



Ministerial Statement to the Senate

By

Senator Arianna Hodgson, JP

Junior Minister for Community Affairs and Sport, and Labour

Employment and Labour Legislative Amendments

16 December 2020

Madam President,

Today I am pleased to announce the tabling of two critical pieces of legislation:

- The Employment Amendment Act 2020; and
- The Trade Union and Labour Relations (Consolidation) Act 2020.

Background

Madam President,

The overarching aim of the Ministry of Labour is the expansion of jobs within Bermuda. The Government previously announced that it would introduce amendments to the Employment Act and a consolidated Labour Act.

These two Bills seek to strengthen the rights and obligations of employers and employees in Bermuda's labour force as well as modernize and clarify areas of the existing legislation to ensure that it is in line with international best practices. In addition, the legislation will revise the labour dispute mechanisms in Bermuda.

Both of these legislative changes are a long time coming and have had substantial input from employers, trade union representatives and the Government over the years.

Legislative Development Process

Madam President,

It is important for me to provide context as to how we arrived at this point today. The Labour Law Reform Committee (the “LLRC”) is a subcommittee of the Labour Advisory Council (the “LAC”), which is a tripartite council Chaired by the Minister responsible for Labour.

In 2013, under the direction of the then Minister of Home Affairs, the LAC was asked to review the existing employment and labour legislation in Bermuda and to recommend amendments that addressed problems within the legislation. The focus was on areas of ambiguity and areas considered archaic and outdated for the 21st century, particularly when compared to examples of more modern legislation in other jurisdictions and the standard set for best practices by the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 (ILO).

Madam President,

The LLRC provided its recommendations on reform to the Minister responsible for Labour in 2018. The LLRC’s review included the following employment and labour legislation:

- the Employment Act 2000;
- the Labour Relations Act 1975;
- the Trade Union Act 1965; and
- the Labour Disputes Act 1992.

The LLRC consisted of the following members:

Union Representatives

- Edward Ball Jr. (BPSU);
- Chris Furbert (BIU); and
- Michael Charles (BUT).

Employer Representatives

- Keith Jensen (BEC);
- Stephen Todd (BHA);
- Graham Redford (BEC); and
- Carlita O'Brien (Bermuda Government)

Independent Representatives

- Wendell Hollis (Chairman);
- Thad Hollis (Deputy Chairman)

Ex-Officio Members

- Marcelle Lawrence (Bermuda Government); and
- Gabrielle Cann (Bermuda Government)

Madam President,

The LLRC reviewed each Act in its current form and brought into consideration the experience of the LLRC members in dealing with such legislation. The LLRC's approach was to overcome the various challenges of the current legislation and to bring the legislation in line with modern principles for laws governing the relationship between a business and a trade union, and between an employer and an employee.

The following points are very important to note:

1. Various industry stakeholders were invited to provide their comments and views on the current legislation with suggested amendments, which were reviewed and considered by the LLRC during its review.
2. Once the LLRC presented its recommendations to the Minister, consultation took place with the various members of the LAC who represented the views of their respective members.
3. LAC members were invited to provide submissions and consultation with the Minister responsible for Labour took place between August 2018 and February 2019.

Madam President,

The Ministry of Labour worked closely with the Attorney General's Chambers to produce an Employment Amendment Act and a Trade Union and Labour Relations (Consolidation) Act that is equitable and promotes good and fair employment practices.

Employment Amendment Act 2000

Madam President,

Please allow me to highlight some of the major amendments to the Employment Act 2000:

1. **Probationary Periods** – Timeframes have been built into the legislation to avoid the practice of lengthy extensions of the probationary period. Employers will now be required to provide employees with a review of their performance midway through their probationary period so that employees are aware of areas that

need improvement to enable successful completion of their probation. There are exclusions to this section to take into account those services which require a longer probationary period due to the nature of the work conducted;

2. **Ante-natal Care** – Employees are no longer required to work for one completed year before being entitled to paid time off from work to attend ante-natal appointments.
3. **Bereavement Leave** – Persons for who bereavement leave may be taken has been extended to include grandparents, great-grandparents, grandchildren and great-grandchildren.
4. **Payment upon Termination** – Employers will be required, upon the termination of an employee, to pay any wages and other remuneration or benefits owed to an employee within seven days or at the next interval that the employee would have been paid.

Madam President,

New Sections being added to the Act in this Bill include:

- **Independent Contractor** – The Labour Relations Manager may issue guidance surrounding the employment relationship as it relates to independent contractors to ensure that persons are not being incorrectly classified;
- **Meal Breaks** – Employees are entitled to a meal break of at least 30 minutes after working continuously for five hours; and
- **Bullying and Sexual Harassment** – Employers are required to have a policy against bullying and sexual harassment in the

workplace that applies to all employees. The inclusion of this provision is to ensure that all workers are protected from bullying and sexual harassment at work and from colleagues. This addition follows guidance set out by the ILO Convention on Violence and Harassment in the world of work.

Madam President,

It is anticipated that the Employment Amendment Act 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.

The Trade Union and Labour Relations (Consolidation) Act 2020

Madam President,

Now I turn to the new Trade Union and Labour Relations (Consolidation) Act 2020. This is a consolidation of:

- The Trade Union Act 1965;
- The Labour Relations Act 1975; and
- The Labour Disputes Act 1992.

It is important to provide a brief summary of some of the more significant changes contained in this comprehensive and ground-breaking legislation.

- **Tribunals and Boards of Inquiries** – In the current labour legislation in Bermuda, there are the following nine (9) Tribunals and Boards:

1. PERMANENT ARBITRATION TRIBUNAL

2. ESSENTIAL INDUSTRIES DISPUTES SETTLEMENT BOARD
3. TRADE UNION ACT TRIBUNAL
4. LABOUR DISPUTES TRIBUNAL
5. SOLE ARBITRATOR
6. ARBITRATOR WITH ASSESSORS
7. INDEPENDENT CHAIRMAN WITH ARBITRATORS
8. MEDIATOR
9. BOARD OF INQUIRY

Additionally, the Employment Act 2000 established the Employment Tribunal to hear employment related complaints.

The legislation being tabled today will streamline and consolidate the number of tribunals across all labour and employment legislation into **one** to be known as the Employment and Labour Relations Tribunal. This means there will be one Tribunal to handle all employment complaints and labour related disputes. This is a significant improvement on the current state of affairs.

- **Mediation** – Under the current Labour Relations Act, the Minister has the option to refer a dispute to a Mediator. In the proposed amendments, referral to mediation by the Minister has been removed as mediation outside of the Labour Relations Section has been found to be unnecessary as it prolongs resolution and most parties opt out.
- **Civil Penalties** – Under the Labour Acts, persons who commit offences are liable on summary conviction to a fine or imprisonment. In the proposed amendments, establishment of civil penalties up to \$5,000 will replace most offences requiring court appearances.

A civil penalty regime entails a faster less laborious process with both the Labour Relations Manager and the Employment and Labour Relations Tribunal able to impose a penalty.

▪ **Definitions** – A number of definitions are out of step with best practice. Therefore this legislation will revise definitions for:

- Employer;
- Lockout; and
- Management Person.

This legislation will also add the following new terms:

- Employers Organization; and
- Civil penalty.

Conclusion

Madam President,

The Employment Amendment Act 2020 and the Trade Union and Labour Relations (Consolidation) Act 2020 will constitute the Employment and Labour Code of Bermuda.

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 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.

It is the vision of the Ministry of Labour to comprehensively engage employers, labour and Government to reinvigorate the Bermuda economy, which benefits everyone.

Thank you.

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