairman or Deputy Chairman unless—

- (a) he is a barrister and attorney of at least five years standing; or
- (b) he has considerable experience in labour relations.

(3) The members of the panel shall hold office for a period of two years, and may be reappointed from time to time for a like period.

(4) The Minister may at any time, by notice published in the Gazette, appoint a person to act in the place of any member of the panel who is absent from Bermuda or who is for any reason incapacitated, but shall not appoint a person to act as Chairman or Deputy Chairman unless that person is himself qualified under subparagraph (2).

(5) The Chairman, Deputy Chairman or any member of the panel may at any time, except during the course of proceedings before them under this Act, resign his appointment by notice in writing addressed to the Minister.

EMPLOYMENT ACT 2000

(6) The Chairman, Deputy Chairman and members of the panel shall be entitled to receive out of the funds appropriated by the Legislature for the purpose such fees and allowances as the Minister may determine.

VACANCIES

3 Where, during any proceedings, a vacancy occurs in the membership of the Tribunal it may, with the consent of all parties, continue to act notwithstanding the vacancy; and no act, proceeding or determination of a Tribunal shall be called in question or invalidated by reason of the vacancy.

ASSESSORS

4 In any proceedings the Chairman or Deputy Chairman of the Tribunal may, if he thinks fit, summon to the assistance of the Tribunal any person of skill and experience in the matter to which the proceedings relate who is willing to assist the Tribunal as an assessor.

TRIBUNAL AUTONOMOUS

5 In the exercise of the powers conferred on it by this Act, the Tribunal shall not be subject to the direction or control of any other person or authority.

PROCEEDINGS

6 Parties to any proceedings before the Tribunal may appear personally or be represented, by counsel or otherwise.

7 The Tribunal may impose reporting restrictions where it considers it necessary or desirable to protect the privacy of parties to a hearing.

8 The Arbitration Act 1986 shall not apply to any proceedings of the Tribunal or to any award made by it.

9 Save as otherwise provided by any provision of this Act or in regulations made by the Minister regulating the procedure to be followed by the Tribunal, the Tribunal shall regulate its own proceedings as it thinks fit.

[Assent Date: 8 December 2000]

[Operative Date: 1 March 2001]

[Amended by:

2006 : 12

2010 : 36

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EMPLOYMENT ACT 2000

2011 : 35
2012 : 25
BR 40 / 2013
2013 : 35]