# EMPLOYMENT AMENDMENT ACT 2020

## **INFORMATION FACT SHEET**

In an effort to strengthen the rights and obligations of employers and employees in Bermuda, the 2020 Employment Amendment Bill seeks to modernize and clarify the existing legislation to ensure it is in line with international best practices.

Considering the present state of the job market in Bermuda and the need to get Bermudians reemployed, the amendments addressed problems within the legislation concerning ambiguity and areas that were considered archaic and outdated for the 21st century, particularly when compared to examples of more modern legislation in other jurisdictions and the standard set for best practices by the International Labour Organization.

The Employment Amendment Act 2020 will come into operation on 1 June 2021 to allow employees, employers and their respective representatives to familiarize themselves with its provisions and make the necessary changes to their current contracts of employment and/or handbooks, to ensure compliance.

An outline of the Employment Legislation Amendments and how they impact employer and employee relations is provided for here for your convenience.

#### 1. DEFINITIONS

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No provision	Bullying	These definitions are added or
No provision	Manager (Labour Relations)	amended to explain the new/amended
No provision	Sexual Harassment	policies and procedures included in the amendments.
No provision	Work permit	amenuments.

#### 2. MEANING OF EMPLOYEE

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No guidelines for determining the difference between an employee and independent contractor.	Manager may issue guidelines to determine the differences between an employee and an independent contractor.	This will be for the purposes of dispute resolution.

#### 3. MEANING OF CONTINUOUS EMPLOYMENT

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No provision	Amendment to include "lay-off".	This will ensure that an employee's
		period of continuous employment shall
		be deemed to include any period of
		lay-off.

## 4. STATEMENT OF EMPLOYMENT

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No provision	The entitlement to rest days and meal breaks must be included in a statement of employment.	This information is to be included in the statement of employment for the agreement of both parties.
	The entitlement to overtime pay or hours in lieu must be included in a statement of employment.	
	Any work permit related conditions and restrictions must be included in a statement of employment.	
	The employer's written policy against bullying and sexual harassment in the workplace and how the policy can be accessed must be included in a statement of employment.	
	No payment or agreement of overtime or time in lieu must be included in a statement of employment.	

## 5. ENTITLEMENT TO MEAL BREAKS

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No provision	Employers must not require employees to work more than five hours continuously without a meal break.	This is in line with the best practices by the International Labour Organization.

#### 6. SEXUAL HARASSMENT AND BULLYING POLICY

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No provision	Requires employer to provide a clear written policy statement against bullying and sexual harassment in his place of employment. A sample of the contents of the policy statement are provided in Schedule 1.	This is in line with the best practices by the International Labour Organization.

## 7. TERMINATION OF EMPLOYMENT

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No specific time period for an	Requires an employer, who terminates	This is in line with the best practices by
employer who, terminates an	an employee's contract of employment	the International Labour Organization.
employee's contract, to pay wages or	to pay wages or other remuneration	
other remuneration.	within 7 (seven) days or during the	
	next regular payment cycle.	

#### 8. PROBATION

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No time-frame for probationary period.	<ul> <li>employers to provide new employees with a probationary period of not more than 6 (six) months;</li> </ul>	This is in line with the best practices by the International Labour Organization.  Note that the probationary periods
No provision	<ul> <li>new employees to be entitled to a performance review during the probationary period;</li> </ul>	will not apply to police, prison, fire and customs officers.
No provision	<ul> <li>the probationary period to be extended for not more than 3 (three) months;</li> </ul>	
Both the employer and employee can terminate the employment contract for any reasons and without notice.	<ul> <li>an employee's contract to be terminated by the employer for any reason related to performance or operational requirement of employer's business;</li> <li>an employee to terminate their contract for any reason;</li> </ul>	
No provision	a promoted employee may be required to serve a probationary period however the rules relating to termination during probation will not apply to a promoted employee.	

#### 9. TERMINATION FOR MISCONDUCT AND UNSATISFACTORY PERFORMANCE

TERMINATION FOR MISCONDUCT		
CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
<ul> <li>No requirement for an employer to set out the nature of misconduct and instructions for improvement when giving an employee a written warning.</li> </ul>	Provides for an employer to give an employee a written warning setting out the misconduct and instructions for improvement.	This is in line with the best practices by the International Labour Organization.
Employer may terminate an employee within 6 months of date of warning without notice or severance payment.	Employer may terminate an employee within 6 months without notice or severance after the second further occasion of misconduct if he is guilty of misconduct on 2 (two) separate occasions or may terminate an employee within a 12 (twelve) month period if he is guilty on four (4) separate occasions of misconduct.	
Employer waives his right to terminate if he does not do so within a reasonable time.	Employer waives his right to terminate if he does not do so within 14 (fourteen) days.	

TERMINATION FOR UNSATISFACTORY PERFORMANCE		
CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
<ul> <li>An employer, who is giving an employee a written warning, is required to provide appropriate instruction on how to improve.</li> </ul>	<ul> <li>An employer may give to an employee who is not performing his duties satisfactorily, a written warning, setting out the unsatisfac- tory performance and appropriate instructions on how to improve.</li> </ul>	This is in line with the best practices by the International Labour Organization.
No provision	Employer waives his right to terminate if he does not do so within 14 (fourteen) days.	

#### **10. REDUNDANCY**

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
An employer who is terminating an employee for redundancy shall inform the employee's trade union or other representative as soon as practicable.	An employer who is terminating an employee for redundancy must inform and consult the necessary persons within 14 (fourteen) days.	This is in line with the best practices by the International Labour Organization.

#### 11. LAY-OFF

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No requirement for an employer, who	Before laying off an employee an	This is in line with the best practices by
is laying off an employee, to inform him	employer must inform the employee,	the International Labour Organization.
in writing or prior to the start of the	union or other representative of the	
lay off period that he is being laid-off	relevant condition of the redundancy,	
or provide reasons and a likely time-	the reasons for the lay off, and the	
period of the lay off.	time-period.	

## 12. INQUIRIES

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
No defined time-frame for an inspector to inquire into a complaint.	An inspector is required to inquire into a complaint within 14 (fourteen) days of receipt.	This is in line with the best practices by the International Labour Organization.

#### 13. REMEDIES: UNFAIR DISMISSAL

CURRENT LEGISLATION	PROPOSED CHANGE	RATIONALE
If a Tribunal upholds an employee's complaint of unfair dismissal and compensation is ordered it shall be not less than 2 (weeks) wages for the first 2 (two) years of continuous employment.	A compensation order shall not be less than 3 (three) weeks wages for the first 2 (two) years of continuous employment.	This is in line with the best practices by the International Labour Organization.

This task and the process to get to tabling of this Bill was a collaborative effort by the Ministry of Labour and the members of the Labour Advisory Council (LAC). The LACs ability to work together in the interest of their members and the labour force of Bermuda is highly commended and greatly appreciated.