



Amendments to Bermuda's Employment Act Come into Force

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Part 2: Statements of employment, statements against bullying and sexual harassment, new entitlements and other changes to Bermuda's Employment Act 2000

On 1 June 2021, various changes to Bermuda's Employment Act 2000 will come into force (the "Amended Act"). These changes arise from the Employment Amendment (No. 2) Act 2020 and the Trade Union and Labour Relations (Consolidation) Act 2020, which were both passed in the Senate on 13 January 2021.

In Part 1 of this two-part series on the changes to Bermuda's employment legislation, we provided an overview of the changes to termination procedures. [Click here to read Part 1.](#)

In this Part 2, we provide an overview of the amendments and additions relating to statements of employment, employee entitlements and employer obligations (including those relating to bullying and sexual harassment in the workplace) and other key amendments.

It should be noted that, except where indicated otherwise, the Act applies only to 'employees' within the meaning of the Act, being employees who work at least 15 hours a week, wholly or mainly in Bermuda, and who do not fall within one of the exceptions e.g. a casual worker or a student employed in their vacation period.

1. New particulars to be included in employee statements of employment

Employers must, within a week of an employee commencing employment, provide to them a statement of employment setting out numerous required particulars. For example, the employee's salary, holiday and sick leave entitlements and notice of termination requirements.

Section 6 of the Amended Act will require new particulars to be set out in an employee's statement of employment, relating to: meal breaks, rest periods, overtime pay, work permit particulars and the existence of the employer's policy against bullying and sexual harassment (discussed below).

Under the Amended Act, if an employer fails to comply with the requirements of section 6 (e.g. having in place a statement of employment, containing the required particulars) they will be liable for a civil penalty. Such penalty must be appropriate, meaning that it must be "appropriate, proportionate and dissuasive" and may be up to \$5,000 if awarded by the Manager of Labour Relations and up to \$10,000 if awarded by the Employment and Labour Relations Tribunal (the "Tribunal").

2. Statements of employment for other categories of worker

Previously, statements of employment were only required for employees. However, as of 1 June 2021, certain other categories of workers will also need to be provided compliant statements – including casual workers, temporary employees, part-time employees, students and voluntary workers (as already defined in the Amended Act, such definitions have not been amended). While the Amended Act clarifies that the requirement to provide a compliant statement shall not be taken to entitle such persons to entitlements that would otherwise not apply to them, care should be taken when drafting the statements to avoid inadvertently giving rise to such rights.

3. Written policy against bullying and sexual harassment

As of 1 June 2021, employers must have in place a compliant clear written policy statement against bullying and sexual harassment. For example (and this is not an exhaustive list), the policy must contain a statement to the effect that every employee is entitled to a workplace free of bullying and sexual harassment, that employers will make every reasonable effort to ensure employees are not subjected to such behaviour, how complaints can be drawn to the employer's attention and what measures, including disciplinary

action, may be taken against an offender. When defining bullying and sexual harassment, the policy must use substantially similar definitions to those in the new provisions.

Employers must also (i) present this policy to employees on the commencement of their employment, (ii) set out in statements of employment the existence of the policy and how it can be accessed and (iii) put in place procedures to assist every employee in understanding the policy statement.

Non-compliance with this new provision renders the employer liable to the new civil penalty (a maximum penalty of \$10,000 if awarded by the Tribunal).

4. Bereavement leave

All employees are entitled to unpaid time off in the event of the death of a member of their 'immediate family' or to attend an overseas funeral for such individual. The Amended Act broadens the definition of 'immediate family' to include a sibling, grandparent, great-grandparent, grandchild or great grandchild. Previously, it only included a spouse, child or parent. (While unchanged by the recent amendments, we note that 'immediate family' also includes a member of the employee's household other than by reason of a landlord/tenant or employer/employee relationship.)

5. Ante-natal appointments

All pregnant employees are entitled to time off to attend ante-natal appointments. Under the Amended Act, this time off must be paid. (Prior to this amendment, only those who had completed one year's continuous employment with the employer were entitled to paid leave for such appointments).

6. Meal breaks

The new section 10A provides that employees shall not be required to work for more than five hours continuously without a meal break of at least 30 minutes or to perform any work during this meal break without the consent of that employee.

7. Lay offs

This last year saw unprecedented use of the legislation's lay off provisions. Under the Amended Act, before placing an employee on lay off the employer shall as soon as possible inform the employee (or their trade union or other representative) of: (i) of the existence of the relevant condition of redundancy; (ii) the reasons for the lay off contemplated; and (iii) the period over which such lay off is likely to be carried out.

8. Limitation, complaints to the inspector

The time for an employee to make a complaint in writing to an inspector will increase from three to six months under the Amended Act. Consequently, employees have six months to complain that their employer has failed to comply with any provision of the Amended Act.

9. Unfair dismissal compensation

Those who are found to be unfairly dismissed and who have been employed no more than two complete years of continuous employment shall be entitled to slightly increased compensation, being *three* weeks wages for each completed year of continuous employment (previously being two weeks' wages). Those employed for more than two years remain entitled to four weeks wages for each completed year.

Conclusion

As a result of the changes to Bermuda's employment legislation, employers will need to take steps to ensure their compliance with the Amended Act and are reminded that non-compliance with the statement of employment and policies against bullying and sexual harassment may result in civil penalties.

How Can We Help?

If you would like to discuss the amendments in more detail or need assisting in identifying and implementing the steps required to ensure compliance with the Amended Act, or advice in relation to any employment related matter, please contact one of the individuals listed below.

This series concentrates solely on the amendments to Bermuda's Employment Act 2000 and not on those to the Trade Union and Labour Relations (Consolidation) Act 2020. If you would like to discuss the changes to the latter legislation, please also contact one of the individuals listed below.

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